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POLSKI INSTYTUT SPRAW MIĘDZYNARODOWYCH
THE POLISH INSTITUTE OF INTERNATIONAL AFFAIRS

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NO. 6 (114), JUNE 2022 © PISM

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Consequences of the Russian Invasion of Ukraine for the 1997 NATO-Russia Founding Act

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Russia's revisionist policy, which culminated in the invasion of Ukraine on 24 February, tore down the foundations of the Euro-Atlantic security system based on the international law and principles listed in the 1997 NATO-Russia Founding Act. Despite Russia's repeated violations of its commitments, NATO has been unilaterally honouring the Act, including by not stationing permanent substantial combat forces in the eastern part of the Alliance. However, given the current security situation, NATO should declare that it does not feel bound by the self-imposed military limitations of the Act. Honouring them is of no benefit in relations with Russia, impedes a response to the Russian threat, and creates unnecessary risk.

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On 25 February, the day after Russia launched its full-scale invasion of Ukraine, the leaders of NATO countries called the Russian actions a “flagrant rejection of the principles enshrined in the NATO-Russia Founding Act” (NRFA) and stated that “it is Russia that has walked away from its commitments under the Act”.¹ However, the leaders have not directly outlined a stance on NATO’s further adherence to the NRFA. A clear position on this issue is important in the perspective of the NATO summit in Madrid in late June as it will have implications for NATO’s new strategy, which is to be approved at the meeting, and on the Alliance’s ability to respond to the Russian threat in the longer term.

Origin of the NRFA

After the Cold War and the break-up of the USSR, Western countries faced the challenge of building a stable security system that would enable safe development with a longer perspective. This system was based on interrelated principles such as the indivisibility of security, refraining from the threat or use of force, inviolability of borders, and sovereign states’ freedom to choose alliances. In the institutional dimension, the pillars of this security architecture were to comprise a reformed NATO, deepened European integration within the EU, a strengthened role for the Organization for Security and Cooperation in Europe (OSCE), and an attempt to build a strategic partnership between NATO, the EU and their individual members and Russia.

During negotiations on the reunification of Germany, Russia did not receive any formal guarantees that NATO would not accept new members in the future, but only that the Alliance would not deploy its forces and infrastructure in the eastern part of Germany in peacetime.² Moreover, when deciding on its enlargement in the east, NATO made fundamental changes to its strategy. They were to signal that the Alliance is acting in the spirit of the principle of the indivisibility of security and neither treats Russia as a threat nor poses a threat to Russia. In December 1996, the Allies declared that they had “no intention, no plan, and no reason” to deploy nuclear weapons on the territory of new members. Further, NATO declared in March 1997 that “in the current and foreseeable security environment,” it would “carry out its collective defence and other missions by ensuring the necessary interoperability, integration, and capability for reinforcement rather than by additional permanent stationing of substantial combat forces.” These political self-restraints were later included in the Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation, signed in May 1997. NATO and Russia did not agree on the definition of “substantial combat forces” in the Act, but during the talks on conventional arms control in 1998-1999, NATO members agreed with the Russian interpretation, according to which this term regarded forces bigger than one brigade (around 5,000 troops) in each of the new member states.³

In the Act, NATO countries and Russia reaffirmed that they would respect the norms and principles from the United Nations Charter, the Universal Declaration on Human Rights, as well as their commitments under the Helsinki Final Act and subsequent OSCE documents, including the 1990 Charter of Paris of New Europe. Both sides declared they did not

NATO and Russia declared they did not consider each other as adversaries and that they would strengthen cooperation on the basis of, among others, respect for human rights, refraining from the threat and use of force, respect for the sovereignty, independence and territorial integrity of all states, their freedom to choose the means to provide for their security, and military transparency.

¹ “Statement by NATO Heads of State and Government on Russia’s attack on Ukraine,” NATO, 25 February 2022, www.nato.int.

