The Framework in the Founding Act for NATO-Russia Joint Peacekeeping Operations

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At the Ministerial Meeting of the North Atlantic Council held at NATO Headquarters in Brussels on 10 December 1996, Secretary General Javier Solana was tasked with developing an agreement on a new NATO-Russia relationship. The foundation for the consultations was based on previous “16 plus 1” discussions; that is, the sixteen members of NATO plus the Russian Federation. The participation of the Russian Federation in the Partnership for Peace programs and in contributing troops to the Implementation Force (IFOR) in Bosnia and Herzegovina were cited as favorable factors for this initiative. The NATO ministers envisioned a fundamentally new European security era in which NATO and Russia’s relationships would deepen and widen. Agreement was to be explored on a “framework of its future development” expressed in a “document or ... Charter.”

Founding Act

The Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation was signed in Paris on 27 May 1997. On one
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side, the signatories were the Secretary General of the Atlantic Alliance, Javier Solana, and NATO Heads of State such as President William Clinton, and on the other side, the President of the Russian Federation, Boris Yeltsin. The signatories stressed the historic significance of the Act that was heralded as beginning a "new chapter of Euro-Atlantic security." At the Act's signing ceremony, repeated references were made to the end of the Cold War and to the notion that the Act was laying the foundation for NATO-Russia collective security cooperation in the twenty-first century. President Clinton spoke enthusiastically both about a new Russia and about building a new NATO. President Yeltsin, not to be outdone, expressed at least equal enthusiasm for the Act. Indeed, the euphoria of the Russian President was such that he unexpectedly announced at the end of the ceremony: "I, today, after having signed the document am going to make the following decision. Everything that is aimed at countries present here, all of those weapons are going to have their warheads removed. (Applause.)" A few hours later, spokesmen for President Clinton were still seeking "clarification" about the meaning of the Russian President's "impromptu remark."

The matter of detargeting or deactivation of Russian missiles is only one of many significant international security issues that requires clarification as a result of the signing of the Act. The long-term ramifications in the Act for either classic peacekeeping or new enforcement action operations involving forces from both NATO and Russia is another important area that merits study. In this latter case in particular, professional military experts must look for guidance about joint operations conducted by the combined military forces of NATO and Russia.

The Founding Act is an umbrella document that, at best, lays out a general framework for concrete action. Practical as well as conceptual problems are immediately presented. And, with such far-reaching consequences, it is predictable that differing interpretations of the Act's numerous provisions will surface, probably sooner rather than later. When this happens, the view advanced in this essay is that the language in the document itself must be the starting basis for analysis. In fact, this point already arose on the day the Act was signed. A reporter asked President Clinton's Press Secretary, Mike McCurry, whether he was "convinced now that Boris Yeltsin understands the Russian role [in the Act] in the same way that the United States understands the Russian role and the rest of NATO does?" McCurry responded: "I don't think he [Yeltsin] ever had any understanding but what was in the document that he signed a short while ago."
Interpreting the Founding Act

Significant implications flow from adopting McCurry’s position. Common sense as well as traditional legal practice supports the proposition that the language actually embodied in the text of the Act is the best evidence of the intentions of the signatories. The actual words agreed to by the signatories are certainly entitled to more weight than are the speculations of third party observers or the perception spin given by interested parties to the media.

An initial step in selecting rules to interpret the text of a multilateral document is to determine its status under international law. In the case of the Founding Act, this is not as straight forward as one might expect. Recall that the Ministerial guidance provided to NATO’s Secretary General was vague about the form in which the agreement might be expressed. The signatories obviously chose to call the final document an “act.” This deliberate decision by the nations concerned merits a brief examination.

The term “act” is usually “reserved for a multilateral convention concluding a session of States on important questions that lays down the law between them for the future.” An example is the “Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe” signed in Helsinki on 10 July 1992. In Section VIII of this instrument, it is explicitly provided that the “measures adopted in this Act are politically binding.” This Act dealing with Conventional Forces was an outgrowth of the Conference on Security and Cooperation in Europe: Final Act concluded in Helsinki on 1 August 1975, that was also a legally non-binding document. The question of whether a Final Act is a “treaty or merely a machinery arrangement to be utilized by the parties depends upon its interpretation.” The problem with this observation is that it begs the question of what rules of interpretation are to be selected to interpret?

The Founding Act is an international agreement embodying a number of specific commitments that is signed by sixteen Heads of State or Government. These officials are sophisticated people who are well advised by legal experts. Such officials must be presumed, for example, not to have chosen to call the document a “joint declaration” or to select a similar label that clearly connotes noncontractual obligations. In international law practice, a joint declaration is typically a public announcement by several States that expresses a common policy outlook without taking on the character of a contractual or legal obligation. Towards the other end of the international obligation spectrum is the formal treaty that embodies the solemn consent by a sovereign State to accept binding legal commitments. The Founding Act was also not called a
"treaty," and that too must be presumed to be a deliberate choice of the leading political leaders of the signatory States. Considered only from a process point of view, that is unfortunate, for if the Act were a treaty, this examination would be unnecessary. The rules to interpret the meaning of the Act's text under international law would, without doubt, be found in the Vienna Convention on the Law of Treaties. It is noteworthy, however, that, even in this "treaty on treaties," the fact that the signatories consciously chose to call the document an "Act" does not mean that it is not a treaty for the purposes of using the rules in the Vienna Convention. Moreover, the "Act" label does not necessarily mean that the document fails to meet the requirements for a treaty under the domestic law of the United States.

The Vienna Convention provides that the definition of "treaty" in the international law sense may be different from the domestic law sense. Use of terms in the Vienna Convention sense is "without prejudice to the use of those terms or to the meanings which may be given to them in the internal laws of any State." This safeguard takes into account the different internal ratification processes of States. The comment by the International Law Commission about this point in the Vienna Convention reads:

In many countries, the constitution requires that international agreements in a form considered under the internal law or usage of the State to be a "treaty" must be endorsed by the legislature or have their ratification authorized by it. . . . Accordingly, it is essential that the definition given to the term "treaty" in the present articles should do nothing to disturb or affect in any way the existing domestic rules or usage's which govern the classification of international agreements under national law.

The Vienna Convention is not in force for the United States, and the treaty interpretation rules therein are, strictly viewed, not governing for a non-party. But the rules of interpretation in the Vienna Convention do represent "generally accepted principles and the United States has also appeared willing to accept them despite differences of nuance and emphasis." While courts in the United States are generally more willing than those of other States to look outside the instrument, at the travaux préparatoires, in most cases, both the U.S. and Vienna Convention approaches lead to the same result. A closer look at the Vienna Convention is needed to satisfy our quest for what rules are appropriate to interpret the meaning of the Founding Act.

A treaty is defined in article 2 of the Vienna Convention as follows:
... "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation... (emphasis supplied).

