

II. Conventional arms control

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I. Introduction

The effort to control ‘inhumane weapons’ at the global level achieved a remarkable breakthrough in 2008. The Oslo process, which was launched in 2006 by a group of like-minded states and non-governmental organizations (NGOs) to stigmatize and effectively tackle cluster munitions, resulted in a legally binding convention, similar in success to the anti-personnel mine (APM) campaign of the 1990s.¹

The situation in European conventional arms control in 2008 remained troubling, although some headway was made. After Russia’s decision to ‘suspend’ its participation in the 1990 Treaty on Conventional Armed Forces in Europe (CFE Treaty) in December 2007, the treaty was in abeyance during 2008.² The Organization for Security and Co-operation in Europe (OSCE) paid special attention to the relevance of conventional arms control and confidence- and security-building measures (CSBMs), the latter being part of ‘soft arms control’ endeavours. The subregional arms control framework in the Western Balkans continued to operate smoothly. CSBMs in Europe are now focused on select areas, while similar initiatives elsewhere have not progressed satisfactorily.

This chapter assesses the major developments in conventional arms control in 2008. The control of inhumane weapons is addressed in section II. Section III gives an overview of events related to the CFE Treaty crisis and the efforts to salvage conventional arms control. Developments in subregional arms control in the former Yugoslavia are also reviewed. Attempts to promote soft arms control measures that strengthen confidence, render assistance and foster predictability in the OSCE area are addressed in section IV. Section V presents the conclusions.

II. Control of inhumane weapons

Since the mid-1990s anti-personnel weapons, which were primarily developed to incapacitate people, have captured international attention for

¹ The ‘Oslo process’ is the generic name given to the diplomatic activities and public campaign that resulted in the Convention on Cluster Munitions in May 2008. The first global conference on cluster munitions took place in Oslo, Norway, on 22–23 Feb. 2007.

² For a summary and other details of the CFE Treaty see annex A in this volume.

their questionable military utility and the humanitarian and economic harm they cause is widely denounced. Every year mines and unexploded ordnance (explosive remnants of war, ERW) kill or injure large numbers of civilians, causing untold human suffering. Restraining or even banning these weapons has long been an international public and governmental concern. Several international agreements regulate or ban the use of APMs, ERW and cluster munitions and seek to limit the effects of armed conflict on civilians.

The 1981 Certain Conventional Weapons (CCW) Convention, with its five protocols, restricts or prohibits the use of specific categories of weapons that are deemed to cause unnecessary or unjustifiable suffering to combatants or to affect civilians indiscriminately.³ Until recently, the 2003 Protocol V of the CCW Convention was the only international legislation covering ERW, including cluster munitions.⁴ The Ottawa process to ban landmines, outside the CCW framework, resulted in the 1997 APM Convention, which seeks to eliminate all such weapons.⁵ Efforts to deal with the ongoing problem saw substantial progress in 2008: using the APM Convention as a model, after 18 months of negotiations, the Convention on Cluster Munitions (CCM) was adopted in May 2008 and signed in Oslo in December 2008.⁶

The Convention on Cluster Munitions

Cluster munitions, along with APMs, stand out as the conventional weapons that pose the gravest danger to civilians. An estimated 76 countries stockpile cluster munitions, which are produced by at least 34 countries in over 210 varieties.⁷ The number of submunitions in arsenals is likely

³ For a summary and other details of the Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW, also known as the 'Inhumane Weapons' Convention) see annex A in this volume.

⁴ For a summary and other details of the CCW Convention's Protocol V on Explosive Remnants of War see annex A in this volume. On the negotiations in the framework of the CCW Convention see Lachowski, Z., 'Conventional arms control', *SIPRI Yearbook 2008: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2008), pp. 489–90.

⁵ For a summary and other details of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction see annex A in this volume. On the Ottawa process see Lachowski, Z., 'Conventional arms control', *SIPRI Yearbook 1997: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 1997), pp. 498–500; and Lachowski, Z., 'The ban on anti-personnel mines', *SIPRI Yearbook 1998: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 1998).

⁶ For a summary and other details of the CCM see annex A in this volume. The worldwide scourge of illicit small arms trade worldwide has led to efforts to create a global arms trade treaty (ATT). As discussions on this subject within the United Nations have not brought about significant progress, an Ottawa/Oslo model is being considered by ATT supporters as a fast track towards that goal.

⁷ Goose, S. D., 'Cluster munitions: ban them', *Arms Control Today*, vol. 38, no. 1 (Jan./Feb. 2008).

to be in the billions. Cluster munitions have been transferred to at least 60 countries as well as to non-state armed groups, and these weapons have been used in at least 30 countries and several other disputed territories since 1991, such as the Falkland Islands, Nagorno-Karabakh, South Ossetia and Western Sahara.⁸

Israel's massive use of cluster munitions during the August 2006 war in Lebanon and the frustration resulting from the modest outcome of negotiations under the CCW Convention served as the catalyst for a number of governments—led by Norway, together with humanitarian groups and NGOs—to take independent action towards establishing a legally binding international instrument to address cluster munitions by 2008.⁹ On 18–22 February 2008, 122 states gathered for the fourth Oslo process conference in Wellington, New Zealand, to continue discussions on an international treaty to ban cluster munitions.¹⁰ After tough discussions on outstanding issues in the draft convention, more than 70 countries endorsed the Wellington Declaration, which committed to negotiate a treaty to ban cluster munitions in Dublin, Ireland, in May 2008 and outlined the principles to be included in the draft treaty.¹¹ The text of the CCM was formally adopted by 107 states participating in the Dublin Conference on cluster munitions, held on 19–30 May 2008.¹² The treaty will enter into force 6 months after 30 governments sign and ratify it.

The CCM prohibits the use, production, stockpiling and transfer of cluster munitions. Following the APM Convention's precedent, and unlike the traditional arms control treaties, the CCM lacks extensive implementation, verification and compliance provisions. States parties are required to destroy existing stockpiles within 8 years after entry into force of the convention for a party and to clear areas contaminated with unexploded cluster munitions within 10 years. Extensions may be requested if these deadlines cannot be met. The CCM also commits states parties to provide extensive victim assistance and calls for international cooperation and assistance programmes on clearance, risk education and stockpile destruction. Under the CCM, cluster-like weapons, so-called smart cluster munitions, are only permitted if they contain fewer than 10 explosive submunitions, each of which must weigh more than 4 kilograms and less than 20 kg; are designed

⁸ Human Rights Watch, 'A dirty dozen cluster munitions', 20 Feb. 2007, <<http://www.hrw.org/en/news/2007/02/20/updated-human-rights-watch-cluster-munition-information-chart>>.

⁹ Goose (note 7).

¹⁰ The first meeting of the Oslo process was held in Oslo, Norway, in Feb. 2007; the second meeting took place in Lima, Peru, in May 2007; and the third, in Vienna, Austria, in Dec. 2007. Additional regional meetings were held to help build support. Throughout 2007 the Oslo process expanded to include more than 100 countries. On the Oslo process in 2007 see Lachowski (note 4), pp. 488–90.

¹¹ Wellington Conference on Cluster Munitions, Declaration, 22 Feb. 2008, <<http://www.mfat.govt.nz/clustermunitionswellington/>>.

¹² The text of the CCM and other related material are available at the Cluster Munition Coalition website, <<http://www.stopclustermunitions.org/>>.

to detect and engage a single target; and are equipped with an electronic self-destruct mechanism and an electronic self-deactivation feature.¹³ The vast majority of the world's cluster munitions do not meet these requirements.

The convention's provisions on military cooperation and operations were among the most controversial issues in the negotiations. In the end, the CCM contained a provision to permit military cooperation and joint operations with states that are not party to the treaty and that may use cluster munitions, despite a separate provision that forbids states parties assisting in any activity prohibited under the convention. However, in such circumstances, parties are required to discourage the use of cluster munitions by non-party states. Another major issue related to the possibility of a transition period during which current possessor states could use cluster munitions. Ultimately, such a provision was not included in the convention.¹⁴

At the signing conference in Oslo, 94 states signed the Convention on Cluster Munitions, including dozens of former users, producers and stockpilers of the weapons.¹⁵ Eighteen North Atlantic Treaty Organization (NATO) members, including the United Kingdom, France and Germany, signed the convention. Some of the most affected countries, such as Laos, Lebanon and Afghanistan, also signed. However, the main users, producers and stockpilers did not sign the convention, which remains its major shortcoming.

