Frozen Obligations: Russia’s Suspension of the CFE Treaty as the Potential Violation of International Law

Adam Collicelli
FROZEN OBLIGATIONS: RUSSIA’S SUSPENSION OF THE CFE TREATY AS A POTENTIAL VIOLATION OF INTERNATIONAL LAW

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Abstract: As the world witnesses renewed displays of Russian military aggression, the importance of multilateral arms treaties is illuminated. This Note argues that Russia’s suspension of the Treaty on Conventional Armed Forces in Europe was likely an illegal act, violating both the explicit terms of that treaty and the law governing international treaties, generally. The United Nations, NATO, and other world leaders must act carefully to redress this wrong without pushing Russia into a full withdrawal from this significant treaty. This Note highlights the variety of dispute resolution mechanisms available and concludes that formal public scrutiny and condemnation of Russia’s suspension are crucial to ensure that illegal treaty suspension does not become a reasonable option for Russia or any other international actors in the future.

Introduction

On July 14, 2007, Russian President Vladimir Putin formally decreed that the Russian Federation would suspend its participation in the Treaty on Conventional Armed Forces in Europe (CFE Treaty), effective in 150 days. Sergi Kislyak, a Russian deputy foreign minister, suggested that a negotiated solution might be reached in the five-month interim. That was not the case. Russia’s suspension of the CFE

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2 Kramer & Shanker, supra note 1, at A1.

3 See Press Release, Ministry of Foreign Affairs of the Russian Fed’n, Statement by Russia’s Ministry of Foreign Affairs Regarding Suspension by Russian Federation of Treaty on
Treaty became official on December 12, 2007, immediately halting Russia’s obligations under this “cornerstone of European security.”

The significance of this unilateral act should not be overlooked. On the international stage, the CFE Treaty, which limits the deployment of heavy military equipment across Europe, embodies the sense of stability that developed on that continent since the fall of the Soviet Union. The Russian foreign ministry admitted that this official rejection of a post-Cold War arms treaty had no precedent. Moreover, “Moscow’s assertive revisionism” might spread its wings beyond just the CFE Treaty. Some have suggested the Intermediate Nuclear Forces Treaty of 1987 could be the next agreement that Russia decides to scrap.

Fully prepared for the legal scrutiny that would follow, Putin’s July 14th decree defends his decision to suspend both in terms of international and domestic law, claiming that this action was justified by various “exceptional circumstances.” According to the CFE Treaty’s text, however, even exceptional circumstances would only justify full withdrawal from the treaty, not suspension.

Part I of this Note provides a concise background of the 1990 CFE Treaty and the 1999 Adaptation Agreement, exploring both the specific and overarching goals that they sought to accomplish. Next, it focuses on Russia’s suspension of the CFE Treaty and its proffered rationale for this action. Part II discusses treaties generally and the ways in which a State can suspend participation in a treaty in accordance with international law. It also provides a basis in how Russian domestic law approaches multilateral treaty obligations. Finally, this section applies the unilateral Russian suspension to this legal framework in an effort to establish whether the suspension did violate international law. Part III


4 See John E. Peters, CFE and MILITARY STABILITY IN EUROPE, at xi (1997).
5 See id., at A1.
6 See id., at 15.
7 See supra note 3.
8 See supra note 1.
9 See supra note 1.
assumes that such a violation did occur and analyzes how this international delict should be remedied, taking into account widespread concern over Russia’s nonparticipation in this crucial treaty.

I. Background

The CFE Treaty is a landmark arms control agreement that attempted to reduce the number of conventional military forces and establish parity between members of the Warsaw Pact and members of the North Atlantic Treaty Organization (NATO).\textsuperscript{11} The importance of this treaty was largely a result of the time in which it was enacted.\textsuperscript{12} It was conceived as a way to temper the security dilemmas created in a number of European States (divided into the two blocs of the Warsaw Pact and NATO States) by the bipolarity of the Cold War.\textsuperscript{13} Soon after negotiations for the treaty began in March, 1989, however, the Berlin Wall came down to reunite Germany and communism fell, dividing up the Soviet Union.\textsuperscript{14} A world of bipolarity was ending. Amidst this tumult, the CFE Treaty took shape and was signed by 22 members of both NATO and the Warsaw Pact on November 19, 1990.\textsuperscript{15} It entered into force on July 17, 1992.\textsuperscript{16}

The CFE Treaty’s aim of arms control was so timely precisely because the political future of Europe appeared so uncertain. Indeed, as Professor Joseph Nye noted, “arms control can become one of the tools for helping manage processes of political change . . . .” through the creation of regimes that deal with international security, helping to “legitimize some activities and discourage others.”\textsuperscript{17} The stage was set for this particular treaty to ensure that security and stability were maintained and that the deeply rooted divisions of Europe could be overcome.\textsuperscript{18}

A. Structure of the 1990 CFE Treaty

At its core, the CFE Treaty sought to extinguish threats of military force that grew organically from the tension between NATO and War-

\textsuperscript{11} See Hollis, supra note 1, at A1.
\textsuperscript{13} Peters, supra note 5, at xi.
\textsuperscript{14} Falkenrath, supra note 12, at 294–95.
\textsuperscript{15} Id. at xiv.
\textsuperscript{16} Id. at xv.
\textsuperscript{17} Joseph S. Nye, Jr., Arms Control and International Politics, 120 Daedalus 1, 162 (1991).
\textsuperscript{18} CFE Treaty, supra note 10, pmbl.
saw Pact States.\textsuperscript{19} This was approached through a combination of quantitative parity in conventional armaments and complete transparency among the treaty parties on a number of matters concerning their military force.\textsuperscript{20}

The CFE Treaty that was signed in 1990 imposed four main obligations on the participating States (Party States).\textsuperscript{21} These obligations were: (a) to cap the total amount of treaty limited equipment\textsuperscript{22} (TLE) situated between the Atlantic Ocean and the Ural Mountains; (b) to reduce any excess TLE amounts to below the quantitative ceiling imposed by the treaty; (c) to provide information about all TLE to other Party States; and (d) to allow for verification of treaty compliance.\textsuperscript{23} Since the treaty entered into force in 1992, 60,000 pieces of TLE have been destroyed and there have been over 4000 inspections.\textsuperscript{24}

The first two obligations are established in Articles IV–VIII of the CFE treaty. Article IV sets the quantitative ceilings of TLE for Party States, requiring the Warsaw Pact and NATO blocs respectively to have no more than 20,000 battle tanks, 30,000 armored combat vehicles, 20,000 pieces of artillery, 6800 combat aircraft, and 2000 attack helicopters.\textsuperscript{25} Articles IV–VIII require Party States to reduce their levels of TLE within forty months, either through destruction or conversion of the TLE into non-military equipment.\textsuperscript{26}

The third obligation of providing information appears in Article XIII of the CFE Treaty, requiring each Party State to provide notifications and exchange information based on the Protocol on Information Exchange.\textsuperscript{27} Party States must not only account for any TLE in their possession between the Atlantic Ocean and the Urals, but they also must provide information about their command structure, organizational concepts, and deployment.\textsuperscript{28} As stated in Article XVI, the Joint

\begin{enumerate}
\item[19] Falkernath, supra note 12, at xi.
\item[20] See id. at xv.
\item[22] CFE Treaty, supra note 10, art. I (stating that the obligations in the treaty relate to five categories of conventional armed forces: battle tanks, armored combat vehicles, artillery, combat aircraft, and combat helicopters).
\item[25] CFE Treaty, supra note 10, art. IV.
\item[26] See id. arts. IV–VIII.
\item[27] See id. art. XIII.
\item[28] Falkernath, supra note 12, at xv.
\end{enumerate}
Consultative Group was created in order to coordinate this sharing of information, which was to occur on the date of the treaty’s signing (November 19, 1990), upon its entry into force (July 17, 1992), and thereafter each year on December 15.\textsuperscript{29}

Finally, verification of compliance in the reduction of TLE is effected through open inspections, as laid out in Articles XIII–XV.\textsuperscript{30} Each Party State has the obligation to receive inspections of its military facilities and also the right to conduct inspections of military facilities in any other Party State.\textsuperscript{31}

Most pertinent to this Note, the ways in which the CFE Treaty can be terminated are delineated in Article XIX. This section begins by stating that the treaty would be of “unlimited duration.”\textsuperscript{32} It goes on, however, to establish that a Party State has two explicit means of withdrawal.\textsuperscript{33} First, withdrawal is allowed if “extraordinary events related to the subject matter of [the] Treaty have jeopardized its supreme interests.”\textsuperscript{34} If a State wishes to take this unilateral step, it must give at least 150 days notice of its intended withdrawal to the Depositary and all other parties, with a full statement of the “extraordinary events.”\textsuperscript{35} Second, withdrawal is allowed if another party increases its holdings in TLE in violation of the CFE Treaty and, in doing so, creates an “obvious threat to the balance of forces within the area.”\textsuperscript{36}

B. \textit{1999 Adaptation Agreement}

By the middle of the 1990s, the Warsaw Pact had dissolved and NATO had expanded, making the bloc categories of the CFE Treaty all but obsolete.\textsuperscript{37} In 1996, France and Russia proposed an amendment to the treaty that would replace the bloc TLE caps with individual State caps to reflect the current geopolitical situation of the region.\textsuperscript{38} In November 1999, each of the then thirty parties to the original treaty signed

\begin{itemize}
\item \textsuperscript{29} \textit{Id.}
\item \textsuperscript{30} See CFE Treaty, \textit{supra} note 10, arts. XIII–XV.
\item \textsuperscript{31} \textit{Id.} arts. XIV–XV.
\item \textsuperscript{32} \textit{Id.} art. XIX(1).
\item \textsuperscript{33} \textit{Id.} art. XIX(2), (3).
\item \textsuperscript{34} \textit{Id.} art. XIX(2).
\item \textsuperscript{35} CFE Treaty, \textit{supra} note 10, art. XIX(2).
\item \textsuperscript{36} \textit{Id.} art. XIX(3).
\item \textsuperscript{38} Institute for Defense and Disarmament Studies, Treaty on Conventional Forces in Europe CFE (2005), http://www.idds.org/issConvCFE.html.
\end{itemize}
the CFE Adaptation Agreement (Adaptation Agreement) at a summit in Istanbul.\textsuperscript{39}

Only four States, however, have fully ratified the Adaptation Agreement: Belarus, Kazakhstan, Ukraine, and Russia.\textsuperscript{40} NATO member states have refrained from ratifying this agreement, asserting the unsatisfactory fulfillment of three commitments Russia made in the 1999 negotiations.\textsuperscript{41} First, Russian TLE were situated in excessive amounts in certain restricted “flank” regions and a commitment was made to reduce the troop levels to comply with the CFE Treaty.\textsuperscript{42} Second, Russia agreed to withdraw from the non-consensual military presence it had in Moldova.\textsuperscript{43} Third, Russia agreed to pull a certain number of forces out of Georgia.\textsuperscript{44} Though NATO concedes that Russia has fulfilled the first of these commitments (compliance with CFE Treaty caps in “flank” regions), satisfactory withdrawal of troops from Moldova and Georgia has yet to occur.\textsuperscript{45} As such, the NATO member states refuse to ratify the Adaptation Agreement and, therefore, it has not entered into force.\textsuperscript{46}

\textbf{C. Russia’s Suspension of the CFE Treaty}

On July 14, 2007, Russian President Vladimir Putin made known his intentions to suspend his country’s participation in the CFE Treaty.\textsuperscript{47} That intention became official on December 12, 2007.\textsuperscript{48} Given the historic relationship between Russia and this treaty, the decision was not too surprising.\textsuperscript{49} The suspension will allow Russia to disregard the TLE


\textsuperscript{40} Weitz, supra note 3.