On its face, the Founding Act is an international agreement in written form concluded between States as evidenced by being signed by a number of Heads of State or Government. The fact that one signatory was the head of an international organization, i.e., NATO, consisting of virtually all the States involved, only adds weight to the impression that important commitments of some significance were being made for Russia, as well as for NATO and its member States. In its own right, NATO is generally accepted in the modern practice of international law as a proper subject to be governed by international law. Along the same line, one may safely assume that the Secretary General possesses full powers to represent the organization in concluding treaties or other international instruments involving binding commitments of various kinds. The government signatories, also prima facie, have full powers to act as representatives for the purpose of expressing the consent of their respective States to be bound by the instrument. Thus, from a formality standpoint, the Act as executed could have qualified as a treaty under the definition in the Vienna Convention.

The fact remains, however, that the drafters consciously chose not to treat the Act as a treaty. Indeed, the circumstances surrounding the negotiation and execution of the document suggest that high-level political rather than legal commitments were contemplated. Political obligations differ in important respects from legal obligations. While political obligations are not enforceable strictly speaking, they may be more significant in practical impact. Political commitments are usually more comprehensive in scope and carry greater long-term implications than do legal obligations. This would appear to be a fit characterization of the Founding Act. The Act was signed at an unusually high level with great public fanfare. Moreover, there was no provision for domestic ratification included in the document. Without ratification, most States, including the United States, do not contemplate undertaking binding treaty obligations.

Those analyzing the Act and the meaning of its text are accordingly still left with the practical task of interpreting an international instrument containing important commitments for which there are no universally accepted rules. To deal with the problem, this writer decided to adopt the following approach: the Founding Act will be treated as a treaty for the limited purpose of applying the widely accepted rules of interpretation in the Vienna Convention to analyze
the meaning of the text. This decision is justified because, looking at the entire context, the Vienna Convention rules are the best choice for legal guidance given their global acceptance. Indeed, the writer cannot think of better rules to facilitate a disciplined evaluation of this document. Considering the Act as a treaty for the limited purposes of interpretation obviously does not mean that the Act is equivalent to a treaty embodying binding legal commitments. It does mean that selection of such a disciplined approach is more likely to lead to conclusions consistent with the elevated status of the signatories whose direct participation indicates that the exact wording of the Act was intended to be taken very seriously.

In the case of the United States, there is no evidence that President Clinton intended the Act to be a formal treaty in the sense contemplated by the U.S. Constitution. Had that been his intent, he would have planned to seek the advice and consent of the Senate. There is great wisdom in consulting the Senate early and often on important foreign policy matters, but nothing indicates that the President wanted to present the difficult issues raised by the Act to public debate in the Congress. Given that the Senate is controlled by the opposition party, the President was probably content at this stage to rely upon his inherent powers as Head of State and Commander in Chief of the Armed Forces as the sources of his authority to act. Of course, the fact that a treaty is not perfected in the municipal law sense does not relieve the State of its obligations under international law. Confusion sometimes arises on this point because while the domestic and international law spheres are related, they are often quite distinct. This duality of legal regimes can be quite handy. In this case for instance, President Clinton probably achieved exactly what he wanted for both his domestic and international law purposes. That is, the United States intends to honor the political commitments to other nations made by the President in the Act under international law but is not bound by legal obligations in the Act under domestic law.

In light of the foregoing, the legal status of the Act under either domestic or international law is unaffected merely by using the treaty interpretation principles and rules in the Vienna Convention to help ascertain the meaning of its language. In all events, interpreters use either implicit or explicit rules to reach conclusions about the meaning of text. In this study, the Vienna Convention rules are expected to provide some guidance.

Proceeding on that basis, Article 31(1) of the Vienna Convention first provides the general rule that a treaty must be interpreted in good faith by according ordinary meaning to its terms “in their context and in light of its object and purpose.” The context expressly includes agreements relating to
the treaty. In the case of the Founding Act, this category covers many treaties and other forms of international agreements that are cited with favor or directly incorporated by reference. Examples include the UN Charter and the Helsinki Final Act.

Paragraph 3 of Article 31 of the Vienna Convention deals with the subsequent practice of States that is to be taken into account with the context. Sub-paragraph 3(a) identifies subsequent agreements between the parties interpreting the treaty or applying its provisions as part of this subsequent practice. Sub-paragraph 3(b) references “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.” Thus, subsequent practice includes both words and deeds.

The primacy of the written text itself over external context is demonstrated by the Vienna Convention’s interpretative rules with respect to supplementary sources. Supplementary means of interpretation may be sought in the preparatory work leading up to the document text and the circumstances of the treaty’s conclusion. But recourse to supplementary means of interpretation is allowed for two limited purposes. Supplementary sources may be consulted either to confirm the meaning of the text itself or to determine the meaning when the text is ambiguous or obscure or leads to a result “manifestly absurd or unreasonable.”

The North Atlantic Treaty

Before examining the text of the Founding Act in light of the rules of interpretation in the Vienna Convention, it is necessary to understand the North Atlantic Treaty that created NATO. Certainly there is no argument about applying the Vienna Convention’s rules of interpretation to this treaty in an effort to ascertain the legal parameters governing NATO.

Entering into force in 1949 at the outset of the Cold War, the North Atlantic Treaty established NATO as an organization to provide for the collective defense of its members; that is, an armed attack on one is an attack on all. The operative language is contained in one long sentence in Article 5 of the Treaty:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article
51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.18

The text of Article 5 is unmistakable about where the armed attack must occur against a Party: the attack must be in Europe or North America. Article 6 is even more geographically specific by expressly citing the "territory of any of the Parties in Europe or North America, . . . on the occupation forces of any Party in Europe, on the islands under the jurisdiction of any Party in the North Atlantic area north of the Tropic of Cancer or on the vessels or aircraft in this area of any of the Parties."19

The question that immediately arises for an essay concentrating on peacekeeping is where is the authority in the North Atlantic Treaty for NATO to initiate peacekeeping operations in Bosnia and Herzegovina? Where was the armed attack against a Party as required by Article 5? And even if the Article 51 concept of self-defense was construed to deem that an armed attack occurred, did it take place on the territory of any of the NATO members as concretely defined in Article 6 of the North Atlantic Treaty?

The express mention of Article 51 in Article 5 leaves no room for argument about the point that NATO was conceived as an Article 51 self-defense organization under Chapter VII of the UN Charter. The North Atlantic Treaty was also formally ratified by its Parties (including the Senate of the United States) as a Chapter VII entity. The reason was plain fifty years ago and is plain now. Had NATO been established as a regional collective security arrangement to undertake enforcement actions under Chapter VIII, it would be subject to a Soviet veto in the Security Council. Article 53 of the Charter explicitly provides that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council. . . ." To give the Soviets a veto over NATO actions would defeat the purpose of an organization established to defend against an armed attack by the Soviet Union or its allies in the North Atlantic territories of the Parties.

