



How Russian Violations of the 1997 Founding Act Influence NATO-Russia Relations

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The NATO-Russia Founding Act adopted in 1997 reflected the consensus within the Alliance that new security architecture in Europe should be based on three pillars: enlargement of transformed NATO, European integration and partnership with Russia. Self-limitation on the stationing and deployment of troops in the territories of new NATO members was conditioned upon Russia's observance of the rule-based order. After the annexation of Crimea, the Allies decided to respect the spirit of the Founding Act to limit the risk of escalation and defend the security system Russia is interested in derailing. The Allies, however, should adopt a less dogmatic approach to NRFA, which would offer additional flexibility in strengthening NATO's cohesion and influencing Russian calculations.

The adoption in 1997 of the Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation (NATO-Russia Founding Act, NRFA) was the result of the consensus in NATO in the 1990s on the future security order in Europe. The aim was to build a lasting peace, without rivalry among the major powers and without spheres of influence. Western countries committed to build a collective security system of which Russia would be part. NATO was to enlarge, but instead of focusing on deterrence and defence it should be better prepared to respond to threats outside its territory ("out of area," or "out of business"). The European Union was also to use its potential to strengthen security outside its own territory more effectively, complementing NATO's activities.

With the NRFA, the Alliance demonstrated that it did not treat Russia as a threat. NATO changed its command and force structure, but to survive it could not put any legal constraints on its ability to act in self-defence. Hence, the NRFA was political in nature and does not constitute a treaty from the perspective of international law. This was also the nature of NATO's commitment not to station permanent additional "substantial combat forces," which in practice was meant to constrain such deployments on the territories of its new members. Currently, Russia is concentrating on this part of the document, accusing NATO of breaking the NRFA. It is also a main argument in the discussion of the Allies against the more decisive strengthening of the Eastern Flank, replacing the formula of "continuous, rotational presence" agreed in Newport and Warsaw with permanently stationed Allied forces.

NATO and Russia have never formally reached a joint understanding of the term "substantial combat forces." However, during negotiations on the adaptation of the Treaty on Conventional Armed Forces in

Europe (CFE), the Allies indirectly agreed with Russian definitions presented in the years 1998-1999. At that time, Russia interpreted the size of such forces as no more than one brigade (usually up to 5,000 soldiers) in each of the new member countries. This Russian interpretation changed in 2008 and 2009, when Moscow proposed the definition of “substantial combat forces” as one brigade in total on the territory of all new NATO members.¹ The change in attitude coincided with the huge programme of military modernisation.

The conclusions of the NATO summits in Newport and Warsaw did not therefore constitute the departure of NATO countries from the content of the NRFA. The four multinational battle groups deployed in Poland and in the territories of the Baltic States have about 1,000 soldiers each. In total, therefore, it is still below the brigade level, and therefore consistent with the latest definition used by Russia. Such limits reflect concerns of some of the Allies that the withdrawal from the NRFA could open the way to the escalation of current tensions with Russia and lead to further erosion of the security system in Europe.

The additional deployment of a U.S. Armored Brigade Combat Team, with units rotating across Germany, Poland, the Baltic States, Romania and Bulgaria on a bilateral basis indicates that the U.S. is also attempting to avoid a departure from the political assurances given to Russia. Even taken together with NATO battlegroups, the level of personnel remains significantly below that of a brigade in each country.

Nevertheless, the possible change in scale and the formula of the presence of Allied forces from “continuous, rotational” to “fixed” would not mean that the Alliance would break the political commitment contained in the NRFA. The declaration on refraining from the permanent deployment of additional “substantial combat forces” was adopted in a completely different security environment. By using military power against its neighbours and changing borders by force, Russia caused a fundamental change in European security.

At the NATO summit in Brussels, a number of European Allies are likely to insist on respecting the NRFA. However, the attitude toward this political commitment cannot be dogmatic. It has to take into consideration not only the new security environment, which is the result of Russian aggression against Ukraine, but also Moscow’s obvious violations of the spirit and letter of the document in its political and a military dimensions.

Russia’s Political Violations of the Founding Act

The NRFA was intended to strengthen the post-Cold War rule-based European security order. In 1994, Russia signed the Budapest Memorandum, in which it gave security assurances against threats or the use of force against the territorial integrity or political independence of Ukraine, Belarus and Kazakhstan. In 1994, it committed itself to withdraw troops from Transnistria, a separatist region of Moldova. Although it signalled in military doctrines that it was ready to use force in the defence of Russian minorities, and that it perceived NATO enlargement as a threat to its interests, investments in its military were modest and not threatening to the West.

Adopting the Founding Act in 1997, NATO members and Russia agreed to strengthen peace in the Euro-Atlantic area by respecting a number of principles. These were transparency in defence policy, size of forces and military doctrines, conflict prevention and the peaceful resolution of disputes, respect for the sovereignty, independence and territorial integrity of all states, and respect for the principle of inviolability of borders and peoples’ right of self-determination. The Act also stresses that the parties will refrain from the threat or use of force against each other and against any other state, its sovereignty, territorial integrity or political independence in any manner inconsistent with the United Nations Charter and with the Declaration of Principles Guiding Relations Between Participating States contained in the Helsinki Final Act.

Through war with Georgia in 2008, recognition of the independence of Abkhazia and South Ossetia, aggression against Ukraine and the annexation of Crimea, Russia broke all the above principles. Further

¹ See: W. Alberque, “‘Substantial Combat Forces’ in the Context of NATO-Russia Relations,” *Research Paper 131*, NATO Defense College, 7 July 2016, www.ndc.nato.int.

blatant breaches could also be seen in the attempted murder of Milo Djukanovic, prime minister of Montenegro, and the chemical weapon poisoning of the former GRU agent Sergei Skripal on the territory of the United Kingdom.

Russia's actions towards Georgia, Ukraine and Montenegro were also motivated (and openly defended in the first two cases) by the desire to stop them from joining NATO. This is contrary to the Act's obligation to respect the right of states to choose means to ensure their own security, and therefore also their own alliances.

Russia has repeatedly issued open and veiled threats against NATO members. There have been threats against Poland and Romania to discourage them from the deployment on their territories of elements of the U.S. and NATO missile defence systems, and against Denmark and Norway, which considered a contribution to these systems.²

The verbal threats were supported with aggressive military actions such as flights by bombers capable of carrying nuclear weapons near NATO's borders. These flights included elements of attack simulation, as did Russia's *West 2009* and *West 2017* exercises, the scenario of which included an attack on Poland and the Baltic States.

There is another dimension of the NRFA, which demonstrates how distant today's security environment is from that of 1997. Russia assured NATO it would develop a democratic society, but its level of autocracy has only been rising since at least 2000. Russian legislation (including the adoption of the Act on Foreign Agents) restricting freedom of association and expression, along with repressive actions of the security apparatus towards the opposition, are the most visible examples.

Russia's Military Violations of the Founding Act

In the military domain, Russian actions indicate a withdrawal from attempts to limit the role of military forces as a tool of intimidation. Russia does not comply with the obligation to prevent a threatening build-up of conventional forces and to exercise restraint in its conventional force deployments in Europe. It started the transformation of its military into a force of permanent readiness and deployed offensive capabilities close to NATO's border long before NATO decided to augment defences on the Eastern Flank in response to annexation of Crimea. Moscow significantly strengthened its military posture in Crimea and the Kaliningrad enclave, the latter bordering Lithuania and Poland, with the deployment of numerous anti-access systems (anti-access/area-denial, A2/AD), including surface-to-air missiles (S-400), coastal defence ("Bastion") missiles and short-range ballistic missiles ("Iskander"). It also strengthened its air forces (including nuclear capable aircraft) and naval forces (armed with Kalibr cruise missiles, with an estimated range of up to 2,500 km). NATO's decision to deploy troops to the Eastern Flank served as a pretext to justify additional moves, which have been in the pipeline at least since 2014. In 2016, Russia completed the formation of three new divisions in the west of the country (two in the Western Military District and one in the Southern Military District). Such violations of the NRFA gave Russia a strategic advantage in the entire Baltic Sea and Black Sea basins, where it can support hybrid warfare with a surprise offensive operation. With such tools it has the ability to exert significant political and military pressure on the Alliance.

According to the NRFA, Russia and NATO were not to consider each other as opponents. Even after the Russian war with Georgia, NATO, in its Strategic Concept approved at the 2010 Lisbon summit, referred to Russia as a strategic partner. Despite NATO's self-imposed limitations and cooperation with Russia, Moscow has consistently repeated in its strategic documents since 1997 that it perceives NATO enlargement as a threat.³ The military doctrine of 2014 (point 12) indicates that deployment of NATO's

² See, e.g.: A.E. Kramer, "Russian General Makes Threat on Missile-Defense Sites," *The New York Times*, 3 May 2012, www.nytimes.com; D. Dyomkin, "Putin says Romania, Poland may now be in Russia's cross-hairs," *Reuters*, 27 May 2016, www.reuters.com; "Russia repeats warning against building a missile shield in Norway," *Norway Today*, 9 March 2017, <http://norwaytoday.info>; "Russia threatens to aim nuclear missiles at Denmark ships if it joins NATO shield," *Reuters*, 22 March 2015, www.reuters.com.

³ *Russian National Security Blueprint*, 30 December 1997, www.fas.org.

military capabilities on the Eastern Flank is perceived as one of the most important military threats to Russia.

The NRFA also refers to a number of agreements, which at the time of its adoption were the foundation of the regime of arms control and disarmament. They were augmented by confidence and security-building measures in Europe, including military transparency in particular. These agreements are The Treaty on Conventional Armed Forces in Europe (CFE), the Open Skies Treaty (OST) and The Vienna Document (VD). These agreements are recognised by the NRFA as the foundations of maintaining peace and confidence in the OSCE area.

In 2007, Russia suspended its participation in the CFE, and in 2015 it withdrew from the work of a joint consultative group (Russia is represented by Belarus during the meetings). Although Russia formally remains a party to the treaty, it has in practice withdrawn by ceasing to provide data on the deployment of military forces and equipment and refusing to allow inspections that could verify such information.⁴ In addition, the stationing of Russian troops in the territories of Georgia, Moldova and Ukraine without the consent of these countries is an outright violation of the CFE.

Russia also violates the OST treaty. It has significantly reduced the possibility of Allied reconnaissance flights over the Kaliningrad enclave and the Russian border with Georgia. It has reduced the number of airports that can be used by states carrying out reconnaissance flights approved in accordance with the Treaty and terminated a bilateral technical agreement with the U.S. to facilitate such flights.

Russia also avoids fulfilling its obligations under the Vienna Document. Within the framework of the OSCE mechanisms, it should report in advance the planned exercises with the participation of more than 9,000 troops and should invite observers should the planned manoeuvres exceed 13,000 troops. Russia notoriously divides manoeuvres into smaller chunks, each remaining below the thresholds provided by the VD, while the whole series of coordinated exercises goes well beyond the approved limits. According to the Russian authorities, the *West 2017* exercises involved 12,700 troops. However, the series of other manoeuvres connected with *West 2017* increased the number of Russian and Belarusian forces up to between 60,000 and 70,000 troops.⁵

Russia's withdrawal from the CFE and violations of the VD and OST indicate that Moscow does not conduct a transparent security policy and does not want to be restricted by any arms control regime. This is a violation of the obligations of the NRFA. The lack of military transparency has led to an increased number of military incidents and growing military tensions in the Euro-Atlantic area.

It can be assumed that Russia's goal, contrary to the spirit of the NRFA, is to increase tension in relations with NATO and actively use military pressure on selected countries in the Russian neighbourhood, including Alliance members. After 2014, the number of unannounced exercises ("snap" exercises) increased significantly, including the placement of individual units and even entire military districts in a state of increased readiness. According to Russian data, about 30 unannounced exercises of various types and sizes were carried out in the Western Military District in 2017 alone.

Russian planes have repeatedly made provocative and dangerous manoeuvres in the vicinity of NATO aircraft and ships in international airspace and international waters in the Baltic and Black Sea regions.⁶ Russian aircraft have been regularly employed to violate the airspace of NATO countries, especially Lithuania, Latvia and Estonia, but also Romania. Russian planes, which fly with their identification devices (transponders) switched off, are responsible for a number of incidents that involved civilian passenger planes. Considered only at the technical level, such actions are a violation of the Act, in which the parties

⁴ It is highly likely that Belarus also provides Russia with data acquired from NATO countries through exchanges and inspections. As a response to the 2007 suspension of Russian participation in the CFE, NATO countries ceased carrying out such obligations towards Russia.

⁵ See, e.g.: D. Johnson, "ZAPAD 2017 and Euro-Atlantic security," *NATO Review*, 14 December 2017, www.nato.int.

⁶ See, e.g.: J.E. Barnes, G. Lubold, "Russian Warplanes Buzz U.S. Navy Destroyer, Polish Helicopter," *The Wall Street Journal*, 13 April 2016, www.wsj.com.

undertook to strengthen regional aviation safety. Finally, Russia is also accused of constant cyberattacks against closer and more distant NATO members.⁷

Possible Areas of Dialogue and Cooperation between NATO and Russia

During the Cold War, NATO learned that to maintain cohesion and limit the risk of conflict it was necessary to complement deterrence with dialogue. In 1997, the NRFA gave Russia a privileged mechanism for political dialogue, which was further strengthened in 2002. In the NATO-Russia Council, both sides could meet as partners at ambassadorial level (once a month), defence and foreign ministry level (twice a year) and occasionally head of state and government level (usually during the NATO summits.). The NRFA also opened the way for practical cooperation, which comprised, among other things, combating terrorism, missile defence, the security of Afghanistan, counter-narcotics operations, combating piracy, civil emergencies, non-proliferation of weapons of mass destruction and arms control, nuclear strategies, and scientific cooperation.

After the annexation of Crimea, NATO suspended practical cooperation with Russia but kept channels of communications open, although it was difficult to agree the agenda of any formal meetings for some time. At the NATO summit in Warsaw in July, the Allies declared openness to a periodic, focused and meaningful dialogue with a Russia willing to engage on the basis of reciprocity in the NRC. At the same time it stressed that return to “business as usual” would not be possible without clear, constructive change in Russia's actions that would demonstrate compliance with international law and its international obligations and responsibilities.

In 2016, NATO resumed “meaningful dialogue” at the ambassadorial level. The Alliance also maintains military channels of communication. General Valery Gerasimov, Chief of the General Staff of the Russian Armed Forces, met the Chairman of the NATO Military Committee General Petr Pavel in September 2017. The following April, there was a further meeting, with General Curtis Scaparrotti, NATO Supreme Allied Commander Europe. A special telephone line was also tested, allowing contact between the highest-ranking NATO and Russia commanders in crisis situations.

Since resuming, the agendas of the NRC meetings have included conflict in Ukraine, military transparency and lowering the risk of military incidents. This has involved the presentation of information on selected exercises and deployments of troops (including NATO's enhanced Forward Presence and Russian military capabilities in the west of the country). The talks included aviation safety in the Baltic Sea region. In July 2017, the debate was extended to the situation in Afghanistan, and in May 2018 to asymmetric/hybrid activities and their role in security strategies and defence doctrines.

Dialogue on the most crucial aspects of mutual security hasn't brought positive results so far. Russia does not seem interested in greater transparency, and violates arms control agreements, for example by presenting false information on the scale of exercises.⁸ Despite talks about aviation safety, Russian aircraft continue to make dangerous manoeuvres in the vicinity of Allied air and naval units in Europe.⁹ The Permanent Representative of the Russian Federation to NATO openly indicated that de-escalation of tensions would not be possible without resuming the previous level of dialogue and cooperation.¹⁰ This, in particular, would be used by Russia to prove that it is no longer isolated.

⁷ A. Mutler, “Romania Minister Says Country Facing Constant Cyber Attacks, Russians,” *AP News*, 25 June 2018, www.apnews.com; E. MacAskill, “U.S. and UK Blame Russia for ‘Malicious’ Cyber-Offensive,” *The Guardian*, 16 April 2018, www.theguardian.co.uk.