\textsuperscript{41} See Press Release, supra note 24, at 2.

\textsuperscript{42} See id.

\textsuperscript{43} See id.

\textsuperscript{44} See id.

\textsuperscript{45} See id. Indeed, in August of 2008, the Russian troop presence in Georgia grew significantly as the regional hostility in South Ossetia led to a full-fledged military operation. See Timeline: Russia, BBC News, http://news.bbc.co.uk/2/hi/europe/country_profiles/1113655.stm (last visited Feb. 15, 2009). Though a peace agreement was eventually signed, Russian forces remain in the region, ensuring that these tensions would persist. See id.

\textsuperscript{46} Weitz, supra note 3.

\textsuperscript{47} Press Release, supra note 1.

\textsuperscript{48} Ministry of Foreign Affairs of the Russian Fed’n, supra note 3.

\textsuperscript{49} See Falkenrath, supra note 12, at 243. Over a decade ago, Falkenrath noted that Russia had the least to gain from the CFE Treaty, with enough of a nuclear arsenal to deter any aggressors despite a minimized conventional force, and enough intelligence capabilities to render the treaty’s transparency objectives somewhat redundant. See id. Indeed, Falkenrath predicted that pressure for Russian compliance with the CFE Treaty “can only
ceilings and refuse to provide information or allow inspections of its conventional forces.  

Putin claimed that the following six “exceptional circumstances” justified Russia’s suspension of the CFE Treaty: 1) the failure of six former Warsaw Pact States (Bulgaria, Hungary, Poland, Romania, Slovakia, and the Czech Republic) to make adjustments in the treaty framework to account for their accession to NATO; 2) the excess of NATO members that are parties to the treaty; 3) the American deployment of conventional forces in Bulgaria and Romania; 4) the failure of a large number of parties to comply with commitments made at Istanbul in 1999; 5) the failure of Hungary, Poland, Slovakia and the Czech Republic to adjust their territorial caps on TLE according to the Istanbul commitments; and 6) the absence of Estonia, Latvia, and Lithuania from the CFE Treaty.

II. Discussion

A. Legal Methods of Evading Treaty Obligations

For centuries, treaties have been the standard tool used by the subjects of international law to engage in various binding transactions with one another. The Vienna Convention on the Law of Treaties (Vienna Convention), currently celebrating its fortieth birthday, codified the preexisting customary law of treaties that existed between State actors (as opposed to those involving non-governmental organizations). It defines a treaty as an “international agreement concluded between States in written form and governed by international law.” Further, it makes explicit a fundamental principle guiding international law: pacta

be expected to work so long as the international community is able to impose costs on Russia that exceeds the foreign policy benefits Russia would expect to accrue from actions taken in violation of the treaty’s provisions.” Id. at 264.

50 See Ministry of Foreign Affairs of the Russian Fed’n, supra note 3; Weitz, supra note 3.

51 See Press Release, supra note 1.

52 See Mohammed M. Gomaa, Suspension or Termination of Treaties on Grounds of Breach, at xix (1996).


sunt servanda—“treaties must be obeyed.” At present, 108 States are party to the Vienna Convention, including the Russian Federation.

Once a treaty has entered into force, an important topic of concern and occasional bone of contention is determining the duration of the binding obligations. When and how a treaty will end is a common issue discussed during the initial negotiation stage. Termination or withdrawal effectively ends a party’s participation in a treaty, an action that can only be undone through renewing consent to be bound (i.e., making a new treaty). Suspension, on the other hand, is presumably temporary and even during the suspension period a treaty relationship continues to exist between the parties. Moreover, the suspending party must “refrain from acts tending to obstruct the resumption of the operation of the treaty.” The Vienna Convention states that a party may terminate, withdraw, or suspend a treaty only through applying either: a) the explicit exit provisions of the treaty; or b) the provisions of the Vienna Convention itself. Thus, if such an act of termination, withdrawal or suspension deviates from these two avenues, it violates the Vienna Convention.

An explicit provision in a treaty may allow for legal termination of or withdrawal from a treaty or for suspension of its operation. In practice, the exit provisions in treaties vary and sometimes are altogether absent. Most modern treaties, however, include some mechanism to allow parties the opportunity to avoid the obligations set forth, making the legality of the act easier to determine.

The Vienna Convention, itself, allows for five alternative exit paths for treaty parties outside of the pertinent treaty text. To invoke one of these paths, the State must notify all other treaty parties of its intent at

55 Id. art. 26 (stating “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith”).
57 See Aust, supra note 53, at 224.
58 See id.
59 See Vienna Convention, supra note 54, art. 70.
60 See id. art. 72.
61 Id. art. 72(2).
62 Id. art. 42(2).
63 See id.
64 Vienna Convention, supra note 54, art. 54(a).
65 Id. art. 57(a).
66 Aust, supra note 53, at 225.
67 See id.
68 See Vienna Convention, supra note 54, arts. 54–62.
least three months prior to acting. Notably, the Vienna Convention distinguishes between justifications for withdrawal and those for suspension of a treaty, though the requirements are largely the same. First, a party may terminate or withdraw from a treaty or suspend its operation with the consent of the parties. For multilateral treaties, consultation is required with other “contracting States,” meaning those States which have consented to be bound, but for which the treaty has not yet come into force.

Second, Article 59 allows for termination or suspension of a treaty if a supervening treaty was concluded on the same subject matter by the exact same parties. This is the case only when there is a clear intention to terminate or suspend the earlier treaty or the earlier treaty is incompatible with the new one.

Third, a treaty may be terminated or suspended as a response to a “material” breach of the treaty. A material breach is either a “repudiation of the treaty not sanctioned by the present Convention” or one which violates a provision “essential to the accomplishment of the object and purpose of the treaty.” If there is a material breach in a multilateral treaty, one of three scenarios may occur: 1) the other parties may suspend or terminate a treaty by unanimous agreement between themselves and the breaching State or between all parties; 2) a party “specially affected” by the breach may suspend its operation of the treaty between itself and the breaching State; or 3) if the breach “radically changes the position of every party with respect to the further performance of its obligations under the treaty,” any non-breaching party may suspend the operation of the treaty. This final situation is especially relevant to disarmament treaties, where one party’s breach may endanger the whole group of treaty participants.

69 Id. art. 65(1) (stating that notification to all parties of the ground for suspension under the provisions of the VCT “shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.”).
70 See id.
71 Id. art. 54(b).
72 Id. art. 57(b).
73 See Vienna Convention, supra note 54, arts. 54(b) & 57(b); Aust, supra note 53, at 232.
74 Vienna Convention, supra note 54, art. 59.
75 Id.; see also Aust, supra note 53, at 235–36.
76 Vienna Convention, supra note 54, art. 60(1).
77 Id. art. 60(3).
78 Id. art. 60(2).
79 See Aust, supra note 53, at 238.
Fourth, a party may terminate or withdraw from a treaty because of
the supervening impossibility of performance of the treaty obliga-
tion(s). If it is merely a temporary impossibility, the party may only
suspend its treaty operations. The threshold for impossibility is very
high.

Finally, a party may terminate or withdraw from a treaty because of
a fundamental change of circumstances. The Vienna Convention
allows for suspension of a treaty’s operations if the same criteria are met.
A state may not cite its own conduct as the fundamental change. As
with impossibility, the threshold to using this justification to exit a
treaty’s obligations appears to be very high.

Unilateral acts of State treaty parties, which deviate from the treaty,
are often presumed to be breaches because of the aforementioned
limitations. If a State party is justified in withdrawing from or sus-
pending a treaty’s operation, the Vienna Convention provides the pro-
cedure to be employed in Article 65. The State must first notify all of
the other parties of the treaty of its claim for withdrawal or suspen-
sion. Unless there is a case of “special urgency,” a period of three
months must elapse in which any other party to the treaty duly notified
of the claim may express an objection. If no objection is raised in that
period, then the State may proceed with its withdrawal or suspension
by way of an official written instrument. If an objection is raised, how-
ever, the parties are directed to resolve the dispute via Article 33 of the
Charter of the United Nations (UN Charter).

80 Vienna Convention, supra note 54, art. 61.
81 Id.
82 See id. (stating that “impossibility results from the permanent disappearance or de-
struction of an object indispensable for the execution of the treaty”).
83 Id. art. 62.
84 Id.
85 See Aust, supra note 53, at 241.
86 See id. at 241–42.
88 Vienna Convention, supra note 54, art. 65.
89 Id. art. 65(1).
90 Id. art. 65(2).
91 Id.
92 Id. art. 65(3). Article 33 of the UN Charter calls on parties to an international dis-
pute that risks global peace and security to engage in some type of dispute resolution such
as negotiation, arbitration, mediation, judicial settlement, or other peace means. U.N.
Charter, art. 33, para. 1. If necessary, the United Nations Security Council can step in to
request that the parties engage in this type of peaceful settlement process. Id. art. 33, para. 2.
B. Russian Suspension of the CFE Treaty Violates the Vienna Convention

1. Russia did not adhere to the exit provisions of the CFE Treaty

Russia’s suspension of the CFE Treaty may constitute a violation of the CFE Treaty and the Vienna Convention, both of which Russia has duly ratified. First, the CFE Treaty itself provides no express authorization for a party to suspend its operation, but only allows for full withdrawal from the treaty under specific limitations. Withdrawal and suspension are two entirely different acts. Although the CFE Treaty arguably may contain an implicit right of suspension, the fact that there exists an explicit provision for withdrawal severely damages this argument. In addition, because it has become commonplace for treaties to include explicit exit provisions, a treaty’s silence on the matter is more likely to imply the absence of the exiting option. Finally, the CFE Treaty’s drafters may have intentionally excluded the right to suspend if they viewed it as an invitation to a “temporally opportunistic exit.” To be sure, any restriction on exiting a multilateral treaty can be viewed as an intelligent way of encouraging continuous cooperation among the parties.

In any event, Putin’s actions portray no effort in advocating any implied right to suspension and, instead, purport to adhere to the explicit terms of the CFE Treaty. By citing “exceptional circumstances” and granting notice of 150 days, both required for a proper “withdrawal” under the CFE Treaty, indicates that Putin equated suspension with withdrawal. Yet, since Russia did not endeavor to withdraw from the treaty, its intent to suspend has no legal basis in the express language of the CFE Treaty itself.

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93 See Hollis, supra note 1.
94 See CFE Treaty, supra note 10, art. XIX.
95 See, e.g., Vienna Convention, supra note 54, arts. 56–57 (expressly distinguishing between withdrawal from and suspension of a treaty’s operation).
96 See CFE Treaty, supra note 10, art. XIX.
97 See Aust, supra note 53, at 234.
98 See Helfer, supra note 87, at 1625.
99 See id. at 1633.
100 See Press Release, supra note 1 (stating that the suspension is “in conformity with international law”).
101 The author construes as equivalent the phrase used by Putin (“exceptional circumstances”) and the phrase found in Article XIX of the CFE Treaty (“extraordinary events”). See CFE Treaty, supra note 10, art. XIX; Press Release, supra note 1.
102 See CFE Treaty, supra note 10, art. XIX; Press Release, supra note 1.
2. Russia’s suspension is likely not justified under any provision of the Vienna Convention

The only other way for Russia’s suspension of the CFE treaty to have been legal under current international law would require justification under a provision of the Vienna Convention. As discussed above, those possibilities are: party consent, supervening treaty, impossibility, fundamental change, and material breach. The only two plausible possibilities, as explained below, which might justify the suspension are the existence of a fundamental change of circumstances or the breach of the CFE Treaty.

Party consent is the easiest of these other justifications to eliminate because it is strikingly clear that many of the CFE Treaty Party States did not consent to Russia’s suspension. Indeed, three days after Putin’s announcement, NATO responded with a press release, which disclosed its deep disappointment in the Russian decision and a desire to maintain the CFE Treaty’s operation.

Second, the supervening treaty justification for suspension is also quickly eliminated because there was no such treaty between the exact same parties. The 1999 Adaptation Agreement might have qualified as such a supervening treaty as it was an update to the CFE Treaty and Russia was a party to it. That agreement, however, never entered into force because of the lack of ratifiers. Even if the Adaptation Agreement had come into force, it makes no change to the CFE Treaty’s exit provision (Article XIX), so it would not have made any alteration in

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103 Vienna Convention, supra note 54, art. 42(2).
104 Id. arts. 54–62.
105 See id. arts. 60 & 62.
106 See id. art. 54(b).
109 See Vienna Convention, supra note 54, art. 59.
110 See Adaptation Agreement, supra note 39.
111 Hollis, supra note 1.
regard to suspension.\textsuperscript{112} Thus, no supervening treaty can justify Russia’s suspension of the CFE Treaty.\textsuperscript{113}

Third, Russia’s participation in the CFE Treaty has likely not become impossible.\textsuperscript{114} For this justification of treaty suspension, there needs to be at least a temporary “disappearance or destruction of an object indispensable for the execution of the treaty.”\textsuperscript{115} There are few examples of what could render a treaty’s operation impossible in this way, though the International Law Commission has mentioned as possible examples the submergence of an island or the destruction of a dam.\textsuperscript{116} No such indispensable object has been lost, even temporarily, here.\textsuperscript{117} The six “exceptional circumstances” that Putin offered on July 14, 2007, involve political objections to what was occurring or not occurring within other CFE Treaty party States along with the “adverse effects” of Estonia, Latvia, and Lithuania’s non-participation on Russia’s northwestern security.\textsuperscript{118} As pressing as these concerns may have been, none of them reflect an absent “indispensable object,” which could deprive Russia of its ability to perform the tasks under the treaty (i.e., maintaining a certain amount of TLE west of the Ural Mountains, providing information of those amounts, and allowing inspections to verify compliance).\textsuperscript{119}

Fourth, a fundamental change of circumstances has likely not occurred, which could otherwise legitimize Russia’s unilateral suspension of the CFE Treaty.\textsuperscript{120} This justification is extremely narrow and there is not one distinct example of a successful assertion of the doctrine in any international case.\textsuperscript{121} The International Court of Justice famously rejected Hungary’s attempt to utilize this justification for its own suspension of a treaty, when it cited profound political changes.\textsuperscript{122}

\textsuperscript{112} Compare Adaptation Agreement, \textit{supra} note 39 (providing no amendment to the exit provision of the CFE Treaty), \textit{with} CFE Treaty, \textit{supra} note 10, art. XIX (providing explicitly for unilateral withdrawal, but not suspension). \textit{See generally} Olivette Rivera-Torres, \textit{The Biosafety Protocol and the WTO}, 26 B.C. Int’l & Comp. L. Rev. 263, 319–20 (noting that obligations from multiple agreements between the same parties must be harmonized if at all possible).

\textsuperscript{113} \textit{See} Vienna Convention, \textit{supra} note 54, art. 59.

\textsuperscript{114} \textit{See id.} art. 61.

\textsuperscript{115} \textit{Id.} art. 61(1).

\textsuperscript{116} \textit{Aust}, \textit{supra} note 53, at 239–40.

\textsuperscript{117} \textit{See President of Russ.}, \textit{supra} note 1.

\textsuperscript{118} \textit{Id.}

\textsuperscript{119} \textit{See} CFE Treaty, \textit{supra} note 10, arts. I–XV; Vienna Convention, \textit{supra} note 54, art. 61(1).

\textsuperscript{120} \textit{See} Vienna Convention, \textit{supra} note 54, art. 62.

\textsuperscript{121} Helfer, \textit{supra} note 87, at 1643.

denied that a fundamental change of circumstances had occurred and emphasized that treaty law stability demands that this exit route for treaty obligations must be applied in only the most exceptional cases.\textsuperscript{123}

Here, Putin’s complaint about the widening of the NATO alliance without a concurrent adjustment to the CFE Treaty may be the closest thing to a fundamental change of circumstances.\textsuperscript{124} Since the CFE Treaty was first signed in 1990, the Warsaw Pact fell apart and several former Warsaw Pact nations joined NATO, but the treaty has not changed in kind.\textsuperscript{125} Whether this political change was more of a radical transformation than occurred in the \textit{Gabcikovo-Nagymaros Project} is out of the scope of the present Note.\textsuperscript{126} The change of circumstances remains, however remotely, one arguable justification.\textsuperscript{127}

This leaves the possibility that a material breach to the CFE Treaty occurred, which justified Putin’s suspension.\textsuperscript{128} Putin has proffered a list of six “exceptional circumstances” that supported Russia’s suspension of the CFE Treaty.\textsuperscript{129} Can any of these circumstances qualify as a material breach of the CFE Treaty in order to justify Russia’s unilateral suspension?\textsuperscript{130} The only assertion that might be construed as a material breach is the first: The failure of the new NATO states to make the “necessary changes in the composition of group of states party to the Treaty.”\textsuperscript{131} Such a failure to act would not constitute the type of material breach that the Vienna Convention calls an unsanctioned treaty repudiation.\textsuperscript{132} Instead, it would have to fall under a violation of a pro-