An argument can be made that while the ordinary meaning of the terms and conditions in Article 5 do not allow NATO to initiate affirmative military action outside the territory of the Parties, the member States agreed to proceed according to NATO procedures. The reasoning is that this is subsequent practice manifesting agreement by the Parties and this makes non-self defense, out-of-area operations legal. On the international law plane, this argument has some validity. Recall that the Vienna Convention recognizes subsequent practice as part of the context to interpret a treaty or to apply its provisions.
The North Atlantic Council did authorize NATO’s out-of-area peacekeeping operations and all sixteen member States have manifested their consent to the peacekeeping operations in Bosnia and Herzegovina at the highest levels in many ways.

But there is a problem with this line of reasoning from a Rule of Law perspective. As explained above, the Vienna Convention accords primacy to the ordinary meaning of words in the text. What is the value of a treaty text at all if context in the form of subsequent practice can conflict directly with the ordinary meaning of the words? Strained interpretations of context, as a matter of principle, may not be a subterfuge for amending plain treaty language. The text, and the rules embodied in it, must be honored for the interpretation process has good faith limits. Black cannot be white no matter how strong the political will to declare it so. If the text of a treaty is bad, then the remedy is to amend the language as provided by its terms. The Rule of Law does not lend itself to “picking and choosing” to meet the needs of political expediency. The language is so plain in the North Atlantic Treaty that there is no ambiguity about the point that NATO is an Article 51 self-defense organization under Chapter VII and not a regional enforcement organization under Chapter VIII of the Charter. Agreed subsequent practice, admittedly based on the consent of all the parties, cannot be ascribed the same legal stature as an amendment to the clear terms of a treaty. An argument on the subsequent practice context has to be fashioned in a mode that is at least compatible with the plain meaning of the terms in the treaty. Moreover, in the case of the North Atlantic Treaty, there is an agreed process for making amendments which requires using the same ratification procedures that were used for formalizing the original text. However much one sees the practical and political value of using NATO for activities beyond its constitutional limits, adherence to the Rule of Law is a higher imperative. The short-term gains in ignoring the law cannot outweigh the long-term benefits of following it. This seems elementary but it must be said in this case.

Confusion about the Articles 5 and 6 problem may stem from international law being based on the consent of sovereign States. Essentially, States may do between themselves whatever they agree to do. Third parties seldom have legal standing to complain. Thus, in the sphere of international law, there is no effective legal remedy for an ultra vires charge with respect to NATO’s out-of-area peacekeeping operations in the absence of the treaty-mandated armed attack. Who has standing to call the sovereign States to task? There is no obligation on a Member State to look behind the ostensible authority of senior representatives in the North Atlantic Council who approve the actions.
Lack of remedy or effective enforcement, however, does not mean lack of law and the obligation to obey the law. There is a duty to obey law on the international plane even in the face of imperfect enforcement. And this philosophical issue is by no means limited to interpretation of the North Atlantic Treaty.

Of course, the enforcement issue is quite different under U.S. domestic law where the Constitution is the supreme law of the land. Both the President and Congress can be held accountable to obey the Law of the Land. Courts do enforce the Constitution and this is at the heart of why the United States promotes the Rule of Law in the former Warsaw Pact nations. Under the domestic law of the United States, the treaty ratification processes of the Constitution must be satisfied if and when a case is presented. If the text of the North Atlantic Treaty is somehow found to admit of the interpretation that the current NATO peacekeeping operations in Bosnia and Herzegovina were contemplated within the four corners of the treaty, the Court may consider supplementary sources such as are found in the debates at the time the Senate gave its advice and consent in 1949. However, this avenue of possible support is unlikely to provide much aid or comfort for the proponents of the current action. This is not to suggest that the Senate is unaware today that NATO is conducting out-of-area peacekeeping operations that go beyond Article 51 self-defense. Clear evidence of notice to the Senate is provided when Congress appropriates funds to support NATO's peacekeeping operations in Bosnia and Herzegovina. This formal act suggests political approval by the U.S. Congress, including the Senate. However, use of these implied methods of approval is not the same as adhering to the advice and consent procedures expressly required by the Constitution. When NATO is funded by Congress to conduct peacekeeping operations out-of-area, NATO ought to have unquestionable legal authority to carry out those activities. This is true if for no other reason than lives are being put at risk. The proper way for American officials to proceed is to amend the North Atlantic Treaty as provided in that instrument and as required by the U.S. Constitution. Compliance with the Rule of Law in this case may engender a politically distasteful public debate about the proper role for NATO in the post-Cold War era. Such are the costs of Democracy and respect for the Rule of Law. Since the admission of new members to NATO must be considered in formal advice and consent processes anyway, the Senate has an appropriate opportunity, if it so chooses, to revisit the authority of NATO to act under Articles 5 and 6 of the North Atlantic Treaty.

How might out-of-area peacekeeping activities of NATO be characterized under another treaty, e.g., the UN Charter? The oft-cited reference
to UN peacekeeping as falling under "Chapter VI and a half" conveys the notion of activities that go beyond peaceful resolution of disputes but stop short of armed self-defense responses. Under treaty interpretation rules, Chapter VI and one half activities are seen as subsequent practice. Unlike the NATO case, the legitimacy of UN peacekeeping operations is derived from a context of subsequent practice that does not violate any express language in the Charter. To take the comparison one step further, the recent NATO actions in Bosnia and Herzegovina could be characterized as "Chapter VII and a half" missions. The idea is that NATO's peacekeeping efforts there clearly go beyond the "self-defense" of member's territories in the Chapter VII sense of the UN Charter but stop short of being international enforcement actions in the Chapter VIII sense.

By its express terms, the North Atlantic Treaty also must be interpreted as not affecting "in any way the rights and obligations under the Charter...." Modern international law prohibits States from using military force unless the actions are in conformity with the UN Charter. Under the UN Charter, the use of military force is accepted as legitimate for peacekeeping under Chapter VI and a half, for self-defense under Chapter VII, and for enforcement under Chapter VIII. As just noted above, the international community may now be on the verge of accepting Chapter VII and a half as State practice in circumstances such as Bosnia and Herzegovina. By the terms of the Charter, UN peacekeeping and enforcement by regional collective security organization actions require approval by the Security Council (setting aside the controversial Uniting for Peace Resolution debate) where the Russian Federation has a veto. As is discussed below, Russia would also have a veto in any joint NATO-Russia military operations undertaken pursuant to the Founding Act.

Preamble to Founding Act

With the framework governing the use of force in the UN Charter and the North Atlantic Treaty in mind, we turn to the first important point stressed in the preamble to the Founding Act that pertains to future NATO-Russia peacekeeping operations. This is that the political commitments in the Act are undertaken at the highest political levels to signify the start of a fundamentally new relationship between NATO and Russia. The Act is said to define "the goals and mechanisms of consultation, cooperation, joint decision-making and joint action that will constitute the core of the mutual relations between NATO and Russia."
Reference is made to the 1991 NATO Summit Conference in Rome where the Alliance revised its strategic doctrine to take account of the collapse of the Soviet Union. The Act then explicitly states the goal of taking on "new missions of peacekeeping and crisis management in support of the United Nations (UN) and the Organization for Security and Cooperation in Europe (OSCE), such as in Bosnia and Herzegovina. . . ." As explained below, what is noteworthy about this political commitment is that Russia has a veto about undertaking peacekeeping operations under either UN or OSCE sponsorship.

