



BULLETIN

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Russian Draft of a European Security Treaty

by Robert Śmigielski and Rafał Tarnogórski

The fundamental objective of the Russia-submitted draft treaty is to ensure, in a legally binding manner, equal and indivisible security in the Euro-Atlantic area. Yet, as the interpretation of issues affecting the security of a party to the treaty would be subject to case-by-case discretionary decisions, this might result in abusing the treaty-enshrined rights. Unlikely as the acceptance of the Russian proposal is, a debate on it could deepen the existing differences among the Western states—which, presumably, is one of the aims with which the proposal was put forward.

An idea of a security treaty, put forward last year by Russian President Dmitry Medvedev, is Russia's answer to an alleged crisis of the European collective security system. The Russian Federation claims that the Georgia-Russia conflict of August 2008 highlighted the ineffectuality of this system. The core idea of the Russian proposal is to ensure equal and indivisible security of all signatories of the treaty, meaning that they would be entitled to undertake only such measures to ensure their own security which are not prejudicial to the security of others.

Main Points of the Draft. The draft comprises 14 Articles and a Preamble. The rights and obligations of the parties are set forth in Articles 1 to 9. The closing provisions (Articles 10–14) govern the procedure for the conclusion of the treaty, its coming into force, and withdrawal from it. The substantive part covers four groups of issues: a commitment to cooperate in accordance with the principles of equal and indivisible security (Articles 1–2); a mechanism for the exchange of information, mutual consultations, and the resolution of disputes (Articles 3–6); commitments relating to individual and collective self-defense (Articles 7–8); matters involving references to other norms of international law (Article 9).

The draft's key principle of equality and indivisibility of security is meant to ensure mutually-guaranteed security to the parties to the treaty. Any measures taken in this sphere by a party, whether unilaterally or multilaterally, may not affect the security of another party. A party undertakes to refrain from taking or supporting in any way actions prejudicial to the security of another party, and states being members of a military alliance (an organization, or a coalition) undertake additionally to ensure that the alliance concerned respects the UN Charter, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, OSCE documents, and the principles set forth in Article 1 of the proposed treaty.

The draft treaty includes a provision on a mechanism for the resolution of disputes: consultations among the parties, conference of the parties, and an extraordinary conference of the parties (to be convened in the event of an armed attack). In case of an armed attack against a party to the treaty, any other party may consider it an attack against itself and may render assistance to the attacked. According to Article 9, the treaty is without prejudice to the parties' rights and obligations under the Charter of the United Nations, nor does it affect the primary responsibility of the Security Council for maintaining international peace and security. The parties are required to affirm that their obligations under other international security agreements in effect as at the date of signing of the treaty, are not incompatible with the letter and the spirit of the treaty, and to undertake to refrain from assuming obligations incompatible with the treaty.

The main legal aim of the treaty: enforcing a theoretical concept of equality and indivisibility of security, gives rise to doubts. The draft is based on general clauses and imprecise phrases unsupported by legal definitions: “due regard” to security interests of the parties, or reference to actions “affecting significantly” security of the parties. Because of this, in the implementation of the treaty case-by-case interpretations of issues affecting the security of a party would be of key importance, enabling discretionary assessments of a situation alleged to constitute a breach of the treaty. Indeed, a state wishing to accede to the treaty would be incapable of stating precisely what it is committing itself to. Without definitions of the terms used, the application of the treaty will offer the parties much room for accusing others of violations of international law.

What's more, according to the provisions of the treaty a member of a military alliance would have to recognize the primacy of the treaty over its commitments under the alliance agreement. This would give rise to problems of a practical nature as well as legal, involving the responsibility arising for a state from the conclusion of a treaty whose provisions are irreconcilable with earlier commitments. Besides, the draft does not provide for the establishment of permanent institutions; instead, it vests significant powers in the depositary state.

A state may withdraw from the treaty where extraordinary circumstances endanger its supreme interests. Possibly, so articulated a freedom of withdrawal reflects the intentions and concerns of the proposer: the main interests of the RF are to delineate the perimeters of the application of the treaty.

Russia's Aims Underlying the Initiative and Prospects for its Acceptance. The initiative is consistent with Russia's strategy intent on revising the post-Cold War security system in the Euro-Atlantic region. The implementation of the Russian proposal would provide room for interference by the signatories in security policy decisions of other states, just as it could obstruct NATO activities. For instance, in the absence of a precise definition of equal security, the deployment in Europe of elements of the U.S. missile shield, an enlargement of NATO, or the build-up of military infrastructure on the territory of the North Atlantic Alliance, could be regarded as violations of treaty obligations.

The signing of the treaty as proposed by Russia is unrealistic. None of the states which, theoretically, could be signatories has expressed the will to be bound by this agreement, even though some—including Germany, France, Spain, Italy, Austria and Greece—have shown themselves ready to discuss the Russian initiative. The vagueness of numerous provisions of the draft treaty warrants a supposition that Russia's real aim was to trigger a debate on this document, in the expectation that this might lead to the deepening of the existing differences among the NATO member states on such issues as the shaping of NATO policy towards Russia, and that it could strengthen the position of Russia as an initiator of a major security initiative. States having economic links with Russia (e.g. Germany, France, Spain, Italy) perceive Russia as a difficult but indispensable strategic partner of NATO and the EU. They are prepared to increasingly take into account its concerns over the development by the U.S. of a missile defense system, or its special interests in the CIS area. A debate on the European security treaty, even it does not actually result in the adoption of the document, could strengthen some NATO member states' reservations on, for instance, further eastward enlargement.

In the short term, the initiative is meant to improve Russia's image damaged by the Georgian war, by promoting an idea designed to strengthen peace, security and stability in Europe, and to bolster the Russia-led Collective Security Treaty Organization, which NATO does not cooperate with. Slim as the treaty's chances for adoption may be, Russia will actively promote it in 2010, using to this end an anniversary of the signing of the CSCE Final Act and Kazakhstan's presidency of the OSCE.

Recommendations for Poland. Working to strengthen the existing institutions and mechanisms for ensuring security in Europe rather than replacing them with new ones should be the principal method of rebuilding confidence in relations with Russia. A debate on the Russian draft European security treaty could actually contribute to this confidence-rebuilding process, by providing an opportunity for the parties' positions—also on controversial issues—to be clearly presented. The OSCE as an organization bringing together all states in the Euro-Atlantic region is the most convenient forum for discussing the Russian proposal. Also, such an arrangement will provide an opportunity for bolstering this organization, which in recent years has been criticized by Russia. Issues to be raised in the course of the debate include: absence in the draft of clear-cut definitions; recognition of the independence of Abkhazia and South Ossetia in the context of the principles underlying the Russia-proposed treaty; or the future of the CFE treaty. Last but not least, refusal to accept any weakening of the NATO alliance security guarantees should be an integral part of Poland's position.