

PUTIN’S BASELESS JUSