



Institute for Peace Research and Security Policy at the University of Hamburg

# FROM CAPITOL HILL TO ISTANBUL: THE ORIGINS OF THE CURRENT CFE DEADLOCK

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## Abstract

In December 2007 the most successful and comprehensive international conventional arms control agreement, the Treaty on Conventional Armed Forces in Europe (CFE), lost the support of its most relevant party – Russia.

Moscow's unilateral decision to suspend the treaty did not actually come as a surprise but merely marked the nadir of negative development that can be traced back to the 1999 Istanbul OSCE Summit where Russia agreed to withdraw its armed forces from independent Moldova and Georgia.

Right up until today NATO States still refuse to ratify the Adapted CFE Treaty (ACFE), which was signed in Istanbul, because of Russia's failure to fully withdraw its forces. Since NATO's 2002 Prague Summit Declaration these so-called *Istanbul Commitments* of Russia are the sole justification for the Alliance not moving further in adapting the Cold War-style CFE Treaty to the current European security landscape.

The present CORE Working Paper aims at highlighting the origins of the *Istanbul Commitments* in the U.S. Congress debate of the early and mid-nineties as well as their links to geostrategic and economic interests, structural anti-Russian and anti-arms control resentments within the Republican Party, and a deep mistrust between Capitol Hill and the Clinton Administration around handling NATO enlargement and Russia.

The paper will not debate the question of Russia's policy on the so-called *near abroad*.

To overcome the current deadlock, however, harking back might be helpful in reminding possible future negotiators of the dangers of taking arms control 'hostage' to national agendas, which are to some degree confrontational.

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## 1. Introduction

On December 12, 2007 the Russian Federation announced its suspension of the CFE Treaty as “the result of exceptional circumstances [...] that affect Russia’s security”<sup>1</sup>. Although Russia still holds its seat in the Joint Consultative Group (JCG), the regular body responsible for the CFE accords, and despite Moscow’s assurances that it would not build up its armaments on a massive scale or concentrate them on its neighbors’ borders, transparency and verification through data exchange and on-site inspections are impossible.

The political implications of the Russian withdrawal weigh even more heavily. With Russia’s suspension, CFE not only lost its most relevant party but also the core justification, more or less, for a number of countries, especially those in the post-Soviet space, to participate.

The danger, that an enduring absence of any limitations agreement at the conventional level might give way to renewed arms races in parts of Europe is clear. Those would be less likely to occur at the strategic level between NATO and Russia, than at sub-regional levels, in the Caucasus, for instance.<sup>2</sup> But most importantly, without CFE a significant instrument for building confidence in military matters has not been in force for almost two years.

Indeed the situation is even more complicated. Not only is CFE not functioning anymore, the ACFE Treaty<sup>3</sup> is not yet in force. ACFE, which envisaged adapting the ‘old’ agreement, - a legacy from the end of the Cold War - to the significantly changed European security landscape is still awaiting ratification. The reason for NATO’s refusal to ratify the legally binding ACFE Treaty can be found in a number of politically binding side-agreements concluded at the time of the signing of ACFE at the OSCE Istanbul Summit in 1999.<sup>4</sup> Moscow’s non-compliance with its pledge in these so-called *Istanbul Commitments* to withdraw its remaining troops and equipment (TLE) from the Transnistrian part of Moldova and to withdraw its forces from Georgia whilst dismantling four military bases became the official and sole justification for NATO not ratifying the Adapted Treaty following the 2002 Prague Summit of the Alliance.<sup>5</sup>

This position stands in stark contrast to former U.S. President Clinton’s announcement during the 1999 Istanbul Summit that he would only submit the ACFE Treaty to the Senate for advice and consent to ratification “when Russian forces have, in fact, been reduced to the flank levels set forth in the adapted treaty.”<sup>6</sup>

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<sup>1</sup> Statement by the Delegation of the Russian Federation (FSC.JOUR/539, 12 December 2007, Annex), p. 1 (OSCE documents are available at: <http://www.osce.org>).

<sup>2</sup> Shortly after the Russian suspension, Armenian as well as Azerbaijani officials suggested a possible withdrawal from the CFE Treaty as well. Cf. Peuch, Jean-Christophe (2008), “Armenia, Azerbaijan mull CFE Treaty withdrawal in year of ‘many uncertainties’ for OSCE”, *Eurasia Insight* (01-07-2008), at: <http://www.eurasianet.org/departments/insight/articles/eav010708a.shtml>.

<sup>3</sup> The correct title of the ACFE is “Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe”.

<sup>4</sup> The side agreements in detail are the Istanbul Summit Declaration, Article 19, the Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe, and Annex 14 (Joint Statement of the Russian Federation and Georgia) to the Final Act. All documents are part of the OSCE Istanbul Document 1999.

<sup>5</sup> Cf. Prague Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Prague, November 21, 2002 (NATO documents are available at: <http://www.nato.int>).

<sup>6</sup> Statement on the Agreement Modifying the Conventional Armed Forces in Europe Treaty (November 19, 1999), (Presidential speeches and documents are available at: <http://www.gpoaccess.gov>).

The question is, why the U.S. and NATO decided to make the modernization of the most successful and comprehensive conventional arms control agreement worldwide dependent on the solution of two sub-regional conflicts in the post-Soviet space.

The answer dates back to the early and mid-nineties when the process of NATO enlargement and the CFE adaptation process became closely connected. A significant change in the U.S. Congress' perception of Russian foreign policy paved the way for a startling showdown between the Senate and the Clinton Administration. In the end, not only the administration but to a greater degree the CFE regime became 'hostage' to unresolved conflicts and partially confrontational national agendas.

## 2. (Ex-)Cold War Warriors and a Change of Tone

In late 1993 two political events became subject to the 103<sup>rd</sup> U.S. Congress debate on Russian foreign policy. First was the constitutional crisis in Russia, which reached its climax in the shelling of the Russian Parliament. Concerns were voiced in Washington that President Yeltsin owed his victory on Parliament solely to the military and would thus be susceptible to blackmail in the future.<sup>7</sup> The second event was the release of the Russian military doctrine which, for the first time, officially legitimized military operations in the so called *near abroad* if Russian national security interests were at stake.<sup>8</sup>

In the view of a number of Senators from both sides of the aisle, these developments heralded the beginning of the end of political reforms in Russia and the return to a policy of an aggressive, revanchist and even imperialist great power. Jesse Helms, long-term Chairman of the Senate Foreign Relations Committee, commented critically "that Russia and several of the other States of the former Soviet Union continue many of the bad habits of the Soviet Union. [...] I am troubled by Russia's growing interventionist tendencies in areas such as Moldova, Central Asia, and Georgia, for example."<sup>9</sup> Together with this kind of criticism a growing tendency to harsh rhetoric became fashionable especially amongst Republican Senators when it came to American-Russian relations. Richard Lugar determined that "we are not partners with Russia. We are tough-minded rivals"<sup>10</sup> and John McCain denounced Russian "imperial outposts from Moldova to Estonia"<sup>11</sup>.

It was no wonder that Congress followed up the rhetoric with action. The Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 obliged the administration to report to Congress on the involvement of Russian armed forces in conflicts in Armenia, Azerbaijan, Georgia, Moldova, and Tajikistan.<sup>12</sup> Furthermore, Congress questioned America's financial support of Russia, wondering aloud about cutting down monetary aid as long as Moscow was

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<sup>7</sup> Cf. Senator Dennis DeConcini during floor debate, Congressional Record, Senate, November 5, 1993, Page S15206 and the Washington Post article "Yeltsin's Deal With the Devil" cited in Congressional Record, Senate, November 5, 1993, Page S15206, (U.S. Congressional documents are available at: <http://thomas.loc.gov/>).

<sup>8</sup> Cf. The Basic Provisions of the Military Doctrine of the Russian Federation (November 2, 1993), at: <http://www.fas.org/nuke/guide/russia/doctrine/russia-mil-doc.html>.

<sup>9</sup> Congressional Record, Senate, November 23, 1993, Page S17050.

<sup>10</sup> Congressional Record, House, March 2, 1994, Page E326.

<sup>11</sup> Congressional Record, Senate, March 17, 1994, Page S3128.

<sup>12</sup> Cf. H.R. 2333, 103d Congress 2d Session (January 25, 1994).

not willing to withdraw its troops from Latvia, Estonia and Moldova. Even international financial institutions should be used to block further loans for Russia, Congress claimed.<sup>13</sup>

Parallel to leveling criticism at Russia, the Clinton Administration's Russia policy came under Congressional fire. "What we need is a fundamental reassessment of United States' policy toward Russia"<sup>14</sup>, Bob Dole urged the White House and, in the words of John McCain, a prospective American policy toward Moscow "should be premised only on that principle upon which all democracies prosper – enlightened self-interest"<sup>15</sup>.

How widely the perceptions of Russian involvement in the post-Soviet space differed between the Congress and the administration was illustrated by a rhetorical *faux pas* during the 1994 bilateral Moscow Summit. With a view to the situation in Georgia, Bill Clinton publicly compared Russia's military involvement in the Caucasus to American interventions in Panama and Grenada.<sup>16</sup>

The American debate on handling Russia in the years 1993 and 1994 seems to have repeated the characteristic style of the Cold War period believed to be overcome at that time. Larger segments of Congress, in particular, appeared to emulate long-term structural behaviors reflexively. In a rather strange mirroring situation, the extinct Soviet Union changed places with the Russian Federation and the cry for freedom of the former Warsaw Pact Members became the call for sovereignty of the newly independent states on Russia's periphery, at least in the rhetoric used by some of the members of Congress.

The significant change in tone might seem anachronistic in retrospect, given the state of affairs already reached between the U.S. and Russia at that time. Nevertheless its frequency actually increased in the years that followed, especially with the Republican-dominated 104<sup>th</sup> and 105<sup>th</sup> U.S. Congress. At the same time, the American legislature was not the only political institution during the early and mid-nineties prone to self-delusions about the United States' omnipotent role in the new world order. American academic as well as journalist deliberations about the future international system predicted either the "end of history"<sup>17</sup> or a "unipolar moment"<sup>18</sup>. From these points of view it was thus clear that granting Russia an equal place at the international table was not an acceptable option for any U.S. administration. According to George Bush Sen., America had won the Cold War. Why should it then share power with its former rival, particularly with Moscow shying away from further democratic reforms?

With NATO enlargement looming on the strategic horizon the willingness of Congress to subordinate American-Russian relations to the long-term goals of enlargement and consolidation of America's supremacy accelerated whilst cooperation with the Democratic leadership of Bill Clinton reached a new low-point. Interestingly enough, for several reasons a tiny European country – Moldova – gained centre stage in the discussions which followed.

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<sup>13</sup> Cf. H.R. 3992, 103d Congress 2d Session (March 9, 1994).

<sup>14</sup> Congressional Record, Senate, March 17, 1994, Page S3128.

<sup>15</sup> Ibid.

<sup>16</sup> Cf. Remarks in a Town Meeting with Russian Citizens in Moscow, January 14, 1994.

<sup>17</sup> Cf. Fukuyama, Francis (1992), "The End of History and the Last Man", Penguin Books London.

<sup>18</sup> Cf. Krauthammer, Charles (1991), "The Unipolar Moment", *Foreign Affairs* (70) 1.

### 3. Moldova, the Russian Troops and the Flank Problem

The problem of the remaining Russian troops in Moldova and Georgia soon became the subject of intensified debate in the Senate and the House of Representatives. In May 1994, Dennis DeConcini detected a violation of the Helsinki Accords and urged Russia to remove its units from both countries.<sup>19</sup>

In October 1994, Senate Resolution 78 and House Resolution 308 urged the Russian Federation “to adhere to the provisions of the agreement initiated on August 10, 1994, to provide for the withdrawal of the military forces of the Russian Federation from Moldova and urge[d] the Administration to continue to use every appropriate opportunity, including multilateral and bilateral diplomacy, to secure removal of the military forces of the Russian Federation from Moldova.”<sup>20</sup> Even though no one in Congress mentioned the CFE Treaty in connection with the Russian troops in Moldova and Georgia at that point, “multilateral and bilateral diplomacy” might have been an early hint in that direction.

The 1995 bill entitled the Freedom and Self-Determination for the Former Soviet Union Act renewed the attempt by Congress to condition financial support for Russia on the withdrawal of its troops from Moldova.<sup>21</sup> In the floor debate that followed, Republican Senator Gerald Solomon used cutting words. With respect to Moldova and Georgia he accused Russia of “occupy[ing] Moldova with 10,000 troops and enough weaponry for a 200,000-man army. Russia used classic Soviet-style divide-and rule tactics to bring Georgia to heel, and is now preparing to occupy the country militarily. [...] She is also seeking to wiggle out of the CFE accords, due to take effect in November.”<sup>22</sup>

Solomon’s reference to the CFE Treaty was rooted in Moscow’s violation of the flank limits set forth in the Treaty. As early as 1993 the Kremlin had determined the need for enhanced TLE limits on its southern flank – namely in the North Caucasus – because of a number of bloody secessionist conflicts.<sup>23</sup> In late 1994, the fighting in Chechnya escalated to an open civil war leading Russia to exceed its CFE flank obligations.

This was especially worrisome as the end of 1995 marked the deadline for CFE countries to be in compliance with the mandatory limits imposed by the Treaty. The Russian violation, therefore, would have meant violating the limits even before they were fully in force, thereby weakening the Treaty significantly. Despite this crucial development, the Moscow Summit of May 1995 did not result in any assurances of Russian compliance with the CFE limits.

On the other front – NATO enlargement – consensus was still out of sight despite the approval for Moscow to join the Partnership for Peace Program (PfP). Was there a kind of trade-off between the problem of the Russian flank violations and the issue of enlarging NATO, a jour-

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<sup>19</sup> Cf. Congressional Record, Senate, May 6, 1994, Page S5326.

<sup>20</sup> S. Con. Res. 78 and H. Con. Res. 308, 103rd Congress 2nd Session (October 5, 1994).

<sup>21</sup> Cf. H.R. 519, 104th Congress 1st Session (January 13, 1995).

<sup>22</sup> Congressional Record, House, January 19, 1995, Page H374.

<sup>23</sup> It was Boris Yeltsin who, in a formal *demarche* to the leaders of the U.S., Great Britain, France, Germany and the flank states, first pointed to the fact that the problem of the Russian flank limits might pressure Russia into decisions not compatible with the restrictions contained in the framework of the flank limitation mechanism. In order to secure peace and security, Russia would need a substantial military presence on its southern borders. Cf. Letter of President Yeltsin to German Chancellor Kohl from September 17, 1993, in Hartmann, Rüdiger et al. (2002), “Die Anpassung des Vertrages über konventionelle Streitkräfte in Europa: Ursachen, Verhandlungsgeschichte, Kommentar, Dokumentation”, Nomos Baden-Baden, pp. 701-704 (in German only).

nalist asked Boris Yeltsin. The Russian President denied it and referred to his American counterpart: “Bill was the first to bring this matter up. And he said that he will surely support us on this difficult issue because it is true we are sort of in a trap with that issue.”<sup>24</sup>

Yeltsin’s statement is not verifiable, especially given the extent to which the Clinton Administration used the flank problem and Russia’s desire to adapt the Treaty to perhaps cushion the Kremlin’s aversion to NATO enlargement. What happened was the U.S. Administration’s clear attempt to accommodate Russia – much to the indignation of the Congress. Just one day after the press conference, Bob Dole responded with an unconcealed threat: “Congress will respond by looking closely at all forms of aid to Russia – especially aid to the government.”<sup>25</sup>

#### 4. *The Cohen Amendments*

In July 1995, Republican Senator William S. Cohen introduced Amendment No. 1885 to the Foreign Relations Revitalization Act of 1995. Comprising four points, the amendment urged the President to report to Congress *inter alia* about Russian compliance with the Russian-Moldovan withdrawal agreement of October 24, 1994.<sup>26</sup> The amendment never found its way into the final act.

Only two months later, Cohen used another legislative debate to introduce his amendment once again, this time accompanying the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1996. The difference this time was that Cohen’s Amendment No. 2724 included a fifth point: “Russian compliance with the Treaty on Conventional Armed Forces in Europe and the Organization on Security and Cooperation in Europe’s Code of Conduct on the Politico-Military Aspects of Security.”<sup>27</sup> Neither Chechnya nor the flank dispute was addressed with a single word.

In contrast to Cohen’s first amendment of July 1995, Amendment No. 2724 made it into the Foreign Operations Act of 1996 together with a third amendment. This third Amendment No. 2766, in turn, referred to the Russian flank violations. It gave clear instructions in case of Russian non-compliance with the limitations imposed by CFE, especially with respect to the flank zone.<sup>28</sup>

Summarizing Cohen’s three amendments, the first, in July 1995, addressed the Russian forces in Moldova without mentioning CFE. The second, in September 1995, again focused on Russia’s troops, this time referring to CFE without determining a violation of the Treaty. Finally the third amendment of September 1995 mentioned a violation of CFE in Russia’s flank,

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<sup>24</sup> The President’s News Conference With President Boris Yeltsin of Russia in Moscow (May 10, 1995).

<sup>25</sup> Congressional Record, Senate, May 11, 1995, Page S6505 et seq.

<sup>26</sup> Cf. Congressional Record, Senate, July 31, 1995, Page S10977.

<sup>27</sup> Congressional Record, Senate, September 21, 1995, Page S14088.

<sup>28</sup> “The failure by the Russian Federation to meet any obligation under the Treaty of the Conventional Armed Forces in Europe shall constitute non-compliance with the Treaty; the United States should insist on full compliance by the Russian Federation with all of the obligations of the Treaty on Conventional Armed Forces in Europe; the Treaty on Conventional Armed Forces in Europe provides adequate means by which the Russian Federation can meet its claimed military requirements for treaty-limited equipment in the flank zone defined by Article V of the Treaty, including movement of equipment within the flank zone, temporary deployment of additional equipment to the flank zone, and the temporary removal of equipment from designated permanent storage sites located in the flank zone.” H.R. 1868 104th Congress 1st Session (September 25, 1995), pp. 147 et seq.

prompting the U.S. Administration to insist on Russian compliance. Apparently, Cohen split his amendments because he saw exceeding the flank in the North Caucasus and the Russian troops in Moldova as two different issues. Nevertheless both incidents have one connection in Cohen's amendments – the CFE Treaty.

Another illuminating detail of the above-mentioned Foreign Operations Act of 1996 is hidden under Pt. 192 Sec. 708.<sup>29</sup> With reference to the NATO Participation Act of 1994 the suggestion is made that the wording "European countries emerging from Communist domination" be clarified. Under the Act of 1994 this circuitous diction was meant to encompass those countries, possibly qualifying for NATO membership at a later stage.<sup>30</sup> For the first time, the revision of 1995 now actually named those countries. Moldova, among others can be found on the list.

If, at least in the view of the Congress, Moldova were to qualify for NATO membership, three premises had to be fulfilled:

- The problem of Transnistria had to be solved;
- Moldova had to have complete territorial integrity;
- Moldovan sovereignty must not be thwarted any longer by a Russian military presence.

If, then, the same act that mentioned Moldova as a possible aspirant, contained a section that – even indirectly – connected Russian withdrawal with CFE, suddenly a mix appears where an arms control treaty might be used as a potential vehicle for achieving the political goals of the Alliance.

In this connection it is still not clear why William Cohen, a Republican from the more liberal branch of the Grand Old Party, was the first member of the legislature to officially link the CFE Treaty to the issue of the Russian troops in Moldova. Perhaps he saw the Treaty endangered by Russia's *near abroad* policy in Moldova. Another possibility is that Cohen was using CFE either to support Moldova's endeavors to achieve full sovereignty or to sow the seeds of enlargement. All three hypotheses are not verifiable without further research.

The episode of the Cohen Amendments gets additional significance through the decision of Bill Clinton, fifteen months later, to appoint William Cohen Secretary of Defense. In this position Cohen had to have a clear impact on the CFE adaptation negotiations. It seems quite likely that he did not forget his support for Moldova in the ongoing talks with Russia in 1999.

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<sup>29</sup> This section dates back to a joint Republican-Democratic introduced amendment, the so called Brown Amendment No. 2749. Cf. Congressional Record, Senate, September 21, 1995, Page S14090.

<sup>30</sup> Cf. H.R. 4426, 103d Congress 2d Session (July 15, 1994).

## 5. Resolving the Flank Dispute – Or Maybe Not?

As a consequence of Russia's exceeding its flank obligations, the 30 States Parties to the Treaty agreed in November 1995 on a new round of negotiations so solve the problem. The clock for implementing the southern flank restrictions was stopped. The aim was to get a solution before the First CFE Review Conference in May 1996. Nevertheless this timetable was not achievable. After hard negotiations a solution was found during the Review Conference. The compromise can be summed up in a short and concise formula: 'new geography – old figures, old geography – new figures'. More precisely this meant, that the *Flank Document*<sup>31</sup> increased the limits for Russian TLE in the 'old area' of the southern flank and, at the same time, introduced a smaller area of application for Russian as well as Ukrainian territory tied to the 'old TLE limits'. The redrawing of the CFE map thereby allowed Russia to deploy an increased number of TLE in the North Caucasus.

Although the *Flank Document* amounted to a creation of a legal right, NATO's legal experts argued that the document merely resulted in a revision of the map, which was not an integral part of the Treaty, hence would not be subject to renewed ratification by national parliaments.<sup>32</sup> The final notification of the Dutch CFE Treaty depositary was supposed to happen by December 15, 1996.

Though the negotiations were already overshadowed by the looming enlargement of the Alliance, NATO members firmly denounced a linkage between the two processes from the very beginning. Yet Russia insisted on a further and far-reaching revision of the whole Treaty and prevailed so that the OSCE Lisbon Summit of December 1996 mandated negotiations to adapt the Treaty. Before this could happen, the *Flank Document* had to be in place. Very quickly it became clear that NATO's legal experts were wrong in their judgment. The *Flank Document* did need ratification by all States Parties and the ratification process, especially in the United States, developed into a bitter showdown.