² M.E. Sarotte, “Not One Inch Eastward? Bush, Baker, Kohl, Genscher, Gorbachev and the Origins of Russian Resentment toward NATO Enlargement in February 1990,” *Diplomatic History*, 2010, nr 1, pp. 119-140.

³ 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.

PISM STRATEGIC FILE

consider each other as adversaries and that they would strengthen cooperation on the basis of, among others, respect for human rights, refraining from the threat and use of force, respect for the sovereignty, independence and territorial integrity of all states, their freedom to choose the means to provide for their security, and military transparency. NATO's readiness to develop ties with Russia was especially manifested by an offer of privileged mechanisms of political dialogue, first in the Permanent Joint Council, and later in the NATO-Russia Council (NRC). At the initiative of the Alliance, NATO and Russia developed practical cooperation in a number of areas, including in the transit of supplies to NATO forces in Afghanistan, combatting terrorism, and maritime crew search and rescue. Russia was not granted a right to veto NATO decisions but it could co-decide on joint initiatives, while regular participation in NRC meetings at various levels gave it additional possibilities to exert political influence on NATO member states.

Russia's Dismantlement of the NRFA and Security Architecture

Russia's problems with respecting its obligations started already in the 1990s and intensified in the following decades.⁴ The adaptation of the Treaty on Conventional Armed Forces in Europe (CFE), which was to reduce the risk of a major military conflict, to the realities of the collapse of the USSR and the enlargement of NATO failed, as Russia violated the treaty provisions and other obligations regarding the withdrawal of Russian troops from Georgia and Moldova, and eventually suspended its implementation. In its strategies and doctrines, Russia indicated that its goal was to reintegrate the

territory of the former USSR and, referring to the principle of the indivisibility of security, argued that the enlargement of the Alliance was a threat to it.⁵ When, at the 2008 summit in Bucharest, some of the allies refused to grant Georgia and Ukraine a Membership Action Plan (MAP), instead accepting a political declaration that they would be members of the alliance in the future, Russia began attempts to restore a sphere of influence through *fait accompli*.

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North Ossetia and to recognise the independence of both self-proclaimed republics. At the same time, it proposed a new treaty on European security that would give it the right to veto other countries' sovereign decisions if it considered them to be a threat to its security. In 2014 it annexed Crimea and sparked a conflict in eastern Ukraine and tried to limit Ukrainian sovereignty by acting through the so-called separatists.⁶

By increasing the pressure in its neighbourhood, Russia took various actions aimed at intimidating NATO countries, weakening the political cohesion of the Alliance and its ability to strengthen security in the area Russia considers its sphere of influence. Russia was limiting its cooperation on arms control, transparency, and confidence-building measures. In 2007, it suspended its implementation of the CFE treaty and *de facto* withdrew from it in 2015. Russia organised military drills in a way to circumvent the provisions of the Vienna Document on observation of manoeuvres by foreign inspectors. Attempts at dialogue and cooperation on U.S. and NATO missile defence in Europe have failed because Russia has not been interested in the transparency of activities in this area, but in

4 A.M. Dyer, A. Kacprzyk, M. Terlikowski, W. Lorenz, "How Russian Violations of the 1997 Founding Act Influence NATO-Russia Relations," *PISM Policy Paper*, 6 July 2018.

5 A.M. Dyer, "Russian Policy on Nuclear Deterrence," *PISM Spotlight* no. 39/2020, 8 June 2020; A.M. Dyer, "Russia's New Direction for Its Armed Forces," *PISM Bulletin* no. 4/1241, 12 January 2015.

6 M. Zaniewicz, S. Zaręba, "Russia Recognises 'Peoples Republics' in Donbas," *PISM Spotlight*, 22 February 2022, A.M. Dyer, "The Annexation of Crimea: A Challenge for Russia to Balance the Books," *PISM Bulletin* no. 66/1778, 22 May 2014.