\textsuperscript{123} See id.
\textsuperscript{124} See President of Russ., supra note 1.
\textsuperscript{125} See Hollis, supra note 1.
\textsuperscript{126} See Gabcikovo-Nagymaros Project, 1997 I.C.J. at 125–27.
\textsuperscript{127} See Vienna Convention, supra note 54, art. 62.
\textsuperscript{128} See id. art. 60.
\textsuperscript{129} President of Russ., supra note 1.
\textsuperscript{130} See Vienna Convention, supra note 54, art. 60; see also id.
\textsuperscript{131} See President of Russ., supra note 1. Putin’s other assertions likely could not constitute material breaches of the CFE Treaty. See id. One concerns the injustice revolving around the excessive NATO parties currently in the treaty, reflecting more of a fundamental change than a particular actor’s breach. See id. Another deals with an American \textit{plan} to deploy troops in Bulgaria and Romania, not the actual deployment. See id. Two of Putin’s assertions relate to failures of parties to comply with agreements made during the negotiations for the 1999 Adaptation agreement in Istanbul. See id. Even if those later agreements were violated, there likely would be no breach of the CFE Treaty here, since it was signed nine years earlier. See CFE Treaty, supra note 10. Finally, one assertion relates to the non-participation of Estonia, Latvia, and Lithuania in the CFE Treaty. See President of Russia, supra note 1. Those States’ lack of participation automatically ensures that they would not be capable of breaching the treaty. See Vienna Convention, supra note 54, art. 60.
\textsuperscript{132} See id. art. 60(3)(a).
vision essential to the objects and purposes of the treaty.\textsuperscript{133} Again, the merit of this argument is outside of this Note’s scope. It remains, as does the fundamental change in circumstances, one plausible justification for Russia’s unilateral suspension under the Vienna Convention.\textsuperscript{134}

Even if there was a material breach or a fundamental change in circumstances, to invoke any of these Vienna Convention exit justifications Putin would have had to specifically notify the other Party States at least three months prior to suspension.\textsuperscript{135} In terms of notification, Putin did give 150 days notice to the CFE Treaty parties prior to its suspension, but his notification aimed to suspend within the bounds of the CFE Treaty.\textsuperscript{136} If any argument for suspension based on Vienna Convention provisions was also to be made, further notification of that was necessary.\textsuperscript{137}

In addition, under Article 65 of the Vienna Convention, any notified party may object to the assertions in the notification.\textsuperscript{138} NATO’s press release a few days after Putin’s decree might qualify as an objection,\textsuperscript{139} which would initiate a dispute requiring a resolution in accordance with the UN Charter’s Article 33.\textsuperscript{140} No such dispute settlement has occurred.

C. Russian Federal Law Cannot Preempt International Law

In his July 14th decree, Putin stated that Russian federal law further justified his suspension of the CFE Treaty.\textsuperscript{141} Putin was referring to the Federal Law on International Treaties of the Russian Federation (Russian Law on Treaties), which Russia adopted on June 16, 1995.\textsuperscript{142} Article 37 of the Russian Law on Treaties authorizes the Russian President to suspend a multilateral treaty “in instances requiring the taking of urgent measures.”\textsuperscript{143} The federal law does not, however, authorize the President to terminate or withdraw from a treaty.\textsuperscript{144} Putin cited Article 37 of the Russian Law on Treaties, declaring that it gave him the ability

\textsuperscript{133} See id. art. 60(3)(b).
\textsuperscript{134} See id. art. 60.
\textsuperscript{135} See id. art. 65(2).
\textsuperscript{136} See President of Russ., supra note 1.
\textsuperscript{137} See Vienna Convention, supra note 54, art. 65(1).
\textsuperscript{138} See id. art. 65.
\textsuperscript{139} See NATO Response, supra note 108.
\textsuperscript{140} See Vienna Convention, supra note 52, art. 65(3).
\textsuperscript{141} President of Russ., supra note 1.
\textsuperscript{143} Id. at 127.
\textsuperscript{144} See Hollis, supra note 1.
to suspend the CFE Treaty since it was a situation of “necessity”, requiring “immediate action.” Of course, Russian domestic law did not empower Putin to withdraw from treaties, so he was forced into relying on suspension.

There is a clear conflict between Putin’s inability to withdraw from an international treaty under Russian domestic law and the lack of a way to suspend the CFE Treaty according to its text. Putin’s reliance on domestic law to increase his number of ways to exit an international treaty will not pass legal muster. Since the CFE Treaty has entered into force in Russia, it prevails over inconsistent domestic law. In fact, the preamble to the Russian Law on Treaties states: “The Russian Federation favours undeviating compliance with treaty and customary norms and affirms its adherence to the basic principle of international law—the principle of the good-faith fulfillment of international obligations.” Article 5 of the Russian Law on Treaties even further provides: “If other rules have been established by an international treaty of the Russian Federation than those provided for by a law, then the rules of the international treaty shall apply.” Thus, although Putin only possessed the authority to single-handedly enforce a suspension under Russian domestic law, if the CFE Treaty effectively prohibits suspensions, then the CFE Treaty’s prohibition must prevail.

III. Analysis

A. Seeking a Solution: Possible Remedies to Russian Suspension If It Violates International Treaty Law

This analysis assumes arguendo that Russia’s suspension was a violation of both the CFE Treaty (unilateral suspension was not an available option under the treaty) and the Vienna Convention (suspension cannot be otherwise justified). The remainder of this Note addresses what realistic remedies are available to correct this type of delict, which allows Russia to enjoy the security benefits of the CFE Treaty without fac-

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145 See President of Russ., supra note 1.
146 See Hollis, supra note 1.
147 See id.
148 See Aust, supra note 53, at 149.
149 See id.
150 Butler, supra note 142, at 6.
151 Id. at 23–24.
152 See CFE Treaty, supra note 10, art. XIX; Butler, supra note 142, at 23–24; Hollis, supra note 1.
ing any of its responsibilities. Any remedy must also aim to discourage Russia from fully withdrawing from the CFE Treaty. The precariousness of the situation is augmented by the true importance of the treaty in achieving global security.

