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Where Did the European Security Consensus Fall Apart?

From the Helsinki Final Act to the Ukraine Crisis

The current state of the world does not look like an age of peace. The hoped-for peace dividend after the end of the Cold War has been used up or has failed to materialise, multilateralism is crumbling, world disorder¹ is dramatically tangible. Tensions and crises are growing worldwide, the rule-based order is eroding. Treaties and international agreements are being ignored or revoked, and a dangerous global arms race is in progress. Many important disarmament treaties, both conventional and nuclear, have been breached, the nuclear Non-Proliferation Treaty is in danger, while Corona is stifling many activities that would be needed to solve problems.

The tensions between the great powers are coming to a head: China and the USA are increasingly using confrontational means in the system competition, NATO and Russia stand hostile to each other. Asian countries are arming themselves against China and its aggressive actions in the region, new alliances such as AUKUS, a military alliance of Australia, Great Britain and the USA, are being formed, creating new imponderables. African countries suffer from military coups and terror gangs. More than 80 million people have been driven from their homes by war, civil war, hunger, natural disasters, climate change or criminal regimes. Old conflicts remain unresolved, new ones are emerging. All of this triggers endless human suffering, hunger and poverty are on the rise again, also because of the Covid 19 pandemic, which shows in all its blatancy the lack of solidarity among countries.

The Cold War has long since returned, and a new hot war must be prevented. The Ukraine crisis keeps the world on tenterhooks. War warnings are alarming Europe, NATO and the United States, while droves of politicians are feverishly trying to prevent the worst with diplomatic efforts. Yet the instruments of peaceful conflict resolution no longer seem to be working.

Tools and organisations

Institutions for peaceful settlement of disputes are in place around the world. The toolboxes are filled, they have been expanded and improved over the years. The most important organisation is the UN. For Europe, it is the OSCE (Organisation for Security and Cooperation in Europe) as the successor to the CSCE (Conference on Security and Cooperation in Europe), the EU and NATO. Each of these organisations claims to be responsible for security and peace. Each of these organisations has developed its own instruments for this purpose. None of these organisations can work alone; effective cooperation is always needed. Interlocking institutions are an urgent requirement for success.

United Nations

All states have committed themselves to the peaceful settlement of disputes within the UN, which was founded after the Second World War, in order to "save succeeding generations from the scourge of war" (Preamble), to settle disputes "in conformity with the principles of justice and international law", to solve "international problems of an economic, social, cultural and humanitarian character" in international cooperation and to promote "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Art. 1,1).

Article 2 refers to the equal rights and self-determination of peoples, a principle that is repeatedly problematised and attacked and which is closely

linked to the principle of non-interference in internal affairs. The Ukraine conflict in particular makes this abundantly clear: the annexation of Crimea in violation of international law and the support of the insurgents in the provinces of Luhansk and Donetsk with military force violate the preservation of Ukraine's territorial integrity. The demand that Ukraine should not join NATO violates the right to self-determination.

Chapter VI regulates the settlement of disputes by all conceivable non-military means up to and including sanctions, which the Security Council can prescribe. In extreme cases, it can decree military intervention. The UN has numerous instruments at its disposal for the peaceful settlement of disputes. The Secretary-General can intervene diplomatically with *bona officia* and Special Representatives, the International Court of Justice can be called upon, states can be condemned by Security Council resolutions, called upon to desist from their actions, or sanctions can be imposed. However, these possibilities are often not effective because the five nuclear powers (USA, Russia, China, France, Great Britain) have the right of veto. With this veto, a single state can prevent a Security Council ruling. Here lies a serious reason for the UN's lack of effectiveness. The Security Council "refuses to be value-based. It acts in a politically motivated, selective manner. It intervenes where it pleases the oligarchs of the Security Council, namely the five permanent members, and not elsewhere." This is the harsh verdict of a German constitutional judge from 2009.² That this state of affairs has not changed to this day is shown by the handling of the Ukraine crisis.

The UN has numerous instruments at its disposal to be highly equipped to intervene in conflict situations. With its sub-organisations, it can offer a wide range of support services that can serve conflict management. Social, economic and trade policy are as important as development, refugee and climate policy. The same applies to the WHO's health sector and to the broad area of humanitarian aid, which would not be possible without the UN.

The tremendously important area of disarmament and arms control is also largely in the hands of the UN, which has achieved gigantic things here.