⁸ Press notice by the NATO Secretary General Jens Stoltenberg following the meeting of the NATO-Russia Council, 26 November 2017, www.nato.int.

⁹ See, e.g.: H. Ellyatt, “US Navy releases video of a Russian fighter jet buzzing one of its planes,” *CNBC*, 31 January 2018, www.cnbc.com.

¹⁰ *Statement by Mr. Alexander Grushko, Permanent Representative of the Russian Federation to NATO at the 2017 Annual Security Review Conference*, Vienna, 27 June 2017, www.osce.org.; *Foreign Policy Concept of the Russian Federation* (approved by President of the Russian Federation Vladimir Putin on November 30, 2016), www.mud.ru.

Russia has always treated talks in the NRC as a tool to influence the decision-making process in NATO.¹¹ The NATO-Russia Council provides the Kremlin with a useful tool for exploiting the differences between the Allies. Hence, it offers cooperation in certain areas, such as fight against terrorism or cybersecurity, in exchange for constraining and eventually withdrawing the U.S. and NATO presence in Central and Eastern Europe. It expects that the Allies will not be ready to bear the costs of deteriorating security and will finally make such concessions, which will de facto or de jure grant Russia a sphere of influence on the territory of former Soviet republics and a buffer zone on the territory of NATO and EU border states.

Among the NATO and expert community, there are two different perspectives about how to approach dialogue with Russia in such circumstances. For some NATO members (mainly Germany, France and southern members of the Alliance), the fact that Russia is ready to go to the brink of confrontation is an argument that the scope of dialogue should be broadened, and that the Alliance should even consider returning to some forms of cooperation with Russia. This could maintain, the argument goes, the importance of the NRC, limiting the risk that Allies would strengthen bilateral contacts, which could undermine NATO's cohesion.

Others (especially Poland and the Baltic States) emphasise that NATO-Russia Council meetings are used by Russia to exert political pressure on the Alliance, and that broadening the scope of dialogue would be a major concession towards Russia. This, together with a dogmatic approach to the NRFA, would send a strategic signal that NATO was succumbing under pressure. With proof of the benefits of its aggressive policy, Russia would have no interest in observing the agreed norms and may hope that further escalation of tension would break the Alliance.

Due to the specificity of the NRC as a channel of political contacts, there is no real possibility to deepen dialogue on arms control and prevention of incidents. This would require a return to practical expert cooperation and/or forums and organisations better adapted to work on detailed solutions. For example, a working group of the International Civil Aviation Organisation (ICAO) has been dealing with flight safety in the Baltic Sea region since 2015. Irregular or individual briefings on the deployment of troops on the NATO and Russian borders do not replace the wider and comprehensive system of notification and inspection of the CFE Treaty.

Russia wants to expand the discussion and exchange of information in the NRC about exercises. However, agreeing to this would mean reducing the significance of the Vienna Document. It would also undermine NATO's efforts to modernise the VD in the OSCE forum. This modernisation may also cover issues of responding to military incidents. The strengthening of such a mechanism, which is already in Vienna Document (Art. 17), is promoted by Poland.

The OSCE, with its 57 members including Sweden, Finland and Ukraine, who are not members of NATO, is a much more appropriate forum for such discussions than the NRC. Sharp disputes between Ukraine and Russia at the OSCE are, however, cited by some of the Allies as one of the sources of the impasse in this organisation and the argument for the talks in other formats.

Coordination of the joint position of NATO countries in the NRC with their bilateral activities with Russia and other forums is becoming more and more challenging. An example of this was the proposal to conclude a new agreement with Russia on conventional arms control in Europe (replacing the CFE Treaty), presented in August 2016 by Frank-Walter Steinmeier, then minister of foreign affairs of Germany. In the end, it translated into the opening of "structured dialogue" in the OSCE with a lower level of ambition (discussion on doctrines, trends in the armed forces and perception of threats). But it also led to the creation of the group of "like-minded countries" outside the OSCE, which consists of 22 countries (excluding Russia, the U.S. and Poland). Since September 2016, the like-minded group has been discussing the future arms control regime.

¹¹ Vladimir Putin, *Speech and Answers to Questions at Rice University*, Houston, 14 November 2001, <http://en.kremlin.ru/events/president/transcripts/21400>.

Conclusions and Recommendations

The intention of the NRFA was to send a strategic signal that NATO does not treat Russia as a threat. At the same time, there was a consensus in the Alliance that it could not accept any limitations on its right and ability to act in self-defence. In practice, however, the NRFA has been treated by numerous countries as an excuse for cutting down on defence spending and necessary investments, which limited NATO's ability to perform collective defence and crisis management missions at the same time.

A number of serious Russian violations of the NRFA gives the Alliance grounds to withdraw from its provisions, in particular from restrictions on the permanent stationing of substantial combat forces on its Eastern Flank. This commitment concerned the "current and predictable security environment" of 1997, which undoubtedly underwent a radical change due to Russia's actions (*rebus sic stantibus* clause). Depending on the interpretation of the term "substantial combat forces", it would be possible to increase the presence beyond the battalion-size (1,000 soldiers) multinational battle groups, while adhering to the main provisions of the Act. If the Russian definition from 1998 and 1999 were to be adopted, NATO could deploy additional forces if they did not exceed the threshold of one brigade in each of the new NATO members (about 5,000 soldiers).

NATO also has the right to a flexible, rather than dogmatic, interpretation of the term because of the negative trends in Russia's military modernisation. The scale of acceptable strengthening of NATO's presence within the NRFA pledge should be considered with reference to Russia's increased military superiority in the region, which affects the interpretation of NATO's "substantial combat forces". By moving from rotational to fixed presence on the territories of new NATO members, the major powers would signal that the status of the region is not negotiable and the Alliance will not succumb to Russian pressure.

However, it is not so much the issue of formal interpretation that determines the direction of the Allied discussion, but rather the political premises. A number of NATO states do not perceive Russia as a key threat, especially when they have to deal with migration and terrorism. NATO would also like to avoid further escalation of tensions with Russia. With inadequate defence spending and neglected investments, even major European powers do not possess the necessary resources to deal with threats in the south and the east at the same time.

The abandonment of the NRFA could also change the whole concept of the security order, from collective security and possible cooperation with Russia to a policy based mainly on deterrence. This, in turn, would mean an uncontrolled increase in the political, economic and military costs of maintaining peace in Europe. Avoiding such a scenario is the main goal of a number of NATO states, and the NRFA provides a useful mechanism for this. At the same time, many countries also believe that keeping the NRFA in force is an essential incentive for Russia to respect the rule-based order, but if Moscow decided to dismantle it further, NATO would have a stronger basis to act in self-defence by demonstrating "moral superiority."

For these reasons, NATO and the U.S. should be prepared for compromise, which would allow the Alliance to act in the spirit of the NRFA and make its presence on the Eastern Flank permanent. The U.S. Congress is already considering whether to change the presence of the Armored Brigade Combat Team from rotational to permanent. Such a deployment could still be within the spirit of the NRFA, while sending a signal to Russia that it will not achieve its goals by a policy of aggression and intimidation. It would also be a message that, should Moscow attempt to enforce a new security architecture, NATO border states will not be treated as a buffer zone.

It is likely that a number of Allies will try to balance deterrence with deeper dialogue with Russia. In such a case, dialogue should comply with three principles:

- 1) Non-initiation of practical cooperation with Russia ("business as usual"), until it meets the conditions set out in the communiqué from the summit in Warsaw.
- 2) Not undermining the role of other European security institutions, in particular the OSCE.

3) Return to the practice of agreeing NATO's position ahead of the NRC meeting, especially on the most divisive issues.

However, NATO also has to be prepared for the fact that the scope and substance of dialogue with Russia can be significantly influenced by results of consultations between U.S. President Donald Trump and his Russian counterpart Vladimir Putin. Hence, pressure for renewed cooperation cannot be excluded, especially in the fight against terrorism.