The CFE Treaty’s preamble states that the parties have made a commitment to “[c]ontinue the conventional arms control process including negotiations, taking into account future requirements for European stability and security in the light of political developments in Europe.” Russia argues that its suspension was triggered by exactly such political developments, while the NATO parties would argue that the suspension risks restoring the security imbalance in Europe that the CFE Treaty aimed to fix. Either way, the suspension has resulted in Moscow’s current refusal to provide information about its conventional military forces between the Atlantic Ocean and the Ural Mountains. The new freedom also opens the door to troop escalations in some regions of Russia, though the head of the Russian General Staff has discounted that notion.

Assuming that Russia’s suspension was contrary to international law, more forceful objections must be made in the international community to condemn the behavior. Although NATO and individual States have expressed clear disappointment in Putin’s unilateral act, a more definitive objection to its illegality is in order. Such an act would undoubtedly activate Article 33 of the UN Charter, directing actors to initiate some type of dispute resolution.

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154 See CFE Treaty, supra note 10, Preamble; Russia Suspends Arms Control Pact, supra note 1.
155 CFE Treaty, supra note 10, Preamble.
156 See Ministry of Foreign Affairs of the Russian Fed’n, supra note 3; President of Russ., supra note 1.
158 See Blair, supra note 3; Weitz, supra note 3.
159 Weitz, supra note 3 (quoting General Yury Baluyevsky as saying that the suspension “doesn’t mean there will be a massive arms buildup...” although he could now “exercise complete freedom in movement of the armed forces on Russian territory.”). But see Time-line: Russia, supra note 45.
160 See Falkernath, supra note 12, at 264.
161 Kramer & Shanker, supra note 1 (noting that the European Union called Putin’s suspension “regrettable”, while James Appathurai, a NATO spokesman, commented: “This is a disappointing move in the wrong direction”); Press Release, supra note 10.
162 See U.N. Charter, supra note 92, art. 33; Vienna Convention, supra note 54, art. 65(3).
Further negotiations between Russia and the remaining CFE Treaty Party States is an obvious option at the current impasse.163 This is the most common method of settling treaty disputes.164 Negotiations have, however, been unsuccessful in the past.165 Putin arranged the Extraordinary Conference of State Parties to the Treaty on Conventional Forces in Europe in Vienna on June 11–15, 2007 precisely to open a dialogue about his concerns, but no agreement could be reached.166 After Russia’s unilateral violation of the CFE Treaty, it may be even more difficult to achieve a negotiated resolution now than it was during the June conference.167 Still, considering how the current CFE Treaty maintains the geography of the Cold War, serious negotiations to get the Adapted Agreement entered into force are long overdue.168

Another possible form of dispute resolution is conciliation, wherein a Conciliation Commission can hear both parties’ claims and objections and then make recommendations that could eventually lead to an amicable result.169 These commissions usually are made up of three to five members representing each side of the dispute and a third-party chairperson.170 Since the result of the conciliation is non-binding, it may be easier to persuade Russia to participate. At the same time, without a binding result, the time and expense of a conciliation may be impractical.171

Seeking a compulsory binding settlement through either an arbitration or litigation in the International Criminal Court is a less plausible solution.172 Even if Russia is convinced it did nothing wrong, it would be unlikely to provide the requisite consent to such binding proceedings.173 This is mainly because instead of facing the time and expense involved in litigation, Russia could simply undertake a full withdrawal from the CFE Treaty, in accordance with the treaty’s provisions.174

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163 See Aust, supra note 53, at 288; Blair, supra note 3; NATO Repsonse, supra note 108 (requesting a “constructive and creative dialogue”).
164 Aust, supra note 53, at 286.
165 NATO Response, supra note 108.
166 Id.
167 See Weitz, supra note 3.
168 See Boese, supra note 37; Hollis, supra note 1.
169 Vienna Convention, supra note 54, Annex.
170 Aust, supra note 53, at 289.
171 See id.
172 See id. at 290.
173 See id.
174 CFE Treaty, supra note 10, art. XIX.
If the other CFE Treaty parties see the unilateral act as unacceptable, however, and wish to get a legal judgment to that effect, seeking a decision from the International Court of Justice (ICJ) could be an option.\footnote{See \textit{Aust}, supra note 53, at 295.} In 1979, for example, the United States brought a case before the ICJ concerning the seizure and holding as hostages of members of the U.S. diplomatic and consular staff in Iran.\footnote{United States v. Iran, 1980 I.C.J. 3, 4 (1980).} Despite the fact that Iran refused to plead or argue before the ICJ, the case proceeded on the merits.\footnote{\textit{Id.} at 8 & 20.} This may have been an effort to “use the Court’s decision as a means for translating a dispute between Iran and the United States specifically into one between Iran and the international community generally.”\footnote{M.W. Janis, \textit{The Role of the International Court in the Hostage Crisis}, 13 Conn. L. Rev. 263, 280 (1981).} By filing a suit in the ICJ, however, other CFE Treaty parties would be widening the divide between themselves and Russia, which is precisely the problem that demands a solution.\footnote{See President of Russ., supra note 1; Press Release, \textit{supra} note 10.}

Another course of action that may be possible here was highlighted by the attempted withdrawal of the Democratic People’s Republic of Korea (DPRK) from the Nuclear Non-Proliferation Treaty (NPT) in 1993.\footnote{See \textit{Aust}, \textit{supra} note 53, at 228.} On March 12, 1993, the DPRK announced it would withdraw from the NPT in 90 days, due to “extraordinary events . . . [which have] jeopardized [its] supreme interests . . . .”\footnote{See Treaty on the Non-Proliferation of Nuclear Weapons art. X, July 1, 1968, 729 U.N.T.S 161; INTERATIONAL ATOMIC ENERGY AGENCY, FACT SHEET ON DPRK NUCLEAR SAFEGUARDS, http://www.iaea.org/NewsCenter/Focus/IaeaDprk/fact_sheet_may2003.shtml (last visited Feb. 15, 2009).} The extraordinary events cited were the U.S. military exercises that threatened the DPRK with nuclear war and certain actions of the International Atomic Energy Agency.\footnote{\textit{Aust}, \textit{supra} note 53, at 228.}

The United States, Russia, and the United Kingdom, three other parties to the NPT, expressed to the United Nations (in a joint statement dated April 1, 1993) their concern that the DPRK’s cited justifications for withdrawal did not constitute “extraordinary circumstances” and, therefore, that the withdrawal violated the NPT.\footnote{S. C. Res. 825, ¶ 7, U.N. Doc S/RES/825 (May 11, 1993).} The United Nations Security Council quickly responded on May 11, 1993 in a resolution that took into account all of the surrounding facts, including the DPRK’s letter asserting justifications for withdrawal, the April 1st letter.
opposing withdrawal, and the “critical importance” of the NPT. The resolution called upon the DPRK to “reconsider” its decision to withdraw and reaffirm its commitment to the NPT. Furthermore, it encouraged all members of the NPT to work together to establish a solution to the problem, reserving further Security Council action if necessary.

Though the precise impact of this U.N. Resolution is difficult to ascertain, further negotiations occurred soon after its announcement and they were fruitful. Exactly one month after the resolution, the DPRK halted its plans for withdrawal from the NPT just before they became effective. On October 21, 1994, the United States and the DPRK signed an Agreed Framework, effectively ending the crisis.

Given the various similarities between the NPT crisis and the current situation with the CFE Treaty, an appeal to the U.N. Security Council seems prudent. The future of both arms treaties was threatened by the potentially illegal exit (be it temporary or permanent) of one of the key parties. With regard to the CFE Treaty, not only is there a strong argument that the “exceptional circumstances” provided by Putin were insufficient, but there is an additional argument that the entire act of suspension was a violation of the treaty’s text on its face. If the Security Council felt compelled to issue a resolution in 1993, it may, therefore, feel more compelled to assert itself now. The other members of the CFE Treaty should write a joint letter to the Security Council addressing their concern on this matter.

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184 Id. ¶¶ 3, 6 & 7.
185 Id. ¶ 10.
186 Id. ¶¶ 13 & 14.
188 Id.
189 Agreed Framework to Negotiate Resolution of the Nuclear Issue on the Korean Peninsula, October 12, 1994, 34 I.L.M. 603.
190 See S.C. Res. 825, supra note 183.
191 See id. at ¶ 7; Hollis, supra note 1.
192 See CFE Treaty, supra note 10, art. XIX.
193 See S.C. Res. 825, supra note 183. Russia’s membership on the Security Council, though less likely to make a resolution politically feasible, is not otherwise an obstacle. See U.N. Charter, supra note 90, art. 27 (noting that in decisions under Chapter VI regarding “Pacific Settlement of Disputes,” a party to a dispute that is a member of the Security Council shall abstain from voting).
194 See S.C Res. 825, supra note 183, ¶ 7.
B. Global Reaction to Russia’s Suspension: Reputational Harm

If the global public carefully scrutinizes Putin’s unilateral suspension of the CFE Treaty in light of its potential illegality, Russia may be more receptive to further serious negotiations aimed at finding a resolution quickly and amicably.\textsuperscript{195} Although Putin’s act may have strengthened his popularity domestically and assisted in the 2008 election of Dmitri Medvedev, his choice for the new president, a visibly improper exit from an important arms treaty could have severe long-term consequences for Russia.\textsuperscript{196} Most importantly, it may make other States more hesitant to enter into agreements with Russia in the future.\textsuperscript{197}

The lackluster attempts of NATO and other States in expressing their “disappointment” of Putin’s suspension may stem from the regularity of treaty exits.\textsuperscript{198} In 2002, for example, the United States unilaterally withdrew from another important arms agreement: the Anti-Ballistic Missile Treaty (ABM Treaty).\textsuperscript{199} President Bush’s withdrawal, however, was at least available to him in the ABM Treaty’s text.\textsuperscript{200} Putin’s suspension was potentially authorized by neither the governing treaty nor the Vienna Convention.\textsuperscript{201} If the international community does not unite in its opposition to acts that facially violate an important treaty, a new precedent may develop that encourages State actors to regularly rely on illegal treaty suspension as a bargaining tool.\textsuperscript{202}

CONCLUSION

Both international legal scholars and international relations theorists have long focused on what is involved in entering into treaties, but
have generally ignored careful studies of treaty exit.\textsuperscript{203} Russia’s unilateral and potentially unlawful suspension of the CFE Treaty is a reminder of how crucial this portion of treaty law can be. The CFE Treaty does not explicitly authorize suspension. The Vienna Convention does not convincingly provide for any other justification for the suspension and Putin did not attempt to invoke one. Thus, Russia’s suspension likely violated the CFE Treaty.

As a result, the other CFE Treaty Party States are left in an awkward predicament. To be sure, they are pleased that Putin did not yet withdraw from this important treaty altogether. There is a chance, however, that Putin never would have taken this more dramatic step, and that he simply capitalized on suspension to elevate Russia’s negotiating posture. If this is the case, then the tactic must be outwardly condemned. As Richard Falkenrath so astutely noted more than a decade ago, Russia’s participation in the CFE Treaty hinges on the international community’s ability to convince Russia that the costs of an unlawful treaty exit exceed any potential political benefits.\textsuperscript{204} If the international community cannot do this, then the CFE Treaty may not be the only casualty. Indeed, the very benefits attained from engaging in international agreements will be in true jeopardy if parties can invariably deviate from those agreements and halt their responsibilities for political gain.

\textsuperscript{203} See id. at 1592 & 1647 (noting that major international law treatises and even specialized treatises on treaty law practically ignore treaty exit or give the issue only passing attention).

\textsuperscript{204} See Falkenrath, \textit{supra} note 12, at 264.