The rampant new arms race and the paralysis of the Conference on Disarmament (CD) in Geneva show that disarmament and nuclear non-proliferation, as important components of peacekeeping, stability and human security, have fallen into a deep crisis. The most important agreement is undoubtedly the Non-Proliferation Treaty (NPT, 1970), which has not made any progress since the 2010 Review Conference. Without an end to the arms race, there will be no secure peace. In 2018, in light of the return of the Cold War, Secretary-General Antonio Guterres called for disarmament to be at the heart of the UN's work in his new agenda, entitled "Securing our Common Future". Guterres proposes solutions that he hopes states will embrace. The Secretary-General rightly sees disarmament as the key to achieving peace, development and preserving humanity.³ So far, states have failed to listen to him!

After the end of the Cold War, Secretary General Butros Butros Ghali presented the "Agenda for Peace" in 1992⁴, which proposes a plethora of peaceful instruments for conflict resolution. Full of relief, he stated that it could now finally be possible again to achieve the UN's major goals: To maintain international peace and security, to promote justice and human rights, and to enable social progress and higher standards of living in greater freedom.⁵ In 1995, on the occasion of the 50th anniversary of the UN, the "Supplement to the Agenda for Peace" followed.⁶ This was followed in 2001 by Secretary-General Kofi Annan's report "Prevention of armed conflict",⁷ a remarkable document that spells out the entire toolbox of a prevention policy and makes a wealth of suggestions for improvement. Instead of a culture of reaction, the report wants to call for a culture of prevention. It calls for greater efforts by the General Assembly and the Security Council and calls for the International Court of Justice to be used. It urges that the causes of conflicts and armed conflicts be investigated, and that development aid be made an

important pillar of prevention. Better respect for human rights, effective health care and media strategies against hate speech are very topical-sounding demands, also against the background of today's conflicts. His regret that national interests often prevent the collective interest in conflict prevention from being successful seems frighteningly clear-sighted today, 21 years later. So, there is no lack of experience and of carefully built-up know-how. Failures or non-utilisation of the available possibilities are always due to the lack of political will of the states involved. Authoritarian states in particular see outside intervention or help in managing conflicts and crises as interference in their internal affairs. Claims to power or greed for resources very often prevent peace-making from actually taking place.

The OSCE as a peace organization

The Organisation for Security and Co-operation in Europe (OSCE) emerged from a long-lasting negotiation process at the Conference on Security and Co-operation in Europe (CSCE). While there had already been signals from the Eastern Bloc in the 1950s and 1960s proposing a conference on European security issues, it was above all Willy Brandt's policy of *détente* with the treaties on Eastern Europe and the Basic Treaty with the GDR and the Four Power Agreement that paved the way for negotiations in a "Conference on Security and Cooperation in Europe" (CSCE). After four preparatory conferences and two years of negotiations, the Helsinki Final Act was signed on 1 August 1975. It is rightly regarded as a milestone in European peace policy, as it defines the norms and values that must be the basis for peaceful coexistence between peoples.

These are the norms and rules that had already been laid down in the UN Charter: Sovereign equality, renunciation of force, inviolability of borders, peaceful settlement of disputes, non-interference in internal affairs, respect for fundamental freedoms and human rights. At the same time, the Final Act contains an important document on confidence-building measures. In its

three baskets: 1. politico-military affairs, 2. cooperation in the fields of economics, science and technology and the environment, and 3. cooperation in humanitarian and other areas, numerous practical fields of cooperation are addressed which are in the interest of all sides and which can make common prosperous cooperation possible.

In 1990, the "Charter of Paris for a New Europe" proclaimed: "The era of confrontation and division of Europe has ended. We declare that henceforth our, relations will be founded on respect and co-operation". The Charter codifies the rights and obligations of the participating States and their citizens already laid down in the Helsinki Final Act. It creates the necessary structures and institutions for joint work. A Parliamentary Assembly was also created and confirmed in 1991. The important institutions were decided here.

The 1994 Budapest Document of the CSCE is important for assessing the development of the CSCE/OSCE in that it reveals fault lines that indicate the seeds of future conflicts in the organisation. They lie in the human dimension. The community of values and the high standards it has established are invoked and it is acknowledged "that there was a serious deterioration in some areas and a need for action against the continuing violations of human rights and manifestations of aggressive nationalism, such as territorial expansionism, as well as racism, chauvinism, xenophobia and anti-Semitism, which continue to cause human suffering". Human rights and fundamental freedoms, the rule of law and democracy are invoked as the foundations of peace and security and thus the basis of conflict prevention within a comprehensive concept of security. This argumentation is reinforced by the "Code of Conduct on Political and Military Aspects of Security", also adopted in Budapest. In paragraph VI, explicit reference is made to causes of tension arising from, among other things, the violation of human rights and fundamental freedoms.

At the Lisbon Summit, a "Common and Comprehensive Security Model for Europe in the 21st Century" was presented. It is a cooperative approach that

excludes the quest for domination, that does not seek security at the expense of the security of other states, that commits to peaceful dispute resolution and explicitly affirms all fundamental rights.

Full of optimism, the participating states were able to present the "European Security Charter", the "Vienna Document" on transparency and confidence-building and the revised CFE Treaty at the Istanbul Summit in 1999.

In the years that followed, efforts to consolidate security structures continued. In Porto in 2002, it was decided to establish an annual security review conference. The future serious divergences can already be clearly seen here: The permanent conflicts and the dissent over the CFE Treaty.

The connection of the conflicts in the OSCE with NATO

Down the road, these differences in security perceptions will lead to an attempt by Russia to redefine the security treaty. In 2008, the then Russian President Medvedev proposed a new treaty that would essentially cover only military security; the human dimension was not included in the draft and was not desired by Russia. Despite the scepticism towards this approach, the Greek Presidency agreed in 2009 to negotiate a new security treaty. The so-called "Corfu Process" began. Russia, however, was not interested in negotiating only within the framework of the OSCE, but sought parallel debate also within the framework of other security organisations and proposed negotiating in the NATO-Russia Council as well as with the European Union. There are clear parallels here with the current Ukraine crisis. This time Russia is addressing NATO and refusing to discuss its demands with the OSCE.

In a speech by Medvedev in Berlin on 5 June 2008, it became clear that the issue was not only indivisibility of security and arms control, but also a deep-seated criticism of NATO's eastward enlargement, through which Russia saw itself isolated and which prevented an overall European security within the framework of the OSCE. Russia wanted to define all European security

organisations uniformly according to criteria that had hitherto been quite consensual (indivisible security, no interference in internal affairs, inviolability of borders), but the other OSCE criteria (pluralism, rule of law, human rights) were to be left out.⁸ There was no longer any talk of the right of every state to choose its own alliance.

This is where the connection with the developing conflict with NATO becomes apparent. Russia increasingly feels that it is not adequately taken into account in the European security order. This has to do with the unwillingness to accept the human dimension of the OSCE's definition of security and with Russia's growing will to power, which yearns for a return to its former greatness. Obvious mistakes by NATO - and above all by US policy - have also contributed to this. I count among them the termination of the Anti-Ballistic Missile Treaty (ABM Treaty), which strictly limited missile defence systems. In June 2002, the USA unilaterally withdrew from the treaty that had fixed the strategic balance between the blocs since 1972. In the long run, this was bound to lead to a new arms race, with Russia feeling increasingly threatened. The build-up of missile defence that followed added to these threat perceptions and sparked an arms race. NATO's refusal to ratify the expanded CFE Treaty without fulfilling the "Istanbul Commitments" (see below) also contributes to the mutual loss of confidence.

From the Corfu Process to Astana

In response to Medvedev's proposal to negotiate a new security treaty, the Greek Presidency suggested convening a conference, which took place in Corfu in 2009. A series of conferences followed. The OSCE states had initially embraced the Corfu process with great vigour, bringing together many innovative ideas, albeit outsourced from the normal OSCE working structures. In the run-up to the Astana Summit in 2010, the Kazakh Chairmanship went to enormous lengths to propose an appropriate programme of action – in vain. Although the "Astana Commemorative Declaration: Towards a Security

Community" was adopted unanimously, the action programme itself was not accepted. The vision of a new security community was bound to fail because of the very different security views of the protagonists. The frozen conflicts, whose proposed solutions revealed the different interests, caused the project to fail. Neither the Corfu Process nor the Astana Summit fulfilled the hope for an improvement in East-West relations, for new trust and improved cooperation, nor did they lead to the recognition of common values and security interests. Mistrust and divergent security perceptions have not been overcome. Efforts for a new security treaty ended with an (elegant) first-class funeral: it was decided that academics should take over. Now the Corfu Process rests in the ivory tower of academia.

The disarmament dimension of the OSCE

The summit meeting in Paris in 1990 has special significance because the Treaty on Conventional Disarmament in Europe was signed there by 22 heads of government of NATO and the Warsaw Pact countries. The disarmament policy dimension of the OSCE was of outstanding importance for the development of peace and security policy in Europe: By 1995, the stockpile of weapons in Europe had been reduced by more than 50,000 offensive weapon systems (battle tanks, armoured infantry fighting vehicles, artillery systems, combat helicopters and combat aircraft). This, in conjunction with the Confidence- and Security-Building Measures (CSBMs) agreed upon concurrently in the Conference on Security and Confidence-Building Measures and Disarmament (CSCBMD) and the Forum for Security Co-operation (FSC), as well as the Treaty on Open Skies (1992), strengthened security and stability in Europe. The inspections agreed upon in the treaties and the "Vienna Document" of 1990 as well as the Code of Conduct on Politico-Military Aspects of Security (1995) contributed to transparency and thus to trust between states. In 1997, new negotiations were initiated to expand the CFE Treaty in order to take into account the changed geopolitical circumstances.