PISM STRATEGIC FILE

stopping the construction of this system or at least gaining control over it and taking responsibility for the security of the Baltic states and Poland. It rejected dialogue on transparency and the reduction of its non-strategic nuclear arsenal (much larger than that of NATO), demanding a unilateral U.S. withdrawal of such weapons from Europe. Russia secretly violated the Intermediate-range Nuclear Forces (INF) Treaty and increased the number of missiles threatening Europe.⁷ Moreover, Russia violated the provisions of the Open Skies Treaty (OST), which contributed to the U.S. withdrawal, and later Russia itself, from the treaty.⁸ It also violates the Chemical Weapons Convention (CWC), not only by having such weapons, but also using them (including on the territory of the Alliance countries).⁹

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of military activity in NATO member and partner countries. Russia threatened that failure to meet these demands would result in a “technical-military response”. What is more, by simultaneously concentrating troops around Ukraine, it threatened indirectly with a massive invasion of that country. Although NATO upheld its offer for dialogue, especially on arms control, and signalled its readiness to talk about the principle of the indivisibility of security, Russia on 24 February invaded Ukraine.¹¹

Russia’s actions violated most of the principles contained in the NRFA. Russia is breaking its obligations to respect human rights both in the country and during military operations abroad. Deliberate attacks on civilians, rape, looting, and destruction of infrastructure have become an integral part of Russia’s military operations. Russian troops have committed war crimes, and many of their actions, such as the mass murder of civilians in Bucha, bear the hallmarks of genocide.¹² The Russians have repeatedly blocked attempts to create humanitarian corridors for the evacuation of civilians and forcibly moved parts of the population from areas they have occupied deep into Russia. In the territories they occupy, they use terror against the inhabitants, often forcing them through violence to cooperate. It is impossible for international humanitarian organisations to operate in these areas. During the aggression against Ukraine, the Russian authorities indicated the possibility of attacks on convoys from NATO member states with military support for Ukraine. They also have tried to intimidate Ukraine and

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7 “Director of National Intelligence Daniel Coats on Russia’s INF Treaty Violation,” Office of the Director of National Intelligence, 30 November 2018, www.odni.gov; “Timeline of Highlighted U.S. Diplomacy Regarding the INF Treaty Since 2013,” U.S. Department of State, 30 July 2019, <https://2017-2021.state.gov>.

8 Ł. Kulesa, “U.S. Withdrawal from the Open Skies Treaty,” *PISM Spotlight* no. 32/2020, 22 May 2020, www.pism.pl.

9 “Evidence of Russia’s Involvement in Salisbury Attack, Statement by Ambassador Karen Pierce,” UK Permanent Representative to the UN, 6 September 2018, Foreign and Commonwealth Office.

10 A.M. Dyer, M. Terlikowski, “Potential Impact of Russia’s Demands on NATO’s Defence and Deterrence,” *PISM Bulletin*, no. 218, 22 December 2021.

11 A.M. Dyer, A. Kacprzyk, “U.S.-NATO Talks with Russia Yield No Breakthrough,” *PISM Spotlight*, no 3/2022, 13 January 2022, www.pism.pl; A. Kacprzyk, “The U.S. and NATO Deliver Written Responses to Russia’s Security Demands and Proposals,” *PISM Spotlight* no. 7/2022, 3 February 2022.

12 M. Piechowska, Sz. Zaręba, “The Bucha Massacre-Russian Crimes in the Kyiv Region,” *PISM Spotlight* no. 77/2022, 5 April 2022, www.pism.pl.

PISM STRATEGIC FILE

NATO by signalling the possibility of using weapons of mass destruction.¹³

In the last two decades, Russia has repeatedly used threats of direct use of force against its neighbours and has conducted military actions against them. It has shown that it does not respect the right of other countries to choose their own alliances, and is ready to prevent them from doing so by openly using military force, undermining their territorial integrity, seizing territory, limiting sovereignty, and even attempting total subjugation. It repeatedly threatened to use force against Alliance countries, organised exercises based on offensive scenarios of attacks on NATO territory, and took aggressive actions near the borders of the Alliance (e.g., violating the airspace of Alliance countries). The Russian authorities have not treated NATO as a partner but as an enemy.