A vague reference is also made in the Preamble to addressing "new security challenges" with other countries and international organizations. The meaning of this sentence is sufficiently ambiguous that it is a candidate for contextual interpretation or even interpretation by supplementary sources. For the purposes of this essay, it can be noted that the reference appears to be broad enough to encompass out-of-area peacekeeping operations.

Specific mention is made of NATO’s efforts to develop the "European Security and Defense Identity (ESDI). . . ." In this connection, the North Atlantic Cooperation Council (NACC) is not cited in the Preamble, while the Partnership for Peace (PFP) program is. Unlike the NAAC, the PFP program is concerned with peacekeeping and fifteen PFP countries are participating in Stabilization Force (SFOR) operations in Bosnia and Herzegovina. 25 The PFP, started at the January 1994 NATO Summit Meeting, joins 27 mostly Central and Eastern European States (including Russia) with sixteen NATO members. A specific PFP goal is to "create an ability to operate with NATO forces in such fields as peacekeeping. . . ."26 Within the PFP framework, peacekeeping field exercises are undertaken with joint planning facilitated by liaison officers stationed at NATO Headquarters and a "Partnership Coordination Cell" at Supreme Headquarters Allied Power Europe in Mons, Belgium.27

Next, the initiative to establish a Euro-Atlantic Partnership Council (EAPC) is noted in the Preamble to the Act. The EAPC was inaugurated in 1997 and replaces the NACC. All former NACC members and all countries participating in PFP can automatically join the EAPC. Other OSCE members that are willing and able to accept EAPC principles may join by joining the PFP. Lastly, a commitment is made that NATO member States will examine NATO’s Strategic Concept "to ensure that it is fully consistent with Europe’s new security situation and challenges."

By comparison with the lofty new goals espoused for NATO, the deadpan characterization of Russia in the last paragraph of the Preamble is much more down to earth. The Russian Federation is portrayed as "continuing the building of a democratic society and the realization of its political and economic
transformation." Its military cutbacks are cited favorably, as are its commitments "to further reducing its conventional and nuclear forces." Russia's active participation in peacekeeping operations under UN or OSCE auspices and its contributions to "multinational forces in Bosnia and Herzegovina" are, however, referred to in a positive vein.28

The outline for the body of the Founding Act was provided expressly at the Brussels meeting of the North Atlantic Council Ministers in December 1996. The content for a new NATO-Russia agreement was identified in Paragraph 10 of their Final Communiqué as follows:

- the shared principles that will form the basis of our relationship;
- a broad set of areas of practical cooperation in particular in the political, military, economic, environmental, scientific, peacekeeping, armaments, nonproliferation, arms control and civil emergency planning fields;
- mechanisms for regular and ad hoc consultations; and
- mechanisms for military liaison and cooperation.

Principles

The opening principle in Section I of the Founding Act is that the NATO nations and Russia share an interest in the security of the Euro-Atlantic area. Russia, of course, borders on Middle Eastern and Asian countries as well. Despite occasional calls to make NATO a worldwide peacekeeping organization, the principles in the Founding Act make it clear that NATO-Russian peacekeeping operations do not extend beyond NATO's traditional geographical sphere of concern in North America and Europe.

The primary role of the OSCE as the only pan-European security organization for regional security cooperation is stressed as a principle. NATO and Russia undertake to enhance the operational capabilities of the OSCE for regional security. Indeed, the parties commit to seeking the "widest possible cooperation among participating States of the OSCE" to create a common area of stability and security in Europe. The strengthening of the OSCE's operational capabilities in peacekeeping is seen as consistent with the development of its Common and Comprehensive Security Model for Europe for the Twenty-First Century.

The representatives of NATO and Russia recognize that there are new threats, e.g., aggressive nationalism, terrorism, and territorial disputes. These new threats are different in kind, and not just in degree, from the threat of armed attack against the parties' territories described in Articles V and VI of the North Atlantic Treaty. The response to these new risks and challenges will
likewise have to be entirely different. And while not mentioned in the Founding Act, it is predictable that a public debate is inevitable about the awkward question of whether NATO is properly constituted to deal with these new threats. The Founding Act is premised, of course, on the principle that NATO is the organization to meet the new threats.

The signatories reaffirm the principle that the UN Security Council retains the primary responsibility to maintain international peace and security. The unmistakable role envisioned for the OSCE is "as the inclusive and comprehensive organization for consultation, decision-making and cooperation in this area and as a regional arrangement under Chapter VIII of the United Nations Charter."

A tangled web of relationships exists with respect to the prospective roles in regional peacekeeping for European entities such as the Western European Union ("WEU") vis-à-vis NATO. And the Founding Act stops short of slamming the door on the WEU being authorized in the future to function as a Chapter VIII collective security entity with NATO or Russian participation. What the Founding Act is crystal clear on is that NATO-Russia peacekeeping operations will either be directly mandated by the Security Council or authorized by the OSCE as a Chapter VIII regional organization. This policy decision had to be a key inducement for obtaining a Russian sign-off on the Founding Act. One very good reason is that Russia has control over military operations with its veto in both the Security Council and in the OSCE (which, by the way, operates by consensus). The result is that NATO is politically bound by the express terms of the Founding Act not to engage in offensive use of force operations without Russian consent. In fairness, the Russian Federation is likewise bound. The veto point was emphasized differently by Presidents Clinton and Yeltsin, as each attempted to put the most favorable press spin for their respective audiences.

In the United States, domestic critics of the Administration strongly object to the concept of a Russian veto over NATO military operations. The fundamental distinction between self-defense and enforcement actions gets lost in the clamor. The Administration’s emphasis is on the non-binding nature of the Founding Act and the continued NATO self-defense role where unilateral action by NATO is legally justified. This aspect of the debate is true as far as it goes, but critics can still probably complain that the American public was given one impression on the veto issue and the Russian public quite another. It would be difficult to deny, however, that the Russian veto over offensive measures by NATO was a major selling point within the walls of the Kremlin as a justification for signing the Founding Act. From a NATO
standpoint, this principle is nothing new. In December 1992, the NATO Council decided that the Alliance had a mandate to support peacekeeping activities of the United Nations and of the OSCE. As stressed above, the legal justification for out-of-area enforcement actions by NATO itself under the North Atlantic Treaty remains open to question. One practical possibility was to remove the authority of the WEU to engage in peacekeeping. However, the January 1994 NATO Summit endorsed the notion that Europe should develop a peacekeeping capacity. In addition, the principle was endorsed that the collective assets of the Atlantic Alliance would be made available for WEU operations. As of early 1998, the WEU continues in the early stages of developing its military operational capabilities and has taken credible actions in the Adriatic, on the Danube, and most recently in Albania. Interestingly, while the WEU could have based these actions on Articles 52 and 53 of Chapter VIII, Article 48 in Chapter VII was cited as a basis for its action. Russia is not, of course, a member of the WEU and thus the WEU was not a realistic option for selection as a Chapter VIII regional security organization in the Founding Act.

Another principle stated is that in implementing the Founding Act, NATO and Russia will observe in good faith their international legal obligations. In addition to the UN Charter, specific mention is made of the "Helsinki Final Act and subsequent OSCE documents, including the Charter of Paris and the documents adopted at the Lisbon OSCE Summit." The Charter of Paris was signed in November 1990 by the OSCE Heads of State or Government (including those for NATO and Russia). Among many other important matters in the Paris Charter was a vision for more structured co-operation among all participating States on security matters. Perhaps this is part of the reason why a specific reference was made to the Paris Charter in the Principles of the Founding Act. At the December 1996 OSCE Summit on European Security issues in Lisbon, a Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century was adopted. The mention in the Principles of the Lisbon Summit serves to remind the signatories that the NATO-Russia Founding Act is simply a part of a much larger scheme to create a more secure Europe.

A number of general principles, not all of which are directly pertinent to the focus of this essay on peacekeeping, were cited to achieve the aims of the Founding Act. One is the notion of an equal partnership between Russia and NATO. This is probably a very important status issue for the Russians, who are sensitive to the extreme about their diminished military might and are understandably concerned about the strength of their economy. This principle
recognizes that that the Russian Federation is an equal on the political level with NATO. Acceptance of the principle by NATO was wise in that the only country outside NATO that could challenge NATO militarily is, in fact, Russia. This is something that American political figures tend to neglect in the debate about NATO expansion.

Another principle noted is the relationship between economic well-being and stability, as well as the role that democracy plays in fostering a secure environment. In this context, it is well worth recalling that democracies do not wage war on one another. Specific acknowledgment is made to the principle of refraining from the use of force contrary to the UN Charter and the Principles in the Helsinki Act. A related principle refers to respect for the territorial integrity of all States and the peoples’ right of self-determination. Several principles then deal with the idea of mutual transparency, especially for defense policy and military doctrines. With a Russian physical presence at NATO Headquarters, one can envision considerable transparency on the part of NATO. It is less easy to see how NATO plans equal access to the formulation of Russian defense policy and military doctrines.

The last principle cited that is directly related to this study reads:

... support, on a case-by-case basis, of peacekeeping operations carried out under the authority of the UN Security Council or the responsibility of the OSCE.

The shared commitment of NATO and Russia to support peacekeeping operations (all of which are case by case) is not new. The NATO-led multinational force (IFOR) established to implement the military aspects of the Bosnia Peace Accord completed its work in December 1996 and was replaced by a smaller Stabilization Force (SFOR). The Russian contingent in IFOR numbered some 2,000 troops at its height and its participation in SFOR in late 1997 was around the 1,400 level. Of the thirty-six nations with forces in Bosnia, the U.S. forces make up about 25 percent or 8,000 of the total allied ground force of 35,000.

The Bosnia peacekeeping venture demonstrates that NATO and Russian military forces can be successfully integrated in the field in joint operations at least in a marginally hostile environment. Presidents Yeltsin and Clinton are also apparently able to resolve successfully reasonably difficult political problems. The Founding Act is a striking example of the willingness of these two world leaders to compromise towards one another’s positions. But too much can be read into the ability of NATO and Russian forces to integrate militarily, based on the Bosnia experience. The modest successes to date do not
warrant jumping to the conclusion that joint NATO-Russia operations at the division levels can work successfully in a truly hostile environment. Peacekeeping operations based on host State consent with a token five percent Russian troop involvement is quite different from enforcement operations in actual combat situations where there might be a substantially large percentage of Russian troops. Many thorny interoperability problems are unresolved pertaining to command and control, intelligence sharing and the like. The professional military must guard against the pressure from political figures to make more of the Bosnia experiment than is there.

**The NATO-Russia Permanent Joint Council**

Section II of the Founding Act establishes yet another organization to deal with European security issues. The NATO-Russia Permanent Joint Council is to carry out the mandates in the Act and "to develop common approaches to European security and to political problems." Considerable latitude is certainly implied by this latter phrase. The loose language of this mandate further demonstrates the bureaucratic evolution of NATO from a strictly self-defense military organization to a broader political organization of some kind. One is handicapped to comment in detail about the nature and even direction of this evolving entity at this stage, as there is no constituting treaty framework or a clearly articulated strategy of the end result being pursued. This is not necessarily unfavorable criticism because the current process has the virtue of being flexible and pragmatic. It may also be largely unavoidable when there is no agreed vision to follow.

In any event, the central objective of the new Council is to provide concrete means to enhance consultation and cooperation between the two sides. In appropriate instances, joint decisions and joint action may be taken on security issues. Again, the meaning of this language is vague. What is clear is that all of this is to be done without extending to the "internal matters of either NATO, NATO member States or Russia." As expected, no definition is given of what is an internal matter and what is not. Presumably the decision to label a matter as internal or non-internal is an internal matter.

Former Secretary of State Warren Christopher and former Secretary of Defense William J. Perry recently acknowledged the value of the Act's political provisions, but went on to opine that the "military provisions are less problematic and more important." They see the object of the Act to create "permanent, institutionalized military relationships modeled on those forged in
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Bosnia. . . .” And practical cooperation with the Russian military is seen as “more important than meetings and councils.”

Paragraph 3 of the section in the Act setting up the Council mechanism is consistent with the former Secretaries’ “action versus talk” emphasis. NATO and Russia are not only to identify but also to “pursue” as many opportunities for “joint action” as possible. The talk part is not neglected, however. The Permanent Joint Council is “the principal” venue of consultation in times of crisis or “for any other situation affecting peace and security.” Such a singular power of appointment must be taken seriously, for there can only be one entity that is “the principal” location for such weighty matters as discussion of an inter-party crisis or “any other” security situation. In particular, in addition to regular meetings, extraordinary meetings of the Council are to be promptly convened if a member perceives a “threat to its territorial integrity, political independence or security.”

The next paragraph is apparently directed toward less frenetic activities as reference is made to “the principles of reciprocity and transparency.” The notion is that through the on-going contacts in the Council, NATO and Russia will keep one another informed of their respective security threats and what each has in mind to do about them.

Sentence one in paragraph six of this mechanism section seems almost out of place. An objective observer might think the sentence is a statement of the obvious, except for the fact that the impression given by the Clinton administration to the public is that the statement represents an important accomplishment. The sentence reads:

Provisions of this Act do not provide NATO or Russia, in any way, with a right of veto over the actions of the other nor do they infringe upon or restrict the rights of NATO or Russia to independent decision-making and action.