The Certain Conventional Weapons Convention

Separate from the CCM negotiations, states also continued discussions during 2008 in the framework of the CCW Convention.¹⁶ The CCW framework involves major users, producers and stockpilers of cluster munitions, most notably Brazil, China, India, Israel, Pakistan, Russia and the United States. These states oppose banning cluster munitions and have thus far remained outside the CCM negotiations, preferring the CCW process instead. The challenge for such states is how to address the humanitarian impact of cluster munitions, 'while striking a balance between military and humanitarian considerations'.¹⁷ The CCW Group of Governmental Experts

¹³ Convention on Cluster Munitions (note 6), Article 2.

¹⁴ Key compromises made during the Dublin conference allow many NATO partners, notably the UK, to support the convention despite US pressure on and disagreement with the Oslo process. See also Abramson, J., '107 countries approve cluster munitions treaty', *Arms Control Today*, vol. 38, no. 6 (July/Aug. 2008).

¹⁵ For a list of signatories as at 1 Apr. 2009 see annex A in this volume.

¹⁶ Abramson, J., 'CCW considers limits on cluster munitions', *Arms Control Today*, vol. 38, no. 8 (Oct. 2008).

¹⁷ Since 2001 the humanitarian impact of cluster munitions has been discussed within the CCW framework's more general context of explosive remnants of war. The problem of cluster munitions

on cluster munitions met several times in 2008 to consider possible limitations on the use of these weapons. Following the August 2008 Georgia–Russia conflict, discussions continued against the background of the alleged use of cluster munitions by both countries.¹⁸ By the end of September a draft protocol text had been developed, but views on the need for and the content of a new protocol remained diverse. At the meeting of the High Contracting Parties to the CCW Convention in November 2008, the states parties were unable to reach consensus on the draft protocol text. Despite wide divergences on numerous issues, they decided to continue negotiations on a CCW instrument on cluster munitions in 2009.¹⁹ The proposals under discussion would give states 13–20 years to phase out some cluster munitions, while allowing them to use, produce, stockpile and trade the remaining ones.²⁰

The CCW Convention’s considerations partially matched the US Government’s policy and reflected the USA’s preference for technological improvements over an outright ban. The USA maintains a stockpile of approximately 5.5 million cluster munitions containing an estimated 720 million submunitions.²¹ In July 2008 the US Department of Defense (DOD) released a newly approved US policy on cluster munitions, setting more stringent standards for the weapons by 2018.²² Claiming a clear military combat utility for these ‘legitimate weapons’, while also emphasizing a ‘need to minimize the potential unintended harm to civilians and civilian infrastructure’, the policy establishes a new technical norm for cluster munitions. The norm states that after 2018 the DOD will no longer use, sell or transfer cluster munitions that, after arming, result in more than 1 per cent unexploded ordnance across the range of intended operational

has been discussed by the CCW Convention’s Group of Governmental Experts since June 2007. United Nations Office at Geneva, ‘GGE sessions in 2007’, <<http://www.unog.ch/>>.

¹⁸ Human Rights Watch alleges that both Georgia and Russia used cluster munitions during their conflict in Aug. 2008 and that explosive remnants from the weapons continue to threaten, injure and kill people. While the Georgian Defence Ministry acknowledged the use of cluster munitions, Russia has continued to deny its use of them, despite strong evidence to the contrary. Neither Georgia nor Russia participated in the CCM negotiation process. Human Rights Watch, ‘Georgia: more cluster bomb damage than reported’, Press release, 4 Nov. 2008, <<http://www.hrw.org/english/docs/2008/1/04/georgi20134.htm>>; and Cluster Munition Coalition, ‘Cluster Munition Coalition condemns Georgian use of cluster bombs’, Press release, 2 Sep. 2008, <<http://www.stopclustermunitions.org/news/?id=667>>. On the conflict see chapter 2, section V, in this volume.

¹⁹ Reportedly, states parties agreed to continue their negotiations on ‘proposals’ (instead of a ‘protocol’, which was objected to by Russia). Abramson, J., ‘CCW fails to reach cluster munitions pact’, *Arms Control Today*, vol. 38, no. 10 (Dec. 2008).

²⁰ Reuters, ‘Main users of cluster bombs fail to agree pact’, *International Herald Tribune*, 14 Nov. 2008.

²¹ Human Rights Watch, ‘Key facts on the United States’ use, production, stockpiling, and transfer of cluster munitions’, 25 June 2008, <<http://hrw.org/english/docs/2008/06/25/global1912.htm>>.

²² US Department of Defense, ‘Cluster munitions policy released’, News Release no. 577-08, 9 July 2008, <<http://www.defenselink.mil/releases/release.aspx?releaseid=12049>>.

environments. The US approach as well as the process to limit the use of cluster munitions within the CCW framework has been sharply criticized by humanitarian groups and proponents of the CCM as not going far enough.²³

Explosive remnants of war

The CCW Convention's Protocol V on Explosive Remnants of War recognizes the humanitarian problems caused by ERW and covers post-conflict remedial measures in order to minimize their occurrence, effects and the risk they pose. Fifty-one states parties were bound by the protocol as of December 2008.²⁴ To demonstrate their serious commitment to address the human suffering caused by ERW, the parties to Protocol V adopted a Plan of Action on Victim Assistance at the Second Conference of the High Contracting Parties to Protocol V, held on 10–11 November 2008. The conference aimed to strengthen the protocol's humanitarian core. The Final Document of the conference also contains decisions on procedural matters.²⁵

The Anti-Personnel Mines Convention

The 1997 APM Convention prohibits its 156 states parties from using, producing, stockpiling or transferring APMs. Although some key current and past producers and users of landmines—including China, India, Pakistan, Russia and the USA—have not signed the convention, it is in many respects regarded as one of the most successful multilateral conventional arms control agreements of recent times. Each state party to the convention is required to destroy its stockpile of APMs within 4 years and to clear all mined areas under its jurisdiction or control within 10 years. More than 42 million APMs have been destroyed under the APM Convention by a total of 83 states parties that have completed the destruction of their stockpiles. Whereas about 15 million APMs remain to be destroyed by six to eight parties to the convention, an estimated 160 million APMs are stock-

²³ Cluster Munition Coalition, 'U.S. out of step with allies with hollow "new" cluster bomb policy', Press release, 8 July 2008, <<http://www.stopclustermunitions.org/news/?id=420>>. A diplomatic source reportedly blamed core supporters of the CCM for intransigence, thus making it impossible to agree on the proposed text that would allegedly have placed restrictions on 95% of all stockpiles of cluster munitions. Abramson (note 19).

²⁴ As of 31 Dec. 2007 this number was 36. For a list of parties to Protocol V see annex A in this volume.

²⁵ In July 2008 experts from the states parties met to evaluate the protocol's first year of operation, including different substantive aspects of its implementation (clearance of ERW, cooperation and assistance and requests for assistance, generic electronic template, national reporting, generic preventive measures and victim assistance), to prepare and to report their findings to the Second Conference of the High Contracting Parties to Protocol V. The Final Document of the conference and the expert's reports are available at <<http://www.unog.ch/>>.

piled by non-party states.²⁶ Myanmar and Russia, both non-parties to the convention, continued to use APMs in 2008, as did non-state armed groups in at least nine countries.²⁷

In 2008 Afghanistan, Burundi and Sudan finished their stockpile destruction. Three states parties—Belarus, Greece and Turkey—all with large stockpiles of APMs, failed to meet their 1 March 2008 destruction deadlines, putting them in non-compliance with the convention. The APM Convention has no provision for extending its Article 4 stockpile destruction deadlines.

Several other parties with 2009 clearance deadlines under Article 5 may not meet their 10-year clearance requirements. Fifteen parties have submitted requests for an extension of their deadlines for completing the destruction of APMs in mined areas. The duration of the sought-for extensions varies from 1 to 10 years.²⁸ At the Ninth Meeting of the States Parties to the APM Convention, which took place in Geneva on 24–28 November 2008, mine clearance extension deadlines were granted to all 15 requesting countries.²⁹

The most common reasons given by governments for lagging behind their clearance schedules are shortages of financial resources, trained personnel and proper equipment as well as environmental, logistical and technical problems. Several states also cited the severity of their landmine problem or poor survey data that impedes the successful completion of their obligations. Some parties blame poor relations with neighbours or the presence of hostile rebel groups inside their borders for delaying the clear-

²⁶ The states parties Ukraine (6.45 million APMs), Belarus (3.37 million), Turkey (2.5 million), Greece (1.6 million), Kuwait (87 582) and Indonesia (10 894) have yet to destroy their stockpiles. It is not clear if Ethiopia and Iraq have stockpiles of APMs. The vast majority of stockpiled APMs belong to states not party to the APM Convention: China (c. 110 million), Russia (c. 24.5 million), the USA (10.4 million), Pakistan (c. 6 million) and India (4–5 million). International Campaign to Ban Landmines, *Landmine Monitor Report 2008: Toward a Mine Free World* (Mines Action Canada: Ottawa, 2008), pp. 8–9.

²⁷ Though declining, the use of APMs by non-state armed groups takes place in more countries than the use by government forces. International Campaign to Ban Landmines (note 26), p. 5.

²⁸ According to Article 5 of the APM Convention, states parties may submit a request for an extension of the deadline for completing the destruction of APMs to a Meeting of the States Parties or a review conference prior to their deadlines, for a period of up to 10 years. States requesting extensions are supposed to explain why they will be unable to meet their obligation and outline plans and new timelines for finishing the task. States that requested such extensions are Bosnia and Herzegovina, Chad, Croatia, Denmark, Ecuador, Jordan, Mozambique, Nicaragua, Peru, Senegal, Thailand, the UK, Venezuela, Yemen and Zimbabwe. The extension requests by the UK and Venezuela, in particular, were sharply criticized because neither conducted any demining operations before the expiry of their 10-year deadline. International Campaign to Ban Landmines (note 26); and International Campaign to Ban Landmines, 'States must keep their word to landmine survivors and mine-affected communities: ninth meeting of the states parties to the Mine Ban Treaty opens in Geneva today', Press release, 24. Nov. 2008, <http://www.icbl.org/news/9msp_pressrelease>.

²⁹ International Campaign to Ban Landmines, 'Mine-affected states given clearance extensions but told to work urgently: ninth meeting of the states parties to the Mine Ban Treaty concluded in Geneva today', Press release, 28 Nov. 2008, <<http://www.icbl.org/news/pr28nov08>>.

ing. According to the International Campaign to Ban Landmines, the need for an extension could have been avoided in numerous instances by more efficient demining and earlier action to mobilize additional demining capacity and international financial support.³⁰

In 2004 the First Review Conference of the APM Convention adopted the Nairobi Action Plan, which declares that ‘successfully meeting these deadlines will be the most significant challenge to be addressed in the coming five years and will require intensive efforts by mine-affected States Parties and those in a position to assist them’.³¹ The Second Review Conference of the APM Convention will take place in Cartagena, Colombia, in November 2009 to evaluate the progress in meeting its goals and to review the operation and status of the convention.

III. European arms control

The 1990 Treaty on Conventional Armed Forces in Europe remains by far the most elaborate conventional arms control regime worldwide. Acclaimed as the cornerstone of European security, it has also inspired regional arms control solutions in the Western Balkans and Central Asia.³²

The CFE Treaty was built on a bipolar concept of an equilibrium of armed forces between NATO and the now defunct Warsaw Treaty Organization in its Atlantic-to-the-Urals zone of application. It sets equal ceilings on major categories of heavy conventional armaments and equipment (treaty-limited equipment, TLE) of the two groups of states. The 1999 Agreement on Adaptation of the CFE Treaty would discard the bipolar concept to better respond to geopolitical shifts and new security circum-

³⁰ International Campaign to Ban Landmines, ‘Article 5 deadline extension requests’, Fact sheet, June 2008, <<http://www.icbl.org/lm/factsheets/>>. See also Boese, W., ‘Some countries to miss mine treaty deadlines’, *Arms Control Today*, vol. 38, no. 1 (Jan./Feb. 2008); and United Nations Office at Geneva, ‘Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction’, APLC/MSP.8/2007/6, 30 Jan. 2008, pp. 13–19.

³¹ ‘Ending the suffering caused by anti-personnel mines: Nairobi Action Plan 2005–2009’, Nairobi Summit on a Mine-Free World, 29 Nov.–3 Dec. 2004, section III, reproduced in *From Ottawa to Nairobi and Beyond* (Geneva International Centre for Humanitarian Demining: Geneva, June 2005), pp. 35–47.

³² On Western Balkan arms control see below. The 1997 Central Asian arms control agreement reached by the Shanghai Five (China, Russia, Kazakhstan, Kyrgyzstan and Tajikistan) suffers from a lack of public transparency and scrutiny. It was reported that by spring 2008, 19 inspections had been carried out at the Chinese sites along the Eastern part of the border between China and Russia. During the same period Russia received 20 Chinese inspection groups at its sites. In the Western part of the zone governed by the agreement, there were 17 inspections of the Chinese sites, while Russia and the 3 Central Asian states (the ‘joint side’) received 17 Chinese inspection groups. Verchenko, V., ‘On the experience of the implementation of the agreements on military confidence building measures and reduction of the armed forces in border area with China’, Seminar on aspects of implementation of the Vienna Document 1999, Berlin, 11–13 Mar. 2008, <<http://www.auswaer-tiges-amt.de/diplo/de/Aussenpolitik/Themen/Abruestung/KonvRueKontrolle/Resuemee/Verchenko.pdf>>.

stances and requirements.³³ However, the agreement has not entered into force because of the refusal of the NATO members and other states parties to ratify it until Russia complies with the commitments it made at the 1999 OSCE Istanbul Summit.³⁴ Of the 30 parties to the CFE Treaty, only Belarus, Kazakhstan, Russia and Ukraine have ratified the Agreement on Adaptation.³⁵ The original CFE Treaty and the associated agreed documents and decisions therefore continue to be binding on all parties, although Russia ‘suspended’ its implementation of the CFE Treaty in December 2007.

The situation of the CFE Treaty and its repercussions for security in Europe was the main focus of one of the three sessions of the OSCE’s Annual Security Review Conference in early July. The relevance of the CFE Treaty in Europe was reconfirmed by almost all the participants. It was pointed out that the major cause of the current crisis for the CFE Treaty was the enlargement of the European Union (EU) and NATO and their globalized security agendas, which have resulted in their growing engagement outside (and at the cost of) the OSCE. With Russia increasingly focused on its region, which overlaps with Europe, a new kind of ‘asymmetry of strategic perspective’ has been created that can and does lead to misperceptions and mistrust.³⁶ A variety of proposals and suggestions concerning CFE and CSBM issues were made, most of them not new, ranging from cyber security to adapting the OSCE tools in order to meet new and asymmetric threats.³⁷ The conclusions drawn demonstrated a measure of helplessness due to the diverging outlooks of the main protagonists—Russia and NATO.³⁸

³³ For a summary and other details of the agreement see annex A in this volume. For the text of the CFE Treaty as amended by the Agreement on Adaptation see *SIPRI Yearbook 2000: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2000), pp. 627–42.

³⁴ OSCE, ‘Istanbul Summit Declaration’, 17 Nov. 1999, paras. 15–19; and OSCE, ‘Final act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe’, 17 Nov. 1999, Annex 14. These texts are reproduced in *SIPRI Yearbook 2000* (note 33), pp. 642–46; and OSCE, ‘Istanbul Document 1999’, <<http://www.osce.org/item/15853.html>>, pp. 46–54, 236–59. Russia has failed to implement the following Istanbul commitments: (a) to close the Gudauta base in Abkhazia, Georgia; (b) to withdraw all Russian troops from Moldova’s Trans-Dniester region; and (c) to eliminate its stocks of ammunition and military equipment in the Trans-Dniester region. The states parties to the CFE Treaty have also not agreed how to treat the Russian peacekeepers in Georgia and Moldova.

³⁵ However, Ukraine has not deposited its instrument of ratification with the treaty depositary.

³⁶ OSCE, ‘Draft statement by Alyson J. K. Bailes, University of Iceland, in session 2, 2 July 2008’, 2008 Annual Security Review Conference, Vienna, 1–3 July 2008, document PC.DEL/490/08/Rev.1, 3 July 2008.

³⁷ OSCE, ‘Chair’s report: working session II: the present state of arms control arrangements, CSBMs and the security dialogue in the OSCE area’, 2008 Annual Security Review Conference, Vienna, 1–2 July 2008, document PC.DEL/646/08, 18 July 2008.