In view of the flank dispute a study by the RAND Corporation of September 1995 rightly warned the U.S. Administration not to underestimate possible problems with Congress. "The Clinton administration [...] cannot control the reactions of the Congress. [...] the U.S. Senate might take unilateral actions of their own against Russia, such as canceling the Nunn-Lugar program. [...] it would seem worthwhile for the U.S. government to invest considerable effort in trying to manage the reactions of the Congress".<sup>33</sup>

Meanwhile Congress had not lost sight of the Moldova issue. Resolution 145 again urged Russian withdrawal<sup>34</sup> and Gerald Solomon shrilly accused the White House of an "appeasement policy" toward Russia. "It is silly to oppose NATO enlargement with talk of drawing lines in Europe", the Senator said. "There already is a line, and because of it, stability has been fostered in those countries west of it. Quite frankly, the farther east that line is, the better." Russia continues its "illegal occupation" of Moldovan territory and behaves like the for-

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<sup>31</sup> The official term for the document is Annex A of the Final Document of the First Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiation on Personnel Strength.

<sup>32</sup> Cf. "The CFE Treaty: Can it survive?" (1995), *IISS Strategic Comments* (1) 8, p. 2. At the same time the legal experts of the White House came to the same conclusion. Cf. "Berger Letter to Lott on Treaty Change Approval" (March 25, 1997), *Inside Missile Defense* (04-09-1997).

<sup>33</sup> Falkenrath, Richard A.; Asmus, Ronald D. (1995), "The CFE Treaty: Future Policy Issues", RAND, Santa Monica, pp. 1 et seq.

<sup>34</sup> Cf. H. Con. Res. 145, 104th Congress 2nd Session (February 1, 1996).

mer Soviet Union, he charged and a moment later he denounced America's "slavish devotion to arms control". Solomon concluded with a clear warning: "Some of these naive policies can be overturned by us in Congress."<sup>35</sup>

A remark by Bill Clinton during the 1996 Moscow Summit revealed how far apart the positions of the administration and the Capitol Hill already were. In addition to not officially criticizing Russia's actions in Chechnya, he compared the events in the North Caucasus to the bloody battles of the American Civil War and stressed Russia's territorial integrity.

Apart from the bad omen of totally differing perceptions of Russia by Clinton and the Congress, a bulging agenda of groundbreaking decisions and events was ahead. The 1996 CFE Review Conference took place directly prior to the Russian presidential elections and the Alliance was about to end the internal preparation process for the envisaged enlargement. The appointment of the qualifying countries in fall 1996 was about to overlap with the presidential election campaigns in the U.S. and finally, the signing of the NATO-Russia Founding Act was expected to happen in the first half of 1997.

On June 4, 1996, Congress passed the NATO Enlargement Facilitation Act of 1996, identifying Poland, Hungary, and the Czech Republic as eligible for NATO membership. A number of other countries were to enjoy American support "in activities for qualifying for NATO membership"<sup>36</sup>. Among those ten countries was Moldova.

In August 1996, the administration submitted the *Flank Document* to Congress expecting approval by a simple majority vote of both the House and Senate. In an initial reaction Jesse Helms and his colleague Bill Roth objected to Clinton's proposal and stressed the expected legal implications of the document. Therefore they demanded ratification by the Senate which would have meant a mandatory two-thirds majority. At the same time, they criticized the results of the *Flank Document* as involving too far-reaching concessions to Russia despite Moscow's using its excess military equipment to intimidate its neighbors. Therefore the President, in their view, should make available to the Senate all diplomatic documents related to the flank negotiations.<sup>37</sup> In his reply to the Senator's letter, Clinton rejected this position and claimed that, in the view of White House legal experts, a simple majority vote in both houses could suffice just as well as a two-thirds majority in Senate.<sup>38</sup> For Congressional proceedings this meant nothing less than its being up to the willingness of the Senate to become engaged with the question of the *Flank Document*.<sup>39</sup> If, in the view of the Senate, the CFE map realignment constituted a change to the Treaty, the Senate had to become engaged. In this case, the *Flank Document* would need a two-thirds majority in the Senate.

Interestingly enough, Clinton's reply took two full months, thus reaching the Senate after the adjournment *sine die* of the 104<sup>th</sup> Congress on October 4, 1996. Obviously, it was the President's intention to wait for the results of the elections, hoping that a less conservative 105<sup>th</sup> Congress would be more cooperative. This hide-and-peek tactic in Washington set back the *Flank Document's* coming into effect. December 15, 1996 passed and the JCG extended the

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<sup>35</sup> Congressional Record, Extension of Remarks, January 24, 1996, Page E80f.

<sup>36</sup> S. 1830, 104th Congress 2nd Session (June 4, 1996), pp. 5 et seq.

<sup>37</sup> Cf. "Helms/Roth Letter on CFE" (August 23, 1996), *Inside the Pentagon* (08-29-1996).

<sup>38</sup> Cf. "White House Response to Senate CFE Questions" (October 31, 1996), *Inside the Pentagon* (10-31-1996).

<sup>39</sup> Louis Fisher, Senior Specialist of the Congressional Research Service stated the same opinion during a briefing of the 'Helsinki Commission'. Cf. Briefing of the Commission on Security and Cooperation in Europe ("Treaty on Conventional Armed Forces in Europe", February 20, 1997), pp. 9 et seq. (Documents of the 'Helsinki Commission' are available at: <http://www.csce.gov>).

already provisional application of the new flank limits until May 15, 1997. By then the Senate would have to ratify. Otherwise the whole CFE adaptation process would be at risk and with it the basis for a shared understanding between NATO and Russia about enlargement.<sup>40</sup>

## 6. Showdown on Capitol Hill

To the President's disappointment the 105<sup>th</sup> Congress was again not only dominated by the Republicans in both chambers but started with exactly the same policy as the 'old' Congress. Resolution 331 condemned the Russian presence in Moldova and called for an end to all financial aid to Russia as long as Moscow was not in strict compliance with its arms control obligations.<sup>41</sup>

Meanwhile the White House approached the Senate asking for consent to the flank issue "provided the Senate will act on this crucial matter before May 15."<sup>42</sup> Cohen's appointment as Secretary of Defense also signaled a gesture of reconciliation to the Republican majority in Congress. Despite these positive undertakings, the battle lines were already drawn. In the debate about the upcoming NATO-Russia Founding Act the Senate urged that the document "include commitments from the Russian Federation [...] to station its armed forces on the territory of other states only with the consent of such states and in strict accordance with international law". Furthermore, the CFE adaptation process should not in any way affect U.S. security interests in Europe or curtail the effectiveness and flexibility of the Alliance. Additionally, it was the sense of the Senate that Romania, Estonia, Latvia, and Lithuania "upon complete satisfaction of all relevant criteria should be invited to become full NATO members at the earliest possible date."<sup>43</sup>

Probably because of this unambiguous position, Clinton transferred the *Flank Document* to the Senate for advice and consent only about a month before the deadline for confirmation of approval. By so doing Clinton pressed the legislature for an early decision and built up strong pressure to succeed. Hence the Senate found itself in a position where a document against which most of the lawmakers had strong reservations had to be ratified. Otherwise the long-term goal of the executive and the legislative branches of government – enlargement – was at risk.<sup>44</sup> The question was whether the Senate would swallow the bitter pill.

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<sup>40</sup> Samuel R. Berger, Assistant to the President for National Security Affairs, stressed this link in a letter to the Senate Majority Leader Trent Lott: "We now face a complex situation. At the Lisbon OSCE summit in December, the 30 States Parties to the CFE Treaty agreed to extend the deadline for confirmation of approval to May 15, 1997. In recent months, it has become evident that the flank agreement underpins the new negotiations in Vienna on 'CFE adaptation,' which in turn underpins NATO's efforts to define the new security environment in Europe as NATO enlarges. In addition, both adaptation of the CFE Treaty and the admission of new states to NATO will be effected through agreements that will be submitted for the advice and consent of the Senate." See footnote 32 above.