The foregoing sentence is technically accurate: the Act is not a legally binding treaty and even if it were, there is no right of veto for Russia in the Founding Act as such. Russia would have a veto on actions if it were a Party to the North Atlantic Treaty; all NATO members have veto power since NATO operates by consensus. Likewise, all fifty-three members of the OSCE (including Russia) have a veto because that regional organization also operates by consensus. Perhaps the statement means that the above commitment, making the Permanent Joint Council “the principal” venue of consultation, does not “infringe” upon independent decision-making or action. One cannot help but wonder what the purpose of consultation is if it is not to “infringe” upon one’s actions? The plain language in the sentence is that neither Russia
nor NATO is given a veto in the Act. True enough, but as explained above, this
is somewhat misleading with respect to peacekeeping operations. The reason is
that Russia and three members of NATO are permanent members of the UN
Security Council. All are also members of the OSCE. And as elaborated fully
above, peacekeeping operations will be carried out only under the authority of
the Security Council or the OSCE. The veto on peacekeeping operations is
there for Russia; it was simply not provided by the Founding Act.

It would be equally accurate, but apparently not as politic, to stress that the
inherent right of self-defense upon which NATO is founded and which is
enjoyed by Russia and the United States alike, truly does not allow a veto by
any other State or organization. That point is not in the Act but may belong
there as much as the sentence quoted above. At the same time, there may be a
host of non-use of force actions that could have been made subject to a veto
and were not. If forbearance to do so is the reason to emphasize the lack of veto,
then one cannot quibble. But the impression should not be left that there is no
Russian veto on the non-self-defense use of force by NATO. Control over the
use of force is what the Security Council is all about and is the hard core
foundation for both the creation, as well as the continued relevance of the
United Nations.

The schedule of regular meetings for the Permanent Joint Council (PJC)
mirrors those of NATO: Foreign Ministers, Defense Ministers and Chiefs of
Staff each meet twice annually, while ambassadors/NAC representatives and
military representatives meet monthly. The possibility of Heads of State and
Government meeting is not excluded but not expressly scheduled. The
Council is authorized (like NATO) to establish either permanent or ad hoc
committees or working groups and meetings of military experts may be
convened, as appropriate. Given the priority on peacekeeping operations, it is
predictable that a committee or working group will soon be established for that
topic.

The Permanent Joint Council has, in principle, three joint chairs. One is the
Secretary General of NATO and another is a representative of Russia. The
third is a representative of one of the NATO member States on a rotation basis.
The first Joint Council meeting held on 18 July 1997 was immediately
presented with a disagreement over who should chair the meetings. A
compromise was worked whereby the Russian Ambassador and Secretary
General Javier Solana are permanent co-chairmen and a representative of the
ambassadors from NATO’s sixteen member States will rotate the other position
for three-month periods. The disinformation campaign in the West on the
veto issue continued with the Agence France Presse reporting: “The council
enables Russia to take part in discussions on NATO policy without exercising a right of veto in its affairs, notably in its peace-keeping role." An American writer commented: "The NATO-Russia council is the centerpiece of the so-called Founding Act . . . conceived as a way to soothe Moscow's hostility toward NATO's eastward expansion plans and to encourage the Russians to play a more cooperative role in European security." He added: " . . . the United States and its allies insist Russia will only have a voice in, not a veto over, NATO policies."37

A significant bureaucratic innovation is also provided in this section of the Act: agreement is expressed that Russia will establish a Mission to NATO (not unlike a Mission to the United Nations) headed by a representative at the rank of Ambassador. Part of his Mission will include a senior Russian military representative and his staff. The possibility is provided for an appropriate NATO presence in Moscow, but is not spelled out.

Insofar as the candidates for NATO expansion are concerned, the Russians won the race to reach NATO Headquarters before they did. Once accepted, the status of the new members will, of course, be quite different. They will have the veto all NATO members enjoy and they will be full participants in all internal NATO meetings. Yet, if the UN Headquarters' experience is an example, there will be few secrets that the Russians will not hear about now that they are at NATO Headquarters. That, in itself, may be the best reason of all for the Russians to have a physical presence in the heart of its former enemy's military command center.

The agenda for regular sessions of the Permanent Joint Council are being set jointly by NATO and Russia. At this writing some organizational arrangements and rules of procedure for the Council have been worked out. At the inaugural meeting Council ambassadors held in Brussels on 11 September 1997, the exact purpose intended was achieved but the results were "very disagreeable." Ambassador Vitaly Churkin, Russia's representative to NATO, was strongly critical of "the aggressive new Western approach to the Bosnia peacekeeping mission. . . ." He reportedly said the "intolerable" use of force directed against the Bosnia Serbs was incompatible with the NATO-led peacekeeping force's rules of engagement.38 A senior NATO diplomat is quoted as saying this "was not a good omen for the future work of the NATO-Russia council."39 A different atmosphere apparently prevailed a few weeks later when the first meeting of the Council's Foreign Ministers convened in New York. NATO's Secretary General reported a successful launch of a new NATO-Russia "partnership."40 Indeed, he cited agreement on a work program which envisioned a range of NATO-Russia cooperation, including peacekeeping. He
highlighted discussion of the present situation in Bosnia and Herzegovina, as well as “the more general topic of peacekeeping operations.” He stressed that the “idea was to get the work moving and translate the words of the Founding Act into reality.”41 He also made a cryptic reference to the “potential for common action ...” between Russia and NATO.42

The text of the Founding Act specifies that the Permanent Joint Council will engage in three distinct activities. The first is to consult on any political or security issue both sides agree to discuss. This is an extraordinarily broad mandate with virtually no qualifications on topics, and is additional evidence of NATO’s turn towards being a political forum. The second activity is to develop “joint initiatives” on which NATO and Russia agree to speak or act in parallel. Again, there are no conditions and the wide latitude expressly given certainly includes planning for joint NATO-Russia peacekeeping operations. It is noteworthy that no distinction is made here between traditional blue helmet operations under the direct authority of the Secretary General and enforcement operations under the direct authority of the Security Council. Indications that the signatories had in mind joint NATO-Russia peacekeeping operations of all varieties are provided by the third category of activities cited. Once consensus (another term for veto) is reached between NATO and Russia, the Permanent Joint Council is authorized to make “joint decisions” and to take “joint actions” on a case-by-case (code in the Act for peacekeeping operations) basis. Pointed reference is then made to participation “in the planning and preparation of joint operations, including peacekeeping operations. . . .” Of course, the built-in reminder of the mutual veto is highlighted again with the statement that the peacekeeping operations must be “under the authority of the UN Security Council or the responsibility of the OSCE.” And just to be sure that there is no room for misunderstanding, a sentence is added that any actions, i.e., use of force undertaken by NATO or Russia together or separately, must be pursuant to the UN Charter and the OSCE governing principles.