³⁸ Kobieracki, A., ‘Speaking notes’, 2008 Annual Security Review Conference, Vienna, 1–2 July 2008, document PC.DEL/523/08, 23 June 2008.

The CFE Treaty regime in abeyance

On 12 December 2007 Russia declared that it will not be bound by restrictions on the number of its TLE. However, Russia stated that it did not have plans for the build-up or concentration of TLE on its borders and reiterated its readiness to continue a ‘result-oriented’ dialogue on the CFE Treaty.³⁹

Apart from treaty-related motives, Russia pointed to the broader context of the balance of forces between itself and the USA and NATO: the continuing NATO enlargement process; the progressing US military base and missile defence plans in Central and Eastern Europe; and the ongoing encroachment on Russia’s ‘near abroad’ (Georgia and Moldova). Various factors apparently led Russia to sacrifice the arms control guarantees and benefits of the CFE Treaty to its broader strategic and political interests outside the regime. These included recognition of Kosovo’s independence by a large number of Western states, the Georgian and Ukrainian NATO membership bids, NATO’s membership invitations to Albania and Croatia in the spring of 2008, Ukraine’s demands concerning the removal of Russia’s Black Sea Fleet from the Sevastopol naval base by 2017, and other controversies.

Reactions to Russia’s decision varied. The NATO states found it either baseless or treated it as a breach of the CFE Treaty and sought to persuade Russia to reverse the decision while trying to engage it in implementation of the treaty. The NATO and other states parties continued to provide information under the treaty provisions and repeatedly requested to conduct inspections on Russia’s territory despite its consistent refusals.⁴⁰ All the other states parties pledged to continue, until further notice, to observe without restriction all the rights and obligations under the CFE Treaty. Germany, Hungary and the UK made presentations in the CFE Joint Consultative Group (JCG) on various aspects of the treaty’s contribution to stability and security in Europe.⁴¹ Many parties advocated the ‘parallel actions’ approach that had been proposed by the Western states in the autumn of 2007—step-by-step ratification of the Agreement on Adaptation

³⁹ Russian Ministry of Foreign Affairs, ‘Statement regarding suspension by Russian Federation of Treaty on Conventional Armed Forces in Europe (CFE Treaty)’, 12 Dec. 2007. On the circumstances and rationale behind Russia’s decision see Lachowski (note 4), pp. 472–82.

⁴⁰ E.g. the USA has repeatedly claimed that neither customary international law—especially the concept of *in plus stat minus* as invoked by Russia (‘the greater includes the lesser’, i.e. that a right to unilaterally withdraw implies a right to unilaterally suspend the operation of a treaty)—nor the CFE Treaty and associated documents provide a basis for Russia’s ‘suspension’ of the implementation of the treaty. In turn, Russia has argued that the Western accusations of ‘illegitimacy’ of the step it took are unsubstantiated on the ground of customary international law.

⁴¹ During 2007–2008, a series of ‘Berlin Seminars on Conventional Arms Control’ under the auspices of the German Federal Ministry for Foreign Affairs was held to discuss and promote the topic among experts and diplomats from the interested OSCE countries. See <<http://www.auswaertiges-amt.de/diplo/en/Aussenpolitik/Themen/Abruestung/KonvRueKontrolle/BerlinerSeminare.html>>.

accompanied by the consistent implementation of Russia's Istanbul commitments.

Ukraine sought clarification from Russia regarding the number of Russian Black Sea Fleet armaments deployed on its territory under the Russian–Ukrainian agreement of 28 May 1997 on the division of the fleet and the former Soviet republics' joint declaration of 1992.⁴² Referring to the precedent of 1992, Belarus tried to persuade others to adopt provisional application of the Agreement on Adaptation or some of its provisions pending its official entry into force.⁴³ Russia advocated that proposal as one of the elements of a future 'package solution'. This, however, was rejected by other parties as incompatible with its suspension of the CFE Treaty. Belarus also unsuccessfully sought 'concrete work' in the JCG to elaborate a package of specific measures aimed at increasing the viability of the treaty and getting it ready upon the entry into force of the Agreement on Adaptation.⁴⁴ Another problem arose when Russia, which had earlier ratified the Agreement on Adaptation, demanded that other states ratify another, modified agreement (without flank limitations).

Four rounds of talks between the two main powers—Russia and the USA—failed to bring about tangible results in 2008. As it had done in 2007, Russia provided aggregated information regarding its TLE at the end of 2008; this, however, lacked the highly detailed and comprehensive character of CFE data exchanges that are required by the treaty. At the Helsinki OSCE Ministerial Council in December, in an attempt to keep the treaty regime alive, the German Foreign Minister, Frank-Walter Steinmeier, invited high-ranking experts from CFE countries to Germany to facilitate a 'new beginning'.⁴⁵ At the same time, NATO warned that the suspension 'cannot last indefinitely'.⁴⁶

⁴² Reportedly, Russia informed Ukraine that the suspension does not cover the Russian obligations under both accords. Joint Consultative Group, Delegation of Ukraine, Statement, document JCG.JOUR/657, 8 Apr. 2008, annex 6.

⁴³ It was argued that the Belarus-sponsored provisional application is not compatible with the short-lived 'precedent' of 1992 in legal and political terms. The German delegation indicated that while nearly all states parties adhere de facto to the provisions concerning the future territorial ceilings, national laws for the implementation of the CFE Treaty remain in effect and cannot be substituted by administrative decisions.

⁴⁴ Joint Consultative Group, Permanent delegation of the Republic of Belarus in the OSCE, the JCG and the OSCC, Statement at the meeting of the Joint Consultative Group, document JCG.DEL/19/08, 29 Apr. 2008.

⁴⁵ OSCE, 'Speech by Federal Foreign Minister Dr Frank-Walter Steinmeier at the OSCE Ministerial Council in Helsinki on 4 Dec. 2008', document MC.DEL/14/08, 4 Dec. 2008.

⁴⁶ NATO, 'Final communiqué: Meeting of the North Atlantic Council at the level of foreign ministers held at NATO Headquarters, Brussels', Press Release (2008)153, 3 Dec. 2008, <<http://www.nato.int/docu/pr/2008/p08-153e.html>>. The Russian Foreign Ministry spokesman called the NATO Dec. 2008 communiqué 'nothing truly new'. Russian Ministry of Foreign Affairs, 'Response by Russian MFA spokesman Andrei Nesterenko to a media question relating to position set out by NATO Council on the Treaty on Conventional Armed Forces in Europe', document 1984-08-12-2008, 8 Dec. 2008.

Russia's President Dmitry Medvedev proposed to hold a mid-2009 European summit to elaborate a legally binding treaty on European security, but as 2008 ended it remained unclear whether this would address the issue of the CFE Treaty itself.⁴⁷

NATO's parallel actions package

In autumn 2007 the Western states proposed a 'package of parallel actions'.⁴⁸ In 2008, NATO's North Atlantic Council (NAC) offered a two-stage plan to address the concerns of all CFE states: the entry into force of the adapted treaty and subsequent review of the changes made since 1999.⁴⁹

During the first stage, outstanding issues related to Russian forces and facilities in Georgia and Moldova would be resolved in tandem with the NATO states moving forward on ratification of the Agreement on Adaptation.⁵⁰ Both sides would request that all states parties make a political commitment to act in a manner consistent with the 'object and purpose' of the adapted treaty until its entry into force. All equipment ceilings would also be observed. Estonia, Latvia, Lithuania and Slovenia—the NATO member states that are not parties to the CFE Treaty—would pledge their readiness to request accession to the adapted CFE Treaty regime as soon as it enters into force. Having consulted with NATO allies, they would enter into discussions with all states parties on the conditions for their accession. The term 'substantial combat forces', the bone of contention between NATO and Russia in the context of military restraint, would also be defined.⁵¹ During the second stage, once the Agreement on Adaptation

⁴⁷ President Medvedev has announced that 'it would be good to establish basic arms control parameters and reasonable limits on military construction. Also needed are new cooperation procedures and mechanisms in areas such as WMD proliferation, terrorism and drug trafficking.' See Medvedev, D., President of the Russian Federation, Speech at World Policy Conference, Evian, France, 8 Oct. 2008, <<http://www.kremlin.ru/eng/sdocs/speeches.shtml>>. Earlier, at the meeting in Berlin in June, Medvedev proposed a new security pact based on the rule of international law and a comprehensive resolution of the security indivisibility and arms control issues, and non-use of force. Medvedev, D., President of the Russian Federation, Speech at meeting with German political, parliamentary and civic leaders, Berlin, 5 June 2008, <<http://www.kremlin.ru/eng/sdocs/speeches.shtml?styp=82912>>. In Feb. 2009 the Russian Deputy Foreign Minister, Alexander Grushko, stated that the arms control section of a new European security treaty will not in any way replace the CFE Treaty. OSCE, Joint Meeting of the Forum for Security Cooperation and Permanent Council, document FSC-PC.DEL/9/2009, 18 Feb. 2009.