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NATO's Approach to the NRFA

Before 2014, the Alliance responded to Russian violations of the NRFA in a very limited way. Following the Russian invasion of Georgia in 2008, NATO suspended NRC meetings and practical cooperation in some areas, but resumed them less than a year later. At the 2010 Lisbon NATO summit, leaders of its member states reaffirmed the "strategic importance" of cooperation with Russia and sought to deepen it. Up till 2014, NATO did not have a policy of deterring Russia. Reforms and reductions in NATO structures and the armed forces of its member states reflected the focus on crisis-management operations out of the territory of NATO member states. It conducted collective defence exercises only occasionally and NATO commands and multinational forces were not prepared for high-intensity operations. In sum, NATO was not developing mechanisms that—according to the NRFA—were to ensure the ability to defend through reinforcement. At the same time, NATO maintained a very small military presence—much smaller than even a very restrictive interpretation of the NRFA would allow for—in Central and Eastern Europe. It was limited to the mission of air policing over the Baltic States (since 2004, four fighter aircraft participated in it at any given time), a transport aircraft base in Hungary, and a training centre and signal battalion in Poland. U.S. construction of bases included in the NATO missile defence system in Romania (finished in 2015) and Poland (ongoing) has been aimed at providing defence against limited ballistic attacks from the Middle East, not from the much larger Russian arsenal. Although the U.S. also took additional actions in the regions outside of NATO, they were not aimed at deterring Russia either, but at developing a general interoperability with allies. The U.S. sent to Poland unarmed Patriot air defence systems at first, and later, once every few months, a small number of fighters and transport aircraft. Exercises on the Eastern Flank involved no more than a few hundred American troops, while new bases in Romania and Bulgaria were intended mostly to facilitate the transfer of troops and supplies to Iraq and Afghanistan.

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¹³ A. Kacprzyk, "Russia's Nuclear Threats During the Invasion of Ukraine," *PISM Spotlight* no. 53/2022, 10 March 2022, www.pism.pl.

PISM STRATEGIC FILE

under the Act. NATO members deployed small units on the Eastern Flank, mainly for exercises, and focused on the development of the capability to deploy bigger forces in a crisis. Only in 2017, one multinational battalion-size battle group was deployed in Estonia, Latvia, Lithuania, and Poland under NATO Enhanced Forward Presence (EFP). Each of these units has been much smaller than a brigade and deployed on a rotational basis. Romania hosted even smaller forces for training purposes. Although the U.S. started to rotate an armoured brigade with logistic and aviation support to the Eastern Flank, the total size of the troops under NATO command and U.S. forces deployed on a bilateral basis remained below the threshold of substantial combat forces, as it corresponded to some 2-3 brigades in at least six NATO countries. The presence of these forces has been first and foremost to underscore that an attack on the Eastern Flank countries would be an attack on all NATO members and would trigger a joint response of the other allies. After the full-scale Russian invasion of Ukraine in February, NATO decided to rotationally deploy new battlegroups in Bulgaria, Hungary, Romania, and Slovakia. The allies also increased the military presence in other countries of the Eastern Flank, and to a substantial level in some of them, although most of these deployments have been described as temporary

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Despite the increasingly aggressive Russian actions, some allies have been opposing actions that would be in line even with the NRFA, such as the permanent presence of small forces on the Eastern Flank. The states argued that honouring the self-restraints under the NRFA would allow NATO to keep the “moral high ground” over Russia.¹⁴

The reasons for such a stance have been, however, much broader than a moral question. Some NATO member states considered Russian aggression on NATO as impossible or highly unlikely. According to such views, a bigger and permanent presence of NATO forces on the Eastern Flank would be not only unnecessary but could also provoke a war with Russia. Such a NATO presence also was deemed an obstacle in attempts to stabilise relations with Russia and as a threat to bilateral (including economic) relations of NATO members with this country. Honouring the NRFA was therefore intended to help reduce tensions by demonstrating the non-confrontational approach of NATO and signal that a return to partnership and practical cooperation is possible in the longer term. Compliance with the NRFA could also be a kind of excuse for states that feared that the increased NATO presence on the Eastern Flank would not only be too expensive for themselves but would also divert allied resources from goals they deemed more important (e.g., operations in Africa or the Middle East).