The unmistakable impression gained from examining the “three distinct activities” identified in Section II of the Act is that a priority activity of the Council is to discuss, plan and present to higher authority, joint NATO-Russia peacekeeping operations.

**Areas for Consultation and Cooperation**

Planning for joint peacekeeping operations is, of course, only one of many areas upon which NATO and Russia are expected to focus in building a new
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cooporative relationship. In Section III of the Founding Act, the signatories are to consult and strive to cooperate, not only across a wide spectrum of security issues in the Euro-Atlantic area, but also on concrete crises, including the contributions of NATO and Russia to the resolution thereof. In the realm of conflict prevention, the roles of the United Nations and the OSCE are once again expressly referenced. Significantly, no mention is made in this section of a role for the WEU or, for that matter, any other European organization in conflict prevention or crisis management. The sides are to discuss “joint operations, including peacekeeping operations, on a case-by-case basis under the authority of the UN Security Council or the responsibility of the OSCE....” A specific reference is made to NATO-Russia “early” participation if Combined Joint Task Forces (CJTF) are used in peacekeeping operations.

The CJTF concept arose out of the 1994 NATO Summit in Brussels to provide a mechanism for rapid deployment of peacekeepers. Under the political umbrella of the North Atlantic Council, the NATO members willing to lead and support CJTFs undertake operations such as those restoring stability in Albania in 1997. The Founding Act clearly provides a political and legal framework within which NATO and Russia could develop and plan joint initiatives utilizing the CJTF approach. Russia is already participating in the Euro-Atlantic Partnership Council and in the Partnership for Peace program. The Permanent Joint Council, however, is an independent springboard to prepare joint NATO-Russia peacekeeping operations.

One of the first steps that NATO and Russia must take in the preliminary planning for possible joint peacekeeping operations is to exchange information on each side’s existing approaches to military operations. The experience gained on each side from the ongoing peacekeeping operation in Bosnia, despite the tendency to puff too much about its success, is obviously invaluable. Multinational training exercises such as the week-long peacekeeping exercise in Kazakstan, led by the United States in mid-September 1997 with troops from Russia and five other nations, generated additional knowledge and experience indispensable for planning future NATO-Russia joint operations. This latter exercise, sponsored under the Partnership for Peace program, reportedly had heavy involvement by Russian military officers in the planning processes—a most welcome development. The framework in the Founding Act explicitly targets exchanges between NATO and Russia on strategy, defense policy, and military doctrine. Exchanging information and conducting joint exercises are necessary, in part, because they help identify similarities as well as expose differences in military approaches and doctrine. NATO has had many decades to work on promoting commonality among its members.
Establishing NATO-Russian commonality will take time, money, and tolerance on both sides. This is anticipated in the Founding Act, in which the PJC is tasked to coordinate an expanded program of cooperation between their respective military establishments.

**Political-Military Matters**

Section IV of the Founding Act is addressed to broad political-military issues that are part of the context within which NATO-Russia joint peacekeeping operations must fit. The first important declaration in this section is that current NATO members state that they are not planning to deploy nuclear weapons or to establish nuclear weapon storage sites on the territories of new members. Indeed, no need is seen to change any aspect of NATO's nuclear policy by the addition of new members. The carefully crafted text stops short of a categorical statement that there are no circumstances under which deployment of nuclear weapons or their storage could occur in the territory of new members of NATO. While the Russians undoubtedly pressed for such categorical assurances, NATO leaders went a long way toward assuaging Russian fears that expansion was moving NATO's nuclear capabilities closer to Moscow.

The next issue tackled was adapting the CFE Treaty to the changed political and military circumstances in Europe. The urgency of this issue was recognized by an undertaking to conclude “an adaptation agreement as expeditiously as possible. . . .” The first step for NATO members and the other State Parties to the CFE Treaty is to conclude a Framework Agreement with the basic elements of an adapted CFE Treaty. At the Madrid Summit in July 1997, it was announced that NATO had advanced a comprehensive proposal for adaptation of the CFE Treaty on the basis of a revised Treaty structure of national and territorial military equipment ceilings. This was consistent with NATO’s members previously stated intention to reduce significantly the future aggregate national ceilings for Treaty-Limited Equipment. These are to be codified as binding limits in the adapted Treaty, reviewed in 2001 and at five-year intervals thereafter. In this Section of the Founding Act, NATO and Russia encourage the Parties to the CFE Treaty to consider reductions in their CFE equipment entitlements to achieve lower equipment levels. The member States of NATO and Russia “commit” to exercising restraint with respect to forces and deployments to avoid diminishing the security environment. They are, in addition, to develop measures to prevent threatening build-up of conventional forces in agreed regions of Europe, to include “Central and
Eastern Europe." Consultations on the evolution of the conventional force postures are to occur "in the framework of the Permanent Joint Council." 45

To ensure that Russia understands its intent with respect to military activities in the future, NATO reiterates its modern approach to military operations in the new European security environment. A cautionary note is in order after the foregoing discussion directed at confidence-building measures and the reduction of conventional forces. The reminder required is that NATO still has a military mission to perform, which may require responding to threats of aggression or peacekeeping assignments. Whether defending the territory of member States or conducting military exercises, NATO stresses that it must ensure "interoperability, integration, and capability for reinforcement rather than by additional permanent stationing of substantial combat forces." This strategy is based on the premise that NATO now faces a multiplicity of smaller threats as contrasted with the monolithic threat of the Cold War era. It is also consistent with the perceived need for combined joint task forces that are more rapidly deployable than are larger, more static forces. Lastly, the approach is compatible with the prevailing political sentiment among NATO members to spend a lower percentage of their gross national product on military defense and to make up the difference by multinational burden-sharing through combined joint forces. 46 While infrastructure compatible with this new approach must still be developed, the hope is that through agreed transparency measures, such reinforcements will be properly understood. Russia is to exercise "similar restraint in its conventional force deployments in Europe."

One of the four main points cited by the Ministers at the 1996 Council meeting in Brussels for inclusion in the new NATO-Russia relationship, was to establish mechanisms for military liaison and cooperation. This was implemented through the Permanent Joint Council's expanding consultations and cooperation via an "enhanced dialogue between the senior military authorities of NATO and its member States and of Russia." Both sides are to significantly expand military activities and practical cooperation "at all levels." This enhanced military-to-military dialogue includes regularly scheduled reciprocal briefings on mutual military doctrine, strategy, and resultant force structure. Specific reference is also made to discussing joint exercises and training. Broad authority is given in the Act for NATO and Russia to establish military liaison missions at various levels.