⁴⁸ See Lachowski (note 4), pp. 479.

⁴⁹ NATO, NAC Statement on CFE, Press release 2008(047), 28 Mar. 2008, <<http://www.nato.int/docu/pr/2008/p08-047e.html>>.

⁵⁰ The use of the phrase 'to resolve outstanding issues' in the context of Georgia and Moldova raised speculation that NATO might have dropped its demand for the full withdrawal of Russian troops from both countries. Socor, V., 'NATO summit sends ambiguous message on Russian troops in Moldova and Georgia', *Eurasia Daily Monitor*, 11 Apr. 2008.

⁵¹ The term was first used in the NAC statement of 14 Mar. 1997 regarding deployments in new NATO member states. Later it was included and complemented in the NATO–Russia Founding Act of 27 May 1997 and in NATO's 'Statement on CFE', 8 Dec. 1998, Press Release M-NAC-D-2(98)141, <<http://www.nato.int/docu/pr/1998/p98-141e.htm>>.

entered into force, NATO has promised to review the operation of the adapted treaty regime with Russia and other parties—particularly changes, where possible, to the level of equipment ceilings. This would enable Russia and other parties to raise their concerns about specific elements of the new regime.

The Bucharest NATO summit declaration endorsed the NAC proposal.⁵² It reiterated NATO's commitment to the viability of the CFE Treaty regime as previously expressed in its 2006 Riga summit declaration, its final statement at the June 2007 CFE Extraordinary Conference and in subsequent announcements by NATO allies.⁵³

Russia cautiously welcomed some elements of the NATO proposal, particularly those regarding the levels of forces, the future accession to the CFE Treaty regime of non-CFE NATO states and the promise to define 'substantial combat forces'. However, the conditions concerning Georgia and Moldova were again rejected. Russia called on the states parties to ratify the Agreement on Adaptation and adopt the 'additional measures' proposed by Russia at the June 2007 CFE Extraordinary Conference.⁵⁴ In May the Chief of the General Staff of the Armed Forces of the Russian Federation, Army General Yury Baluyevsky, demanded at the annual meeting of the NATO–Russia Council that, as a way out of the CFE stalemate, Russia be allowed to abolish its flank limitations. The proposal, however, was not submitted as an official document.⁵⁵ In December 2008 Russia hinted that it would expect the future package solution to be equitable, indivisible and concrete, particularly with regard to the definition of substantial combat forces, the conditions for accession to the adapted treaty of

⁵² NATO, 'Bucharest Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008', Press Release (2008)049, 3 Apr. 2008, <<http://www.nato.int/docu/pr/2008/p08-049e.html>>, para. 42.

⁵³ NATO, 'Riga Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Riga on 29 November 2006', Press Release (2006)150, 29 Nov. 2006, <<http://www.nato.int/docu/pr/2006/p06-150e.htm>>, para. 42; and CFE Extraordinary Conference, Delegation of Italy, Statement, 15 June 2007, <<http://www.nato.int/update/2007/06-june/e0615a.html>>.

⁵⁴ Russian Ministry of Foreign Affairs, 'Russian MFA Information and Press Department commentary on NATO's statement on Treaty on Conventional Armed Forces in Europe (CFE)', document 433-01-04-2008, 1 Apr. 2008. For discussion of the Russian proposals in 2007 see Lachowski (note 4), pp. 476–79.

⁵⁵ In the Russian media the proposal was presented as extending flank limitations onto the whole European territory of Russia. Baluyevsky argued that NATO would retain its military superiority, even if Russia were allowed to abolish its flank limitations and pointed to Georgia's rapidly growing armed forces and its 'provocative actions' vis-à-vis the separatist entities of Abkhazia and South Ossetia as the rationale behind the Russian demand. Centre for European Security, 'Digest "NATO, EU, OSCE in headline news of World Wide Web, June of 2008"', 10 July 2008, <<http://www.europansecurity.ru/news/06.08e.asp>>.

Table 11.1. Arms reductions under Article IV of Annex 1-B of the 1995 Dayton Peace Agreement, as of 31 December 2007

Party	Tanks	ACVs	Artillery	Aircraft	Helicopters	Total
Bosnia and Herzegovina	..	..	35	..	..	35
Federation of Bosnia and Herzegovina ^a	57	39	2 394	–	–	2 490
Republika Srpska ^a	387	192	1 987	4	–	2 570
Croatia	49	85	911	2	–	1 047
Montenegro ^b	62	..	..	..	..	62
Serbia and Montenegro/Serbia ^b	663	336	1 544	133	11	2 687
Total	1 218	652	6 871	139	11	8 891

ACV = armoured combat vehicle.

^a The two entities of Bosnia and Herzegovina ceased to be parties to the Florence Agreement in 2006.

^b Montenegro declared its independence from the State Union of Serbia and Montenegro in June 2006 and became a party to the Florence Agreement in Jan. 2007. Montenegro and Serbia signed a bilateral agreement on the principles and procedures of implementation of the Florence Agreement on 6 July 2007.

Source: Periotto, C. (Brig.-Gen.), Personal Representative of the OSCE CIO for Article IV, Annex 1-B, Dayton Peace Agreement, Presentation at the Berlin Seminar on Conventional Arms Control, 'The potential of the CFE Treaty to stabilise security relations of States Parties in a regional context: the South Eastern European region', Berlin, 30 Sep.–1 Oct. 2008, <<http://www.auswaertiges-amt.de/diplo/de/Aussenpolitik/Themen/Abruestung/KonvRueKontrolle/7BerlinerSeminar/Uebersicht.html>>.

new parties and the wording on the provisional application of the new regime.⁵⁶

The August conflict between Georgia and Russia violated the principles of the OSCE documents and the CFE Treaty that call on the states parties to refrain from the threat or use of force against the territorial integrity or political independence of any state and the commitments to peaceful cooperation and prevention of any military conflict in Europe. The prospects for resolving the ongoing CFE crisis are bleak in the wake of Russia's recognition of both Georgia's separatist entities—Abkhazia and South Ossetia—as independent countries and the renewed stationing of Russian troops (now doubled to roughly 6000–7000) and armaments in these regions.⁵⁷

⁵⁶ Russia has submitted its proposed parameters for the (combat brigade-level) of 'substantial combat forces': 41 tanks, 188 armoured personnel carriers, 90 artillery pieces, 24 combat aircraft and 24 combat helicopters to the Joint Consultative Group. Joint Consultative Group, 'Statement by the delegation of the Russian Federation to the Joint Consultative Group', document JCG.JOUR/682, 9 Dec. 2008, annex 2.

⁵⁷ According to one expert, the Georgia–Russia conflict definitively 'killed' the CFE Treaty. Socor, V., 'CFE dead and buried in Georgia', *Eurasia Daily Monitor*, 22 Oct. 2008.

Subregional arms control for the Western Balkans

Since Russia's suspension of the CFE Treaty regime, the 1996 Agreement on Sub-Regional Arms Control (Florence Agreement) is the only fully functional 'hard' (reduction-related) arms control agreement in Europe. It has weathered various crises and challenges over the past 12 years, including the most recent one over Kosovo's independence.

According to the Personal Representative of the OSCE Chairperson-in-Office for Article IV of the Dayton Peace Accords, the implementation of the Florence Agreement shows that military stability in the Western Balkans is 'solid and uncompromised' and the four parties—Bosnia and Herzegovina, Croatia, Montenegro and Serbia—are in full compliance with the spirit of the agreement.⁵⁸ All the parties participate in NATO's Partnership for Peace (PFP) programme (and Croatia became a full NATO member in 2009) and are on the path to EU membership (with Croatia having candidate status).⁵⁹ Armaments limited by the Florence Agreement have been destroyed voluntarily since the end of the official reduction period in October 1997, and by 2008 the parties had scrapped or converted a total of nearly 9000 items classified as heavy weapons, including 6900 artillery pieces, considered to be the most critical weapon category in the mountainous former Balkan battlefield (see table 11.1).⁶⁰ During the period 1996–2008, 600 inspections were conducted, including more than 120 reduction inspections. The steady decrease in the number of objects of inspection (OOIs) resulting from the restructuring of the armed forces of the parties led them to agree on a fixed quota for each party, irrespective of the number of OOIs. In total, the number of OOIs decreased from 244 at the end of the reduction period to 85 in 2008.⁶¹

Lowering the thresholds in heavy weaponry has been possible owing to steadily decreasing fears and threats and the willingness to cut the cost of maintaining large arsenals of armaments. Consequently, the holdings of

⁵⁸ Periotto, C. (Brig. Gen.), 'Report to the Permanent Council, Implementation of the Agreement on Sub-Regional Arms Control (Article IV, Annex 1-B, Dayton Peace Accords)', document CIO.GAL/132/08, 18 Sep. 2008. The Florence Agreement was agreed under Article IV of Annex 1-B of the 1995 General Framework for Peace in Bosnia and Herzegovina (Dayton Agreement), which was signed on 14 Dec. 1995. In 2006–2007 the number of parties changed from the original 5, first having been reduced to 3 (by the unification of Bosnia and Herzegovina) and then increased to 4 (following the independence of Montenegro). Montenegro became a party to the Florence Agreement as of 16 Jan. 2007. Formal amendments to the agreement for its participation as the fourth party were signed by all parties and the Personal Representative during the SRCC meeting on 14–16 Oct. 2008. For a summary of the Florence Agreement see annex A in this volume. The text of the Dayton Agreement is available at <<http://www.oscebih.org/overview/gfap/eng/>>.

⁵⁹ The Partnership for Peace consists of bilateral agreements between NATO and its partner countries. The NATO member states and the PFP partners meet in the Euro-Atlantic Partnership Council. See annex B in this volume for a full list of members.

⁶⁰ Periotto (note 58).

⁶¹ Periotto (note 58).

Table 11.2. Ceilings, holdings and exemptions under Article IV of Annex 1-B of the 1995 Dayton Peace Agreement, as of 30 September 2008

Party	Tanks	ACVs	Artillery	Aircraft	Helicopters
<i>Bosnia and Herzegovina</i>					
Ceiling	410	340	1 500	62	21
Holdings	325	272	1 469	19	7
Exemption	7	12	64	0	0
<i>Croatia</i>					
Ceiling	410	340	1 500	62	21
Holdings	258	111	1 406	21	7
Exemption	39	23	89	5	2
<i>Serbia</i>					
Ceiling	948	786	3 375	143	46
Holdings	505	607	2 616	85	38
Exemption	281	65	396	0	0
<i>Montenegro</i>					
Ceiling	77	64	375	12	7
Holdings	0	8	168	12	6
Exemption	0	3	202	0	0
Total ceilings	1 845	1 530	6 750	279	95
Total holdings	1 088	998	5 659	137	58

ACV = armoured combat vehicle.

Source: Periotto, C. (Brig.-Gen.), Personal Representative of the OSCE CIO for Article IV, Annex 1-B, Dayton Peace Agreement, Presentation at the Berlin Seminar on Conventional Arms Control, 'The potential of the CFE Treaty to stabilise security relations of States Parties in a regional context: the South Eastern European region', Berlin, 30 Sep.–1 Oct. 2008, <<http://www.auswaertiges-amt.de/diplo/de/Aussenpolitik/Themen/Abrüstung/KonvRueKontrolle/7BerlinerSeminar/Uebersicht.html>>.

limited armaments of all parties are well below the ceilings agreed in Florence in 1996 (see table 11.2). Rapprochement has helped facilitate the new simplified voluntary reduction procedures for the destruction of agreement-limited armaments. Along with the successful implementation of the Florence Agreement, economics has also played a role in reducing the number of Sub-Regional Consultative Commission meetings from three to two per year. The parties to the Florence Agreement also decided to use the Integrated Notification Application of the OSCE Communication Network for all notifications starting from 1 January 2009 and to adopt the Automated Data System for the annual data exchanges beginning in 2010.⁶²

⁶² Periotto (note 58).

At their sixth review conference in July 2008, the parties agreed on two major recommendations: (a) to continue the implementation of the Florence Agreement with the assistance of the Personal Representative of the OSCE and to simultaneously explore the modalities for further strengthening the parties' 'ownership' of (responsibility for) the implementation with the aim of a gradual attainment of full autonomy; and (b) to start considering the adapted CFE Treaty as a possible long-term alternative to the Florence Agreement.⁶³ The latter process, however, is bound to be marred by the impact of the conflict between Georgia and Russia on the future of the CFE treaty regime.

IV. Building confidence and security in the OSCE area⁶⁴

European confidence and security building continues to be a unique experiment. Military-related confidence-building endeavours outside the OSCE area have been aborted (those on the Korean Peninsula), cautiously explored (in cross-strait relations between China and Taiwan), been in pursuit of broader consensus (in Latin America) or limited to bilateral selective approaches.⁶⁵

In 2008 the OSCE community continued to focus on its arms control dimension: military confidence building and security cooperation in the fields of small arms and light weapons (SALW), reducing stockpiles of conventional ammunition (SCA) and the 1994 Code of Conduct on Politico-Military Aspects of Security.⁶⁶

⁶³ See also Lachowski, Z., 'Possibilities for a transition from the Dayton Peace Accord to the CFE Treaty', Berlin Seminar on Conventional Arms Control, Berlin, 30 Sep.–1 Oct. 2008, <<http://www.auswaertiges-amt.de/diplo/en/Aussenpolitik/Themen/Abruestung/KonvRueKontrolle/7BerlinerSeminar/Uebersicht.html>>.

⁶⁴ For a list of states participating in OSCE see annex B in this volume. The OSCE area covers Europe, from the Atlantic to the Urals, and Central Asia.

⁶⁵ The confidence-building dialogue on the Korean Peninsula, North and South, agreed in late 2007 quickly fell victim to successive disagreements. The Organization of American States III Forum on Confidence- and Security-Building Measures, held in Apr. 2008, brought about no noticeable progress. It aimed to reach preliminary agreements to be presented at the conference of states parties to the Inter-American Convention on Transparency in Conventional Weapons Acquisitions, to be held in 2009, and to generate consensus around the implementation of confidence-building measures and regarding the fight against new threats afflicting the western hemisphere. During 2008, China set up military hotlines with South Korea, Russia and the USA.

⁶⁶ For an overview of developments in 2008 see OSCE, 'Letter from the Chairperson of the Forum for Security Cooperation to the Minister for Foreign Affairs of Finland, Chairperson of the Sixteenth Meeting of the Ministerial Council', document MC.GAL/7/08/Rev.1, 26 Nov. 2008, <http://www.osce.org/documents/html/pdf/html/35093_en.pdf.html>; and OSCE, 'Code of Conduct on Politico-Military Aspects of Security', document DOC.FSC/1/95, 3 Dec. 1994, <<http://www.osce.org/fsc/22158.html>>.

Confidence- and security-building measures

Overall, CSBM implementation under the Vienna Document 1999 on Confidence- and Security-Building Measures has remained relatively steady for several years.⁶⁷ Noticeably, with the CFE Treaty suspended, the numbers of inspections and evaluation visits requested by Russia under the politically binding Vienna Document increased more than three fold compared to 2007.⁶⁸ Developments in 2008 helped reinvigorate the confidence-building dialogue, but not progress, in the OSCE. Numerous proposals were submitted to the OSCE's Forum for Security Cooperation (FSC) during 2008, of which two resulted in new decisions.⁶⁹

During the Annual Security Review Conference in July 2008, Russia presented a proposal ('food-for-thought' paper) on naval confidence-building measures.⁷⁰ However, amid the tension accruing from April to June and later from September to October no CSBM stood the chance of being agreed. In September, problems with access to Russian airspace in the North Caucasus under the Treaty on Open Skies regime occurred because of the Georgia–Russia conflict and NOTAM ('Notice to Airmen') hazard-related restrictions. In effect two requested observation overflights there were cancelled.

The Abkhazia incident

After a Georgian unmanned aerial vehicle (UAV) was shot down by a Russian aircraft over Georgia's breakaway territory of Abkhazia on 20 April 2008, Georgia demanded an international investigation. Following a report by the United Nations Observer Mission in Georgia (UNOMIG), the Georgian authorities invoked the Vienna Document risk reduction (Chapter III) mechanism for consultation and cooperation regarding unusual military activities on 28 May.⁷¹ The OSCE held three special joint FSC–Permanent

⁶⁷ FSC Chairperson's Progress Report to the Sixteenth Meeting of the Ministerial Council, 'Efforts in the field of arms control agreements and confidence-and security-building measures in accordance with its mandate', Helsinki, Dec. 2008, <http://www.osce.org/conferences/mc_2008.html?page=documents&session_id=333>. On the Vienna Document 1999 risk reduction mechanism see Lachowski, Z., *Confidence- and Security-Building Measures in the New Europe*, SIPRI Research Report no. 18 (Oxford University Press: Oxford, 2004), pp. 59–63.

⁶⁸ OSCE, Conflict Prevention Centre, 'Annual CPC survey on CSBM information exchanged in 2008', document FSC.GAL/2/09, 9 Jan. 2009. The respective numbers are as follows: 30 inspections in 2008 and 9 in 2007; and 28 evaluation visits in 2008 as opposed to 8 in 2007.

⁶⁹ On FSC activities in the field of arms control and CSBMs see OSCE, 'Efforts in the field of arms control agreements and confidence- and security-building measures in accordance with its mandate', document MC.GAL/5/08/Rev.2, 13 Nov. 2008, <http://www.osce.org/documents/html/pdf/html/34921_en.pdf.html>.

⁷⁰ Delegation of the Russian Federation, 'Confidence- and security-building measures in the naval area', document FSC.DEL/120/08, 2 July 2008.

⁷¹ United Nations Observer Mission in Georgia (UNOMIG), 'Report of UNOMIG on the incident of 20 April involving the downing of a Georgian unmanned aerial vehicle over the zone of conflict', 26 May 2008, <<http://www.unomig.org/media/events/?year=2008&offset=10>>, para. 36. UNOMIG

Council sessions on the incident in May and June, and the chairperson of the Permanent Council requested politico-military advice from the FSC. This failure to reach a tangible outcome and other politically motivated obstacles testify to the need to streamline the cumbersome risk-reduction procedures. In June Russia sent railroad construction troops and equipment into Abkhazia outside the peacekeeping zone without consultation with or the consent of the Georgian authorities. The EU and the USA criticized these actions.⁷²

Small arms and light weapons

The 2000 OSCE Document on Small Arms and Light Weapons (SALW Document) and the other relevant documents remain an effective instrument for addressing SALW problems, fostering transparency and confidence among the participating states, and helping to combat terrorism and organized crime.⁷³ In 2001–2007 OSCE participating states destroyed 7.7 million small arms.⁷⁴ In 2008 the participating states pledged over €430 000 (\$630 000) for OSCE SALW projects. The level of implementation of the SALW Document is considered high, but room for improvement exists. Generally, the OSCE activities in the SALW field focus on two major areas: normative work and practical assistance.

In 2008 the FSC took norm-setting decisions on: (a) updating the OSCE Principles for export controls of man-portable air defence systems

recognized that the overflight of the conflict zone by surveillance aircraft was a breach of the 1994 Moscow Agreement. However, many states contended that an unarmed UAV flight could not justify Russia's choice to respond with force, and the EU found it inconsistent with the Moscow Agreement. Russia considered the Georgian request unjustified and insisted that a solution be found bilaterally between Abkhazia and Georgia. Russia also questioned the authenticity of the radar data materials. Russia also claimed that the aircraft could have been Abkhazian; however, Abkhazia does not possess such aircraft. (It was probably an Su-27 Flanker or a Mig-29 Fulcrum.)

⁷² OSCE, Slovenian Presidency of the Council of the European Union, Joint FSC/PC Meeting no. 33, 'EU Statement on Abkhazia, Georgia', document FSC-PC.DEL/29/08, 11 June 2008; and United States Mission to the OSCE, Statement for the FSC-PC on Georgia/Abkhazia, as delivered by Ambassador Julie Finley to the Joint Meeting of the Forum for Security Co-operation and the Permanent Council, Vienna, 11 June 2008.

⁷³ OSCE, Forum for Security Co-operation, 'OSCE document on small arms and light weapons', 24 Nov. 2000, <<http://www.osce.org/fsc/13281.html>>. The other documents include OSCE, *Handbook of Best Practices on Small Arms and Light Weapons* (OSCE: Vienna, 2003), <http://www.osce.org/fsc/item_11_13550.html>; OSCE, Forum for Security Co-operation, 'Standard elements of end-user certificates and verification procedures for SALW exports', Decision no. 5/04, document FSC/DEC/5/04, 17 Nov. 2004, <<http://www.osce.org/item/1699.html?html=1>>; OSCE, Forum for Security Co-operation, 'Principles on the control of brokering in small arms and light weapons', Decision no. 8/04, document FSC/DEC/8/04, 24 Nov. 2004; and OSCE, Ministerial Council, 'OSCE principles for export controls of man-portable air defence systems', Decision no. 8/04, document MC.DEC/8/04, 7 Dec. 2004, <<http://www.osce.org/atu/13364.html>>.

⁷⁴ OSCE, 'The continuing implementation of the OSCE Document on Small Arms and Light Weapons', document MC.GAL/2/08/Rev.2, 13 Nov. 2008, <http://www.osce.org/documents/html/pdftohtml/34917_en.pdf.html>.

(MANPADS); (b) updating the reporting categories of weapon and equipment systems subject to the information exchange on conventional arms transfers, which now also call on participating states to include exports and imports of SALW in their national reports to the UN Register of Conventional Arms; (c) introducing best practices to prevent destabilizing transfers of SALW through air transport and on an associated questionnaire; and (d) exchanging information with regard to sample formats of end-user certificates and relevant verification procedures for SALW.⁷⁵ Moreover, the FSC decided to establish a directory of national and OSCE points of contact on small arms and stockpiles of conventional ammunition.⁷⁶ Some suggestions and initiatives call for extending the role of the FSC Support Section of the Conflict Prevention Centre (CPC); making sure that all the OSCE commitments find their way into national legislation; taking advantage of progress in other forums and so on in order to supplement the existing framework; and to further develop the OSCE tenets, norms and measures to better face up to the excessive accumulation and uncontrolled spread of SALW.

Regarding practical assistance, the FSC contributed to the Third Biennial Meeting of States in support of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in all its Aspects. Several OSCE projects deal with both small arms and stockpiles of conventional ammunition. In February 2008 the OSCE held a workshop on the implications of technical, managerial and financial issues of existing and planned projects on SALW and stockpiles of ammunition. The Comprehensive SALW and SCA Programme was launched, which, in addition to providing regular donations to established projects, facilitates contributions to small arms and surplus ammunition projects under development. An OSCE Directory of Points of Contact on SALW and SCA was established to facilitate the exchange of information among OSCE participating states.

Two new requests for assistance were submitted, by Cyprus and Kyrgyzstan, in 2008. Projects to tackle problems of surplus SALW and SCA in Belarus and Tajikistan are ongoing. In 2008 the OSCE office in Tajikistan finalized most of the programme on surplus small arms and conventional ammunition, and its completion was expected in early 2009.

On the basis of past experience, it is felt that the focus on implementation could shift to an approach that integrates destruction with stockpile and

⁷⁵ OSCE, Forum for Security Co-operation, Decision no. 5/08, 26 May 2008, <<http://www.osce.org/item/31348.html>>; Decision no. 8/08, 16 July 2008, <<http://www.osce.org/item/32222.html>>; Decision no. 11/08, 29 Oct. 2008, <<http://www.osce.org/item/34809.html>>; and Decision no. 12/08, 12 Nov. 2008, <<http://www.osce.org/item/34884.html>>. See also Holtom, P., *Transparency in Transfers of Small Arms and Light Weapons: Reports to the United Nations Register of Conventional Arms, 2003–2006*, SIPRI Policy Paper no. 22 (SIPRI: Stockholm, July 2008).

⁷⁶ OSCE, Forum for Security Co-operation, Decision no. 4/08, 7 May 2008, <<http://www.osce.org/item/31015.html>>.

border management. This will require close cooperation and coordination with other international organizations, such as the EU, NATO and the UN.

Destruction of stockpiles of ammunition and toxic rocket fuel

Unsecured or uncontrolled stockpiles of conventional ammunition and toxic liquid rocket fuel components (melange) pose cross-dimensional security, humanitarian, economic and environmental risks. Under the 2003 OSCE Document on Stockpiles of Conventional Ammunition, any OSCE state that has identified a security risk to its surplus stockpiles and needs help to address such a risk may request the assistance of the international community through the OSCE.⁷⁷ Since 2003 the OSCE has received 24 such requests from 13 participating states.

In 2008 the OSCE published the *Handbook of Best Practices on Conventional Ammunition* after the FSC Editorial Review Board had finalized its work on two 'best practice guides'—one on the physical security of stockpiles of conventional ammunition (drafted by Sweden) and the other on the destruction of conventional ammunition (drafted by the Netherlands). Apart from the documents dealing with both SALW and SCA, the FSC adopted a decision on the overview of disposal aspects of liquid rocket fuel in the OSCE area.⁷⁸

In 2008 Albania and Kyrgyzstan made new requests for assistance and further progress was made and challenges identified in the ongoing projects in Georgia, Kazakhstan, Moldova, Montenegro, Tajikistan and Ukraine. Most parts of the SALW and conventional ammunition programme in Tajikistan and the melange project in Albania were completed in 2008. The melange project in Ukraine and the demilitarization of surplus ammunition project in Montenegro have progressed less than expected due to legal and financial obstacles, respectively.⁷⁹ Nevertheless, in 2008 the participating states pledged over €2 million (\$2.9 million) for SCA projects—more than twice the amount pledged in 2007.

The FSC report on SCA to the 2008 Helsinki Ministerial Council recommended that the OSCE concentrate its efforts on resolving outstanding issues regarding the projects in Montenegro and Ukraine, while maintain-

⁷⁷ OSCE, 'OSCE Document on Stockpiles of Conventional Ammunition', document FSC.DOC/1/03, 19 Nov. 2003, <<http://www.osce.org/item/1538.html>>. Since 1995 there have been at least 158 known or suspected explosions in ammunition storage areas.

⁷⁸ OSCE, 'Liquid rocket fuel in the OSCE area: overview of disposal aspects', document FSC.DEL/443/07/Rev.2, 23 Oct. 2008, <<http://www.osce.org/item/35984.html?ch=1227>>.

⁷⁹ The legal impediment stems from the OSCE's lack of legal status. Consequently, the OSCE and Ukraine cannot agree on the liability issues regarding the transport of melange out of Ukraine.

ing momentum in all other projects. Furthermore, the OSCE's coordination with other international organizations should be enhanced.⁸⁰

The Code of Conduct on Politico-Military Aspects of Security

The 1994 Code of Conduct on Politico-Military Aspects of Security (COC) is the norm-setting document on the cooperative behaviour and mutual responsibilities of states in the OSCE region and the democratic control of their armed forces.⁸¹ It also addresses politico-military relations within states. In 2008 several food-for-thought papers and draft decisions were presented on: promoting public awareness of the COC; updating the COC questionnaire; and supplementary steps to implement the COC.

In 2008 a new decision was adopted on COC awareness raising and outreach.⁸² Accordingly, since April the replies to the COC questionnaire by the participating states have been posted on the OSCE's public website. The OSCE Secretariat is requested to hold at least one specialized seminar or workshop each year. Furthermore, the OSCE Partners for Cooperation are encouraged to join a process for adopting the Code's principles. To this end, three meetings with the Partners for Cooperation were held during the first half of 2008. To promote outreach, seminars on the COC implementation issues continued to be organized for Central Asian officials and for senior officers in Bosnia and Herzegovina. While the level of commitment to the information exchange remains high, the substance and extent of reports by individual states still vary, increasing the support for bringing the COC questionnaire up to date by improving its structure and terminology.⁸³ The first comprehensive reporting exercise is likely to take place in 2009, and annual updates will probably start in 2010. Supplementary measures to implement the COC are at the stage of overview of various ideas and consultations.

V. Conclusions

The Convention on Cluster Munitions, a hybrid agreement combining arms control and humanitarian dimensions, further reinforces the network of treaties and agreements seeking to reduce unnecessary human suffering

⁸⁰ OSCE, 'The continuing implementation of the OSCE Document on Stockpiles of Conventional Ammunition', document MC.GAL/3/08/Rev.2, 13 Nov. 2008, <http://www.osce.org/documents/html/pdfhtml/34918_en.pdf.html>.

⁸¹ OSCE, DOC.FSC/1/95 (note 66).

⁸² OSCE, Forum for Security Co-operation, Decision no. 1/08, 27 Feb. 2008, <<http://www.osce.org/item/29906.html>>.

⁸³ OSCE, 'Efforts to further improve the implementation of the Code of Conduct on Politico-Military Aspects of Security', document MC.GAL/4/08/Rev.2, 13 Nov. 2007, <http://www.osce.org/documents/html/pdfhtml/34920_en.pdf.html>.

both on the battlefield and, particularly, after the end of hostilities. The CCM represents a significant achievement for all those involved in generating support for such limitations, if not a ban, on this category of weapons. The number of signatories is likely to increase and some hope that President Barack Obama will reassess the current US position on these weapons. Some states continue to claim that cluster munitions are militarily useful and the non-participation of major users, producers and stockpilers will limit the effect of the treaty. However, campaigners hope that the CCM will contribute to the moral and political stigmatization of cluster munitions to such an extent that governments which are not party to it will be increasingly reluctant to use such weapons. Whether the CCW parties will be able to negotiate a complementary agreement that includes major users and producers of cluster munitions in 2009 is unclear.

The CFE Treaty regime remains in crisis. The Western proposal is still on the negotiating table, while Russia sends vague signals about a broader European security treaty. All of the CFE states parties except Russia have thus far fully implemented the treaty's provisions but, despite goodwill on their part, the treaty's continuing erosion risks reaching a point of no return. Lacking the information and verification regime of the treaty, adverse developments and risks and rivalries reminiscent of those of the cold war could re-emerge. The plight of the CFE regime has led analysts to wonder whether the international community is dealing with a forthcoming end or the opportunity for a 'new order' in conventional arms control.⁸⁴ There is no substantive alternative to the CFE regime. Russia's renewed interest in confidence-building mechanisms notwithstanding, neither the 1999 Vienna CSBM Document regime nor the relevant confidence-building bilateral accords between Russia and its neighbours can satisfactorily substitute for the CFE Treaty due to their limited purview. NATO's and Russia's positions aim at restoring the viability of the CFE regime but the gulf between them cannot be easily bridged. The time factor is of critical importance.⁸⁵ On the other hand, the current crisis creates a new opportunity to rethink the pertinence of the regime to the new realities of European security. The future conventional arms control regime, if it is to be relevant, will need to take into account not only the changed strategic and political circumstances, but also the accelerating

⁸⁴ See e.g. Socor (note 57). 2008; Schmidt, H.-J. and Zellner, W., 'Anfang vom Ende oder Neubeginn konventioneller Rüstungskontrolle in Europa?' [Beginning of the end or a new beginning of conventional arms control in Europe?], *Friedensgutachten 2008* (LIT Verlag: Berlin, 2008), pp. 66–78; and Schmidt, H.-J., *Ende oder Neuordnung der konventionellen Rüstungskontrolle?* [End or a new order of conventional arms control?], HSFK-Report 3/2008 (Hessische Stiftung Friedens- und Konfliktforschung: Frankfurt am Main, 2008).

⁸⁵ On the state of the CFE Treaty regime see Lachowski, Z., 'The CFE Treaty one year after its suspension: a forlorn treaty?', SIPRI Policy Brief, Jan. 2009, <http://books.sipri.org/product_info?c_product_id=372>.

qualitative processes and technological advances in military affairs. This, however, would demand much improved security cooperation in the Euro-Atlantic area, which is currently lacking.

European military confidence building in its wealth of measures, rules, norms and mechanisms strives to respond to new threats and challenges while the development of classic CSBMs came to a standstill. Meanwhile, the OSCE community strives to counter multidimensional threats, increasingly of a non-state nature. The practical assistance given to the OSCE participating states through the implementation of projects on small arms and light weapons and on stockpiles of conventional ammunition as well as the updating and streamlining of the Code of Conduct are considered a key component in the improvement of security and stability in the OSCE region.