This treaty was adopted and signed at the Istanbul Summit in 1999. However, this treaty was only ratified by Russia, Belarus, Ukraine and Kazakhstan. The NATO countries refused to ratify this treaty until Russia complied with the "Istanbul criteria", i.e. the withdrawal of its troops and ammunition from Georgia and Transnistria.⁹ This was a serious mistake with major consequences. Russia had to consider this as a breach of trust. These "Istanbul criteria" are not part of the treaty text, but only included in the summit declaration. The weak formulation: "We welcome the commitment by the Russian Federation to complete withdrawal of the Russian forces from the territory of Moldova by the end of 2002" cannot be read as a precondition for the ratification of the treaty.¹⁰ Russia's unreasonable and mistrustful delaying tactics in withdrawing from Moldova are out of all proportion to the damage this refusal by NATO countries has caused in the highly sensitive area of conventional disarmament. The first step towards the erosion of conventional disarmament in Europe was taken. Russia suspended the implementation of the CFE Treaty in 2007 and finally left it in 2015. Here lies a profound reason for the failure of a cooperative security zone from Vancouver to Vladivostok. The path to a security community had ended. Although the Astana Summit almost panic-strickenly invoked all values, obligations and norms once again, mistrust and diverging security perceptions could not be overcome. The extensive catalogue of tasks in the Astana Action Plan could very well have paved the way to a true Security Union if it had been implemented.

NATO, the new Russian myth of deception and the Ukraine crisis

The North Atlantic Treaty, concluded in 1949, is based on the UN Charter as a treaty of mutual and common defence. The preamble declares the will to live in peace with all peoples and to "safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and the rule of law". It professes peaceful settlement of disputes, renunciation of the use of force and the threat of force (Article 1). It

seeks to promote peaceful and friendly international relations and welfare and economic cooperation (Article 2). And it declares itself open to the accession of further countries. In 1997, Poland, the Czech Republic and Hungary were invited, and they joined in 1999. In the same year, 1997, on 14 May, the then Secretary General Solana and the Russian Foreign Minister Primakov sealed an agreement between Russia and the Alliance on future cooperation: The NATO-Russia Founding Act. The full English title is: "Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation". The contracting parties confirmed the norms of the UN Charter and the Helsinki Final Act, i.e. respect for the sovereignty, independence and territorial inviolability of states, and committed themselves to the peaceful settlement of disputes. This does not look like vehement protest against the planned eastward enlargement or indignation at an alleged promise not to expand NATO one inch to the east! There are some important NATO promises in this agreement that take Russia's security interests into account. The most important are the three nos: "no intention, no plan and no reason" to station nuclear weapons in the new NATO countries. This, however, is an important promise that must not be toyed with. (All the more disconcerting when the Secretary General, of all people, who must be the guardian of such treaties, on 19 September 2021 in Berlin, at an event with the participation of the Federal Academy for Security Policy, lightly rants about the possibility of moving nuclear weapons to Poland if Germany no longer wants to host them). NATO agrees not to station major permanent combat troop units in the new countries. Both countries commit themselves to a rapid adaptation of the CFE Treaty. All this sounds like agreement and the will to cooperate. Together they want to strengthen the OSCE, which has a key role in peace and stability for Europe.

At the NATO summit in Madrid, on 9 July 1997, NATO also concluded a charter with Ukraine in which close cooperation was agreed.

It is important to make all this explicit in order to clearly contradict the new myth of the West's betrayal by breaking an (alleged) promise to Russia not to expand NATO. Until 2008, when President Medvedev called for a new security treaty, Bulgaria, the Baltic countries and Romania, Slovakia and Slovenia joined NATO. Medvedev's proposed security treaty made no mention whatsoever of the alleged promise not to extend NATO an inch to the east. Nor did it play a role in the subsequent Corfu Process. It became visible, however, that Russia's concept of security and its interests had moved far away from cooperation and common security. The war in Georgia had already shaken confidence. Since Russia's annexation of Crimea in 2014, which was against international law, trust seems to have been completely shattered. The agreement of the Russian Federation, the USA and Great Britain with Ukraine of 5 December 1994, the so-called Budapest Memorandum, was breached by Russia in violation of international law. When Ukraine signed the Non-Proliferation Treaty in 1994 and transferred the nuclear weapons stationed on its territory to Russia, these three powers promised Ukraine: "to respect the independence and sovereignty and existing borders of Ukraine" (Art 1) and "to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine" (Art 2).

All these agreements – the Budapest Memorandum of 1994 and the NATO-Russia Founding Act of 1997, but also the 2+4 Treaty of 12 September 1990 – cannot give any indication of a promise not to expand NATO eastwards... The 2+4 Treaty was exclusively about the reunified Germany. Here Putin is creating a new myth based on "fake news".¹¹

The Medvedev proposal of 2008/2009 was never discussed in detail, but it clearly shows that Russia was more interested in the hard military agreements and would like to get rid of the human dimension. The new treaty that Putin sent to NATO on 17 December 2021 is very similar to the old Medvedev approach in this respect. Putin's draft: "Agreement on measures to ensure security of the Russian Federation and member States of the North Atlantic

Treaty Organisation" refers in the preamble to OSCE policy documents such as the Helsinki Final Act of 1975, the Code of Conduct of 1994 and the Security Charter of 1999. In addition, the draft refers to the NATO-Russia Founding Act of 1997 and the Rome Declaration between Russia and NATO of 2002 "NATO-Russia Relations: A New Quality". This declaration agreed on a new beginning in cooperation on the occasion of the replacement of the "NATO-Russia Permanent Joint Council" by the present NATO-Russia Council.

The new Russian draft of a security treaty refers to all these papers, but (just like the Medvedev proposal) it denies the spirit of the OSCE, in focusing only on military aspects and not on the human security essential in the OSCE, which also includes democratic structures and human rights.

In essence, despite a number of approaches worth negotiating, it is about the realisation of the dream of Russian spheres of influence in the "near neighbourhood": no further eastward enlargement, no stationing of NATO troops in countries that joined NATO after 1997 – in other words: in all former Warsaw Pact countries. NATO countries should not be allowed to conduct military activities in Ukraine or in other Eastern European countries, in the South Caucasus or Central Asia – the perfect *cordon sanitaire*! The desire not to station medium- and short-range missiles capable of reaching the other side is definitely of mutual interest, as is the obligation to settle disputes peacefully and to use the NATO-Russia Council.

NATO's response was moderate and wise, but at the same time firm on the principle of the free choice to join an alliance. Important is the call to resume the terminated cooperation, to have the ambassadors return to Brussels and Moscow very quickly and to start a sincere exchange of views ("real conversation"). The readiness for risk reduction, transparency and arms control is a top priority for NATO.

Russia's insistence on the literal implementation of its draft treaty cannot reduce the danger of war. This is a one-sided demand for security for the

Russian side at the expense of its western neighbours. This is not the way to resolve conflicts.

The world must finally remember the existing instruments of peaceful dispute resolution and use them to prevent a hot war.

¹ Carlo Masala, in *Politische Studien* 482/2018, p.65.

² Christine Hohmann-Dennhardt, written manuscript of her lecture at the 7th symposium of the Adolf Arndt Circle of the Friedrich Ebert Foundation on 14 February 2009 on the topic "Law Rules the World – The Only Question is Which One?" [„Recht regiert die Welt – fragt sich nur welches? “], p. 10.

³ *Securing our Common Future. An Agenda for Disarmament*, New York 2018, p. 6-7.

⁴ An Agenda for Peace. Preventive Diplomacy, Peacemaking and Peace-Keeping, A/47/277-S/24111 of 17 June 1992.

⁵ *Ibid.*, point 3.

⁶ A/50760*S/1995/1*.

⁷ A/55/985-S/2001/574.

⁸ See the account by Andrei Zagorski, „Der russische Vorschlag für einen Vertrag über europäische Sicherheit: Von der Medwedew-Initiative zum Korfu-Prozess “, in: IFSH (ed.) *OSZE Jahrbuch 2009*, Baden-Baden 2010, p.49-67.

⁹ Tenth Meeting of the Ministerial Council in Porto 2002, p.24, under (3) points 3 to 5, and Interpretative Statement by the Netherlands (also on behalf of many NATO countries): "We urge swift fulfilment of the outstanding Istanbul commitments, ... which will create the conditions for Allies and other States Parties to move forward on ratification of the Adapted CFE Treaty".

¹⁰ Istanbul Document 1999, p. 51, point 19.

¹¹ The facts are elucidated in: "The Story of the Broken Promise", in: *The New York Times, The Interpreter*, 24 December 2021 and Mary Elise Sarotte: "A Broken Promise? What the West Really Told Moscow about NAT Expansion" In: *Foreign Affairs*, September/October 2014.