The value of practical activities and direct cooperation, which was highlighted by former Secretaries Christopher and Perry earlier in this essay, is the unmistakable focus of the last paragraph in the Founding Act. The deliberate placement of this point at the very end of the Act serves to
emphasize rather than to diminish the importance of the paragraph—it is no afterthought. NATO and Russia’s respective military authorities are directed to “explore the further development of a concept for joint NATO-Russia peacekeeping operations,” building upon “the positive experience of working together in Bosnia and Herzegovina.” The lessons from the peacekeeping operations there are to be “used in the establishment of Combined Joint Task Forces.” Of course, agreement on a new command structure to enable all Allies to participate fully will have to emerge if the CJTF concept is to be advanced. The plans must be flexible enough to allow for the preparation and conduct of WEU-led operations as well.

The Ministers meeting held under NAC auspices at the end of 1997 also stressed the importance of practical cooperation under the Permanent Joint Council. NATO and Russia were said to have made significant progress on security issues, including the situation in Bosnia and the conduct of peacekeeping operations. In this latter instance, encouraging progress was cited in the working group on peacekeeping. Again, reference was made to “opening a new era in European security relations” and the “potential of the Founding Act.”

The most important message in the Founding Act, that is reinforced by the highest authorities in the “NATO 16 plus Russia 1,” is that their respective military forces are directed to become allies rather than to continue as adversaries. The implications of such a profound change for the military cultures of the respective sides reach well beyond NATO-Russia joint peacekeeping operations. But that is evidently where the Heads of State expect to start the process of military integration. As we have seen in this study, this is to occur within the framework in the Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation. It remains to be seen how much is potential and how much is practical. The reader is reminded that a wounded bear is far more dangerous than a healthy one. And it is no overstatement to end this essay with the sobering observation that global security in the twenty-first century may hinge upon the success or failure of the grand experiment outlined in the Act.

Notes

2. Id. at 7.
3. Press Briefing by Mike McCurry, White House Press Release, May 27, 1997, at 2. [hereinafter Press Briefing] An editorial in the December 4, 1997, Moscow Times read: "There he goes again. President Boris Yeltsin on Tuesday made another startling gesture on nuclear weapons during his trip to Sweden, only to have it immediately downplayed by his staff. Yeltsin made people sit up straight in their chair when he offered to cut nuclear warheads by a third. But only for a moment. As with his earlier offer to no longer target the West with nuclear weapons, which turned out to be something that had already happened, it turns out there's not a lot of substance behind the latest offer."

4. Id., at 6. President Yeltsin presented the Founding Act to the Duma where it was adopted. This suggests that the Russians view the status of the Act as being in the nature of a treaty carrying binding legal obligations. For a discussion of this issue and other political aspects of the Act, see Karl-Heinz Kamp, The NATO-Russia Founding Act Trojan Horse or Milestone of Reconciliation? AUSSENPOLITIK, IV/1997, at 315-324.


6. 3 DEPT. OF STATE, DISPATCH 29 (July 20, 1992). Both the United States and Russia are Participating States in this Act which expressly refers to the "obligations" in the Treaty on Conventional Armed Forces in Europe (CFE Treaty) of November 19, 1990.


8. O'CONNELL, supra note 5, at 214.


10. Id., art. 2, para. 2.


13. Id., at 198.

14. Vienna Convention, supra note 9, art. 7.


16. Vienna Convention, supra note 9, art. 31 (1).

17. Id., art. 32.


19. Id., art. 6. The Algerian departments of France no longer exist and the fact of their mention in the North Atlantic Treaty is irrelevant.

20. Senator Arthur Vandenberg consulted with the State Department about the constitutionality of joining the Atlantic Alliance. He drew up a Resolution which, inter alia, made clear the determination of the United States Government "to exercise the right of individual or collective self-defense under Article 51..." The text of the Vandenberg Resolution is reproduced in "NATO Basic Documents" published by the NATO Information Service.

21. Chapter 6 of the UN Charter is entitled Pacific Settlement of Disputes. Chapter 7 is entitled Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression. The Charter as written makes no references whatsoever to peacekeeping activities.
Accordingly, when this gap became apparent to the members of the UN, this phrase came into common usage to characterize peacekeeping activities as falling somewhere between Chapter 6 and Chapter 7.

22. NATO Treaty, supra note 18, art. 7.

23. A stalemate occurred in the Security Counsel between the western powers and the Soviet Union, as the permanent members have a right to veto actions. When it became evident that the UN was unable to discharge its responsibilities due to this unfortunate fallout from the Cold War, the General Assembly exercised its prerogative to make recommendations on virtually any matter that is of interest to it. Accordingly, as a response to the deadlock over the Korean War, the General Assembly passed a Uniting for Peace Resolution that urged all members to take actions with respect to threats to international peace and security by enacting a General Assembly resolution that was a substitution for the Charter-provided Security Counsel resolution.


25. This is the successor to the Implementation Force operations enforcing the Dayton Peace Accords.


27. Id.


29. See Press Briefing, supra note 3, at 3, for the following exchange at the White House Press Briefing on the day the Founding Act was signed:

Q. . . . when the NATO agreement was announced there seemed to be some confusion at least by President Yeltsin about what exactly Russia was allowed to do in terms of a veto. Do you feel like he's kind of backed off of that and has maybe come to accept your definition?

Mr. McCurry. I don't know if there was confusion. I think he was presenting the Founding Act in a way that he thought would engender support among the Russian people. And you now all have [sic] Founding Act, so you know what's in it.

30. Moscow Warns NATO on Bosnia, WASH. POST, Sept. 12, 1997, at 1, 12. [hereafter Moscow Warns]

31. Interview on Aug. 18, 1997 with recently retired former military commander of NATO, General George A. Joulwan, ARMY TIMES, Sept. 1,1997, at 6. His percentages work out better using another report that put the figures at "31,000 soldiers from 30 nations."

32. N.Y. TIMES, Oct. 21, 1997, as reported in the EARLY BIRD published daily by the U.S. Dep't. of Defense, at 12.

33. Id.


35. Id., at 2.


37. Id.

38. Moscow Warns, supra, note 27.

39. Id.

40. NATO's Role in Building Cooperative Security in Europe and Beyond, Remarks by the Secretary General of NATO, Tokyo, Japan, Oct. 15, 1997, at 4.

41. Id.
42. Id. at 5.
44. Id.
45. The Head of Policy Planning and Speech Writing for NATO, John Barret, commented, \textit{inter alia}, at a briefing in Moscow about the substantive differences between the NATO-Russia Founding Act and the NATO-Ukraine Charter. He noted: "the NATO-Russia Act has a permanent joint council . . . the Act foresees joint decision-making and the possibility of joint action of NATO and Russia." Barret also predicted that issues such as the situation in Bosnia would be part of the PJC consultations. Official Kremlin International News Broadcast, July 15, 1997.
46. The Defense Department's total costs for peacekeeping operations in and around Bosnia are estimated by the Government Accounting Office to be $6.4 billion through June 1998. After June 1998, the stabilization force mandate expires and the NATO-led operations are in the process of formulating a revised mission which will entail revised costs. INSIDE THE NAVY, February 16, 1998.