<sup>41</sup> Cf. H.R. 331, 105th Congress 1st Session (January 7, 1997).

<sup>42</sup> See footnote 32 above.

<sup>43</sup> H.R. 1431, 105th Congress 1st Session (April 24, 1997).

<sup>44</sup> In his letter of transmittal Clinton again referred to the long-term implications of the decision. "Timely entry into force of the Flank document will ensure that these key principles are not a matter of debate in the negotiations we have just begun in Vienna to adapt the CFE treaty to new political realities, including the prospect of an enlarged NATO. [...] Therefore, I urge the Senate to give early and favorable consideration to the Flank document and to give advice and consent prior to May 15, 1997." Letter of Transmittal, The White House (April 7, 1997), in "Flank Document Agreement to the CFE Treaty", Message from The President of the United States, 105th Congress 1st Session, Senate, Treaty Doc. 105-5.

On April 29, 1997, the Senate Committee on Foreign Relations convened a hearing on the implications of the revision of the flank agreement. After a unanimous vote of 17 to 0 the Committee transferred the *Flank Document* to the Senate, followed by a special report about the agreement. Part of this report was a resolution comprising 14 conditions to be ratified together with the *Flank Document*.

This 60-page report clearly revealed the sense of the Committee that the relevance of the flank agreement was rather in its possible negative effects on the sovereignty of the newly independent states than in strengthening the CFE regime as a whole. The American course of negotiation was criticized as “confused and sloppy”, leading to an agreement which, for the most part, the Senate found wrong and redundant.<sup>45</sup> Furthermore, in the view of the Committee, Washington was accommodating Russia with a number of far-reaching concessions. In connection with NATO enlargement, Senator Joe Biden therefore wanted to know how far this accommodation went. During the April 29 hearing he raised concerns that the administration “made a deal to keep Russia in line as it relates to NATO expansion [...] We want to know, did you sell out the Caucasus in order to get Poland in?”<sup>46</sup> Administration officials denied such a link, responding that without an agreement Russia would go totally unchecked on its southern flank. Moreover the agreement was necessary to sustain the momentum for conventional force reductions in Europe. Even the attending General Gary M. Rubus acknowledged the fact that without increased limits in the North Caucasus “it would have been extremely difficult for any Russian officer to advise political authorities to stay in the treaty.”<sup>47</sup>

The 14 conditions attached to the report ultimately embrace the Senate’s view of such contentious issues as the administration’s Russia policy, U.S. backing of the post-Soviet states, and, last but not least, arms control.<sup>48</sup> The future fulfillment of these conditions was made binding upon the President.

In detail Condition No. 1 states that “nothing in the CFE Flank Document shall be construed as altering the policy of the United States to achieve the immediate and complete withdrawal of any armed forces and military equipment under the control of the Russian Federation that are deployed on the territories of the independent states of the former Soviet Union [...] without the full and complete agreement of those states.” As a consequence thereof, Condition No. 2 requests that “the Secretary of State should, as a priority matter, initiate discussions with the relevant States Parties with the objective of securing the immediate withdrawal of all armed forces and military equipment under the control of the Russian Federation deployed on the territory of any State Party without the full and complete agreement of that State Party.” Both conditions clearly point to the Moldovan-Georgian issue and the specification part of the report identifies it with a view to the Second Condition - “namely Moldova”.<sup>49</sup> The Third Condition reinforces the sovereignty principle of the Helsinki Decalogue and urges the President to stand up for the rights of the newly independent states in any future negotiations – meaning ACFE. Condition No. 5 sets specific briefing procedures for the administration and calls for an annual compliance report by the President as well as a corresponding report by the Secretary of State about Russian troop and TLE withdrawals with respect to Condition No. 2. Thereby, the Senate ensured that the issue would appear on the agenda of the Senate on a regular

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<sup>45</sup> Flank Document Agreement to the CFE Treaty, 105th Congress 1st Session, Senate, May 9, 1997, Exec. Rept. 105-1, pp. 15 et seq.

<sup>46</sup> “Treaty on Conventional Armed Forces in Europe (CFE): Revision of the Flank Agreement”, Hearing before the Committee on Foreign Relations, 105th Congress 1st Session, Senate, April 29, 1997, S. HRG. 105-56, pp. 30 et seq.

<sup>47</sup> Ibid.

<sup>48</sup> See footnote 45 above, pp. 28 et seq.

<sup>49</sup> Ibid., p. 20.

basis. Conditions No. 6 and No. 7 ensure the Senate's right to re-submission of the *Flank Document* in case of any modification, and Condition No. 9 urges the President to re-submit the bilateral ABM Treaty in case of the accession of a third party to the Treaty – a matter totally unrelated to CFE. Finally, Condition No. 12 is aimed at Russia without directly identifying its target: "It is the policy of the United States to treat with the utmost seriousness all acts of intimidation carried out against any State Party by any other State Party using any conventional armament or equipment limited by the Treaty."

The adoption of the report together with the 14 conditions seems to indicate a common understanding among the Senators. But quite the contrary was the case. In the supplementary views of Senators Biden and Kerry, attached to the report, the stance of the Republican members of the Committee toward arms control was harshly criticized as "arrogant" and unilateral.<sup>50</sup> Some of the conditions, John Kerry noted, "reflect a degree of fear and anxiety on the part of some members". The real objective should be "to keep the CFE Treaty in operation in order to continue to derive its benefits to security in Europe and a reduction in the risk of conflict there." Condition No. 9 could even be viewed as "hostage-taking". Nevertheless, because of the tight schedule and the great importance of the *Flank Document*, Kerry decided not to oppose the 14 conditions but rather to use the floor debate in Senate to state his objections. This was a simple concession to the artificially built-up pressure by the White House. Thus the tactic by the Clinton Administration to pressure the Senate for consent of the agreement was turned around by the Committee by tying America's future CFE policy to those 14 conditions.

The subsequent floor debate in the Senate more or less centered on the appalling link between the *Flank Document* and the ABM Treaty as stated in Condition No. 9. Beyond this controversial point there was consensus on the significance of the agreement. Both sides of the aisle used the debate for further attacks against Russia. Joe Biden clarified: "We cannot allow Moscow to coerce its independent neighbors into accepting the presence of foreign forces on their soil [...] I believe the Flank Document and the resolution of ratification now before the Senate addresses these concerns and recognizes that sovereign countries must have the right to refuse Russian demands."<sup>51</sup> The White House was criticized by Jesse Helms for its negotiation policy: "Russia uses its military presence in Ukraine and Moldova to influence the sovereign governments of those States while the Clinton administration remains silent." Therefore, "the resolution places strict limits on the administration's flank policy. It ensures that we will be on the side of the victims of Russian intimidation and that the United States will stand up for the independence of States on Russia's borders", Senator Lott praised the 14 conditions. With a unanimous vote of 100 to 0 the *Flank Document* and the associated resolution together with its 14 conditions was adopted on May 14, 1997, one day before the deadline.

On the same day President Clinton reacted with two letters to the Senate and Congress. In addition to congratulating the Senate on its decision, he criticized the resolution: "These Conditions all purport to direct the exercise of authorities entrusted exclusively to the President under our Constitution, including for the conduct of diplomacy and the implementation of treaties. The explicit limitation on diplomatic activities in Condition 3 is a particularly clear example of this point. [...] Nevertheless, without prejudice to my Constitutional authorities, I will implement the Conditions in the resolution."<sup>52</sup> The showdown was over; the majority of the Senate had won.

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<sup>50</sup> Ibid., pp. 56 et seq.

<sup>51</sup> Congressional Record, Senate, May 14, 1997, Page S4452 et seq.

<sup>52</sup> Message to the Senate on Conditions to the Flank Document of the Conventional Armed Forces in Europe Treaty (May 14, 1997) and Message to the Congress on Conditions to the Flank Document of the Conventional Armed Forces in Europe Treaty (May 14, 1997).

The 14 conditions mark the turning point of America's CFE policy. For the first time the Senate prevailed by legally tying the administration to its positions. From now on, the Senate would keep a jealous watch over all aspects of the CFE adaptation process, ensuring that those were in line with its own conditioning. Thus the Senate simply followed an approach that can be outlined in five bullet points:

- stigmatization of Russia as an 'aggressive hegemonic power',
- critique and open mistrust of Clinton's Russia policy,
- support for full sovereignty of the post-Soviet states,
- withdrawal of all illegitimate remaining Russian forces from neighboring states,
- quickly pressing ahead with NATO enlargement.

What remains open to debate is the unwillingness or inability of the Democrats in the Senate to perceive the possible negative ramifications of the jointly agreed resolution for the CFE regime as a whole.

## 7. Georgia Comes into the Limelight

From the mid-nineties a geo-strategic as well as economically influenced *New Great Game* around the Caspian Sea's natural gas and crude oil reserves picked up speed. Among the various international state and non-state players, the U.S. was soon pushing for a pipeline connecting the Caspian with the Mediterranean Sea.

The idea behind the proposed pipeline – later called Baku-Tbilisi-Ceyhan Pipeline (BTC) – was, to avoid “routes through countries, such as Russia and Iran that may have a geopolitical interest to choke off those pipelines at some point in the future”<sup>53</sup>, Representative Benjamin Gilman explained to the House.

If the aim was to avoid Russia, Georgia as a transit country had to be secured, especially as the producer country, Azerbaijan, had a long-standing conflict with Armenia over the entity of Nagorno-Karabakh. Nevertheless Georgia shared the same problems as Moldova with two secessionist conflicts and the permanent presence of Russian 'peacekeepers'. Explicitly with Georgia in mind, the Silk Road Strategy Act of 1997 urged the U.S. Administration to “support the establishment of neutral, multinational peacekeeping forces to implement peace agreements reached between belligerents in the countries of the South Caucasus and Central Asia.”<sup>54</sup>

The year 1998 highlighted some extremely interesting developments of U.S. foreign policy on Georgia. While Amendment No. 2304 listed Georgia a possible PfP Candidate<sup>55</sup>, the administration as well as members of Congress lobbied for BTC on the ground. The newly re-ignited conflict between the Georgian central government and Abkhazia in early 1998 led to a setback for Washington's envisaged Silk Road Strategy. “For the corridor to function, stability [...] is essential”, Senator Sam Brownback stated. In his view, “Russia is the problem, the aggressor and the single-most threat to stability in Georgia and the entire Caucasus. [...] It is

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<sup>53</sup> Congressional Record, Extension of Remarks, November 8, 1997, Page E2241.

<sup>54</sup> H.R. 2867, 105th Congress 1st Session (November 7, 1997), p. 6.

<sup>55</sup> Cf. Congressional Record, Senate, April 22, 1998, Page S3456.

time for the Administration to demand the removal of the bogus Russian peacekeepers, and to insist on their replacement by an independent force of peacekeepers.”<sup>56</sup>

Only a few days later Senator Herbert Kohl requested his administration “to end its neglect of this situation and become actively engaged.” As a matter of priority, Kohl insisted, Russian hegemony *vis-à-vis* Georgia had to come to an end.<sup>57</sup> And again Brownback: “These Russian peacekeepers do not want peace. Rather, they seek to extend the hostilities so that Georgia will find it difficult to consolidate its hold over this breakaway region.” The interests of America in the region were at stake, Brownback warned, especially as “Georgia is a key strategic ally for America in a region in which America has few strategic anchors.”<sup>58</sup>

The sudden U.S. interest in Georgia was driven by obvious economic causes. To secure the future transit of oil and gas through the Southern Caucasus, Georgia, as a kind of strategic hinge, had to be stable. Yet, the skirmish of early 1998 triggered serious concerns about the realization of this premise, thereby leading to Capitol Hill’s harsh accusations against Moscow.

Again the Senate started to address the Georgian issue in the same manner as with Moldova through (1) rhetorical attacks against Russia, and (2) support for Georgia’s endeavors related to NATO. A third step would have been exploiting the CFE adaptation process to secure Russian troop withdrawal. Actually, though, this was no longer necessary as the White House already had to act in accordance with the 14 conditions of the flank resolution. But what if the President were not to fulfill the Senate’s expectations?

## 8. *The Road to Istanbul*

For the Clinton Administration, adjusting the U.S. negotiating position in the ongoing CFE talks in Vienna to the 14 conditions of the Senate was a *conditio sine qua non* if the final agreement were to have even a slight chance for approval in the Senate. However, the course of negotiations did not result in quick reinforcement of the sovereignty of both Moldova and Georgia.

While Deputy Secretary of State, Strobe Talbott, with respect to Moldova “urged all parties to build upon the considerable progress to date by setting a fixed timetable for full withdrawal of foreign troops and for facilitating the proper disposal of arms and ammunition in Transnistria”<sup>59</sup> during the OSCE Ministerial Council meeting in December 1997, the CFE talks did not address the issue. Taking this development into account, Jesse Helms wrote to Clinton, reminding the President of the Senate’s conditions: “Any U.S. effort to conclude CFE negotiations without having brokered the withdrawal of Russian troops from these countries [Moldova and Georgia] will be regarded by many in the Senate as a failure to discharge the principal duty assigned the administration in the CFE Flank Document resolution.” Furthermore Helms threatened to strand the adapted Treaty in the Senate. “A more considered approach thoroughly addressing the Senate’s concerns is absolutely essential to secure support for the adapted treaty”<sup>60</sup>, he wrote. In so doing Helms clearly signaled that an adapted Treaty

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<sup>56</sup> Congressional Record, Senate, June 4, 1998, Page S5654 et seq.

<sup>57</sup> Congressional Record, Senate, June 17, 1998, Page S6504.

<sup>58</sup> Congressional Record, Senate, July 30, 1998, Page S9488.

<sup>59</sup> Deputy Secretary Talbott, Intervention at the OSCE Ministerial, Copenhagen, December 18, 1997.

<sup>60</sup> “Helms Letter to Clinton on CFE Treaty” (February 3, 1999), *Inside the Pentagon* (02-18-1999).

without a significant success on Moldova and Georgia would not have any chance in the Senate.

How far Helms' undertakings influenced the U.S. Delegation in the JCG cannot be verified. Nevertheless the Decision of the Joint Consultative Group on CFE Treaty Adaptation of March 30, 1999 stressed "the desirability of early mutually acceptable results to bilateral discussions on the configuration and consequent reduction of Russian forces in Georgia and of the withdrawal of Russian forces from Moldova". Even a rather diffuse timeframe was envisaged.<sup>61</sup>

Thereby, Russia showed its willingness for concessions on this particular issue, probably the result of increased pressure by the U.S. Delegation.<sup>62</sup> Yet, the conservative Senate was not satisfied by the administration's efforts. In another letter, Helms made renewed attacks on the course of negotiations. Unequivocally, he underlined the priorities of the Senate: "Far less important than getting an agreement is the need to get the right agreement." The 14 conditions were "the yardstick against which the Senate measures any adapted treaty. The Senate will provide, or withhold, consent for the CFE Treaty on the basis of the extent to which its advice was heeded", he reminded Clinton.

Meanwhile the adaptation talks were facing another serious problem as rising tensions in the North Caucasus were quickly escalating into the Second Chechen War. Again Russia exceeded its TLE limits; however, at the same time it provided the CFE States Parties with data about its forces in the region.

In the wake of this development, Republican Senators requested Bill Clinton to withhold his signature to the Adapted Treaty.<sup>63</sup> Even so, the political intent of the main players to keep CFE alive was still strong enough in 1999. During a late-night meeting on the eve of the Istanbul Summit, the Secretaries of State of Georgia, Moldova, and Russia finally agreed on specific withdrawal schedules. On the morning of November 19, 1999 the attending Heads of State and Government signed ACFE. Attached to the Treaty, Russia agreed on the withdrawal of its excess equipment and troops from both Moldova and Georgia.

As mentioned above, these commitments are politically binding only. From a legal point of view they are neither an integral part of ACFE nor subject to any enforcement mechanism. Therefore, if one compares the Senate with its gradual endeavors to achieve Russian troop withdrawal from Moldova and Georgia, reaching a climax with the 14 conditions, ACFE, in the eyes of the Senate, must have looked like a failure because of the merely politically binding character of Russia's commitments. Not for nothing, had Jesse Helms repeatedly outlined to the executive branch what he expected to be the "right agreement" – a treaty that ultimately would lead to Russian withdrawal. ACFE as a merely politically binding document would not

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<sup>61</sup> "These arrangements will be implemented at the entry into force of the new Treaty or by the time specified in the Treaty", the document stated under subparagraph 14.2.7. Decision of the Joint Consultative Group on CFE Treaty Adaptation (Vienna, 30 March 1999) at: <http://www.bits.de/ac-archive/3ru/on/cfe/JCG.htm>.

<sup>62</sup> Responsible for the newly independent states, Madeleine Albright's advisor Stephen Sestanovich during a Senate hearing pointed to the significance of this matter. "If this treaty is to be, as I said, a serious instrument for increasing the security of all states, it has got to serve the interests of Georgia, of Moldova, as you noted. These are countries that are now involved in negotiating the final terms of this treaty with the Russians. If those negotiations are a success, then the treaty will be a success. If it is not, then it will not serve the purposes that we all agree it needs to." "Chechnya: Implications for Russia and the Caucasus", Hearing before the Committee on Foreign Relations, 106th Congress 1st Session (November 4, 1999), p. 11.

<sup>63</sup> Cf. "GOP Senators' Letter to Clinton on Chechnya" (November 10, 1999), *Inside Missile Defense* (12-01-1999).

serve this purpose. Therefore, the negative future awaiting ACFE in the Senate was certainly foreseeable. Delivering the treaty for advice and consent in 2000, the last year of the Clinton presidency, was nothing more than a forlorn hope.

One outcome of the 1999 Istanbul Summit, nevertheless, delighted both the administration and Congress. An agreement between Azerbaijan, Georgia, Turkey, and Kazakhstan paved the way for opening up Caspian crude oil reserves. Bill Clinton, who attended the signatory ceremony, praised the agreement, the cornerstone for the BTC Pipeline, as one of the “most important policy achievements of 1999”<sup>64</sup>.

## 9. Ten Years in Limbo

During the three years that followed, NATO quickly began to change its position with respect to the *Istanbul Commitments*. As mentioned above, at the 1999 Istanbul Summit, Bill Clinton urged only Russian compliance with the ACFE flank levels as mandatory for U.S. ratification.<sup>65</sup>

Just half a year later, in May 2000, the Alliance additionally requested compliance “consistent with the commitments contained in the CFE Final Act. We look for early and effective implementation of Russia’s commitments to reduce and withdraw its forces from Moldova and Georgia.” Even though fulfillment of this issue was not made mandatory by the Alliance at that point, Russian forces withdrawal from both countries was well underway to becoming a critical hurdle. Nevertheless, in 2000, adherence to the flank limits was the crucial basis for the Alliance in bringing the Adapted Treaty into force.<sup>66</sup>

By May 2002 Russia was in compliance with the flank limits again. Moscow had reduced its numbers in the North Caucasus and withdrawn excess TLE from Moldova. What remained to be fulfilled were the provisions in Annex 14 of the Final Act, with respect to the bases in Georgia, even though those provisions were not an integral part of ACFE.

Nevertheless the U.S. had already stressed the additional aspect of the Russian stockpiles in Moldova.<sup>67</sup> In this connection, the issue of Moscow’s remaining ‘peacekeepers’ in Transnistria was about to become the next issue to be debated. Washington’s requirements, it appeared, were steadily being augmented.

NATO’s 2002 Prague Summit marked the critical turning point in the wording of the *Istanbul Commitments*. The passage of the Summit Declaration regarding CFE is short and crisp: “We urge swift fulfillment of the outstanding Istanbul commitments on Georgia and Moldova,

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<sup>64</sup> Quoted from Baran, Zeyno (2005), “The Baku-Tbilisi-Ceyhan Pipeline: Implications for Turkey”, in Starr, S. Frederick; Cornell, Svante E. [Eds.], “The Baku-Tbilisi-Ceyhan Pipeline: Oil Window to the West”, CACI & SRSP Washington D. C., Uppsala, p. 107.

<sup>65</sup> See footnote 6 above. The Alliance followed this wording a few days later. “Entry into force of the Adapted Treaty can only be envisaged in the context of compliance by all States Parties with the Treaty’s limitations. It is on this basis that we will work towards bringing the Adapted Treaty into force.” Final Communiqué, Meeting of the North Atlantic Council in Defence Ministers Session held in Brussels, December 2, 1999.

<sup>66</sup> Cf. Final Communiqué, Ministerial Meeting of the North Atlantic Council held in Florence, May 24, 2000.

<sup>67</sup> Cf. Statement to the Organization for Security and Cooperation in Europe, Permanent Council, Ambassador David Johnson, November 22, 2001.

which will create the conditions for Allies and other States Parties to move forward on ratification of the Adapted CFE Treaty.”<sup>68</sup>

Thus, the Alliance demanded full withdrawal of the stockpiles and ‘peacekeeping’ units from Moldova as well as the closure of the two remaining bases in Georgia. Nevertheless, the Summit Declaration could not fully conceal a possible inner-Alliance dispute about the relevance of the *Istanbul Commitments*. Indications, such as the contradictory Annual Disarmament Reports of the German Government of 2002 and 2003, point in the direction of differing positions.<sup>69</sup>

The effects of the Alliance’s policy are well known. As early as 2003 Russia began to slow down its removal of ammunition from Moldova. NATO and Washington reacted with a mantra-like reiteration of the Prague formula until Russia officially threatened to withdraw from the Treaty.<sup>70</sup> Meanwhile Congress was fully occupied with the ramifications of *September 11* and the adjustment of America’s foreign policy. From 2005 onwards the unresolved conflicts of Moldova and Georgia, and with these the presence of the Russian forces, were once again the focus in Congress. The debates and resolutions that followed repeated the rhetoric and content of the 1990s almost word-for-word. Russia’s suspension of the Treaty and the war against Georgia in 2008 further complicated the situation to a degree where CFE, the often cited ‘cornerstone of European security’, is now in a rapidly deteriorating state of agony.

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<sup>68</sup> Prague Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Prague, November 21, 2002.

<sup>69</sup> Whereas the Report of 2002 with regard to the *Istanbul Commitments* declares that “some States insist on fulfillment of these non-CFE relevant obligations from the Istanbul Final Act by Russia”, the 2003 Report after the Prague Summit states that “NATO Member States remain to the position that ACFE ratification can only be envisaged by Russia’s fulfillment of the outstanding commitments [...] concerning Georgia and Moldova” (in German only, translation by the author). Deutscher Bundestag (2002), Jahresabrüstungsbericht 2001, (Deutscher Bundestag, 14. Wahlperiode, Drucksache 14/8941, 25.04.2002). Deutscher Bundestag (2003), Jahresabrüstungsbericht 2002, (Deutscher Bundestag, 15. Wahlperiode, Drucksache 15/1104, 02.06.2003), (Bundestag documents are available at: <http://drucksachen.bundestag.de/drucksachen/en/index.php>).

<sup>70</sup> Already during the 3<sup>rd</sup> CFE Review Conference from May 30 to June 2, 2006, the Russian Delegation clarified, that “Russia is interested in this regime [CFE] to the same degree as the other participants in it as well – no less, but also no more. [...] The entire responsibility for the fate of the Treaty now rests with our western partners.” Quoted from Statement by the Delegation of the Russian Federation at the Extraordinary Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE-EC(07)).JOUR, 12 June 2007, Annex 2), p. 1. Nevertheless NATO’s 2006 Riga Summit Declaration just repeated the already known phrase about the *Istanbul Commitments*. On April 26, 2007, Russian President Putin officially envisaged a moratorium on the observance of the Treaty in his Annual Address to the Federal Assembly and convened an extraordinary conference on CFE, which ended without any significant result, (speeches by the President of the Russian Federation are available at: <http://eng.kremlin.ru/>).

## 10. What Next?

The willingness of the Obama Administration to push the ‘reset button’ on American-Russian relations, together with renewed attempts to bring arms control back onto the agenda, might give impetus even for the CFE accords. Especially in light of Obama’s vision of a world free of nuclear weapons, the question of the apparent conventional imbalances in Europe taken together with the sordid state of the Russian conventional capacities could lead to argumentation that measures of cooperative security are needed to prevent inaccurate Russian threat assessments and at the same time foster confidence among Europe’s states.

In concert with this, President Medvedev’s proposals for a ‘Helsinki 2’-like European security treaty could offer at least the starting point for renewed discussions about security cooperation, arms control, and principles for interstate and human security in Europe. Parallel to these developments, NATO is deeply engaged in exploring ways and means for a new strategic concept. Thus the time could be ripe to revive the CFE process.

Nevertheless, caution should be exercised. The most recent statement by a U.S. Administration official did not reveal a significant change in Washington’s policy toward fulfillment of the *Istanbul Commitments*.<sup>71</sup> In addition, former leaders from Central and Eastern Europe called on Obama to give an answer to the question of “whether NATO would be willing and able to come to our defense in some future crisis” to prevent Russia from violating “the core principles of the Helsinki Final Act [...] all in the name of defending a sphere of influence on its borders.”<sup>72</sup>

In addition to such political impediments, Russia’s outdated conventional capabilities could lead to heightened tensions, this time ironically because of Moscow’s weakness especially on its southern flank. How pressing the question of conventional defense capabilities already is for the Russian military, was revealed by the latest deliberations about including preemptive nuclear strikes in the upcoming Russian military strategy, which could also be used in local conflicts in case of critical threats to Russia’s national security.<sup>73</sup>

Last but not least, all possible undertakings to reanimate CFE must bear in mind that the 14 conditions are still up and running. Any attempt to bargain a new agreement or to start a process of concurrent step-by-step application must therefore either circumvent the Senate or go the hard way – convincing the U.S. Congress to drop the *Istanbul Commitments*.

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<sup>71</sup> In a hearing before the Senate’s Committee on Foreign Relations, Ambassador Sestanovich outlined that a revival of Russia’s implementation of the CFE Treaty is “completely incompatible” with Russia’s actions in Georgia. Unless the *Istanbul Commitments* “are eventually fulfilled, it is hard to see how the CFE treaty can survive in its present form. [...] The first step has to be for Russia to restore the military status quo ante bellum of last year”, Sestanovich said, cutting down expectations. “Prospects for Engaging With Russia”, Hearing before the Committee on Foreign Relations, 111th Congress 1st Session (March 19, 2009), p. 64. The same applies for NATO. Cf. Strasbourg/Kehl Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Strasbourg/Kehl on 4 April 2009, Pt. 57.

<sup>72</sup> Adamkus, Valdas et al. (2009), “An Open Letter to the Obama Administration From Central and Eastern Europe”, *Gazeta Wyborcza* (07-16-2009) at: [http://wyborcza.pl/1,82049,6825987,An\\_Open\\_Letter\\_to\\_the\\_Obama\\_Administration\\_from\\_Central.html](http://wyborcza.pl/1,82049,6825987,An_Open_Letter_to_the_Obama_Administration_from_Central.html).

<sup>73</sup> Cf. Kramnik, Ilya (2009), “Who should fear Russia’s new military doctrine?”, *RIA Novosti Opinion and Analysis* (10-23-2009) at: <http://en.rian.ru/analysis/20091023/156567212.html>.

## Findings

The origins of the current CFE deadlock are rooted in the U.S. Congress. Partially led by a deep, historic mistrust of Russia and partially by fantasies of the supremacy of American power in the new world order, Republican Members of Congress in particular started in 1993 first to criticize and then to stigmatize their former antagonist.

The rationale for this included the Russian constitutional crisis of 1993, the military doctrine of the same year, Yeltsin's dependence on the military apparatus, the stagnation of political and economic reforms, the brutal escalation of the first Chechen War, and Russia's suspect policy toward its neighbors.

To counter these developments, Congress acted using four main policy strands:

- explicit rhetorical critique directed at Russia,
- roll-back of Russian influence,
- swift enlargement of NATO,
- support for the independence and sovereignty of the post-Soviet states.

The last point in particular was closely connected to the issue of the Russian forces in Moldova.

Another significant aspect was the discontent of the majority of the Congress with the Clinton Administration's policy toward Russia. Congressmen Helms, Solomon, and Brownback, especially, formed the front line of the Russia/Clinton-skeptical legislative phalanx. William Cohen was the first to link the Moldova issue to the CFE Treaty with his amendments of 1995.

In 1997, the adjustment of the flank rule allowed the Senate to tie the administration to its own positions. It was especially the 14 conditions that marked the turning point in America's CFE policy. From that point on CFE was closely intertwined with the solution of the two sub-regional conflicts in Moldova and Georgia.

In the case of Moldova a connection between the Congressional demand for troop withdrawal and the prospect of NATO enlargement is definitely verifiable. At least in the early stages of the debate about enlargement, Moldova, in the eyes of Congress, qualified for possible membership at a later stage, whereas for Georgia, simple economic and geo-strategic interests argued for the use of the CFE instrument.

The undertakings of Congress resulted in a situation in which CFE became 'hostage' to the solution of these sub-regional conflicts, thereby promoting national American agendas which were partially confrontational, at least in Moscow's perception.

Any attempt to revive CFE must keep in mind that the 14 conditions, the source of the *Istanbul Commitments*, are still entirely in force.

The reactions of Congress to any prospective agreement or adjustment of CFE have to be carefully considered by European governments and the U.S. Administration. Confrontational or egoistic approaches have proven to be counterproductive and should therefore be dispensed with at the earliest stage possible.

## List of Abbreviations

ABM	Anti Ballistic Missile
ACFE	Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe
BTC	Baku-Tbilisi-Ceyhan Pipeline
CFE	Treaty on Conventional Armed Forces in Europe
CSBMs	Confidence- and Security-Building Measures
JCG	Joint Consultative Group
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
PfP	Partnership for Peace Program
TLE	Treaty-Limited Equipment

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