Even given the further Russian actions undermining European security (such as a *de facto* withdrawal from the CFE Treaty, violation of the INF treaty, or conducting military exercises in circumvention of the Vienna Document commitments), NATO still tried to complement deterrence and defence with an attempt to maintain dialogue with Russia. According to a NATO declaration, it was to be based on reciprocity, lead to increased transparency and predictability, and minimise the risk of miscalculation and escalation. But after their resumption in 2016, NRC meetings did not yield results, with Russia trying to use them first and foremost to disinform and divide the allies. In time, Russia lost interest in dialogue with NATO altogether, and the NRC has not met since mid-2019 to the beginning of 2022. Russia has not been interested in increased transparency and predictability because it has been exploiting the lack thereof to create uncertainty around the character and goal of its military actions. In the arms control dimension, Russia presented maximalist demands, which, if fulfilled, would give it

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¹⁴ A. Rettman, “US and Germany say No to Poland on NATO base,” *EuObserver*, 16 April 2016, <https://euobserver.com/world/133084>

PISM STRATEGIC FILE

one-sided advantages over NATO by limiting the Alliance's ability to conduct collective defence.

Conclusions and Recommendations

The invasion of Ukraine dealt the final blow to the Euro-Atlantic security system based on the assumption that Russia is an integral part and will respect agreed norms, the most important goals of which were to prevent changing borders by force and large-scale war. By its aggression, Russia clearly proved that the Russian strategic aim is to subjugate Ukraine and rebuild a sphere of influence. By threatening war and escalation, Russia also has been trying to force NATO to limit its ability to defend Eastern Flank countries, which the Alliance was not even developing for a long time. Such goals and actions show that Russia is a revisionist state that does not accept the European order based on norms and principles developed since the 1975 Helsinki conference.

In spite of NATO's honouring of the NRFA principles, attempts to build partnership with Russia and demonstrating the defensive character of the collective defence mission, Russia has been portraying NATO as a threat and escalating its aggressive actions. Respecting NRFA did not prevent revisionist Russian policy and could even have been seen by it as a sign of weakness, encouraging the full-scale aggression. Further maintenance of NATO's military self-restraints declared in the NRFA will encourage Russia to increase its aggressive actions towards NATO, undermine the Alliance's political cohesion, and impede strengthening NATO deterrence and defence within the new strategy, which should restore the key priority of collective defence.¹⁵

During preparations for the NATO summit in Madrid, the Allies should agree a joint position on the NRFA. The North Atlantic Council should declare that Russia's actions amount to its rejection of the NRFA and that NATO no longer feels bound by self-limitations regarding the implementation of

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collective defence. Given the clear military threat posed by Russia to its neighbours, it is in NATO's interest to have full freedom to enhance its deterrence and defence capabilities, also on the basis of a permanent and substantial presence of allied forces in countries most vulnerable to attack.

A departure from military self-restraints from the NRFA will not mean that NATO will cease to respect the norms and principles of European security affirmed in this document, with the exception of attempts to build

partnership with Russia. It will not exclude a dialogue with Russia on military transparency or decreasing the risk of conflict, although any progress in these matters will not be possible without a fundamental change in Russia's behaviour. It also does not have to lead to the deployment of nuclear weapons in the Eastern Flank countries, although NATO would be entitled to do so. Consensus on NATO nuclear policy is based not on NRFA declarations but on the *status quo* regarding the presence of U.S. nuclear forces in Europe, burden-sharing with respect to the nuclear mission, and having the credible ability to use nuclear weapons.

¹⁵ W. Lorenz, "Forward Defence: a New Approach to NATO's Defence and Deterrence Policy," *PISM Policy Paper*, No. 2 (210), 27 April 2022, www.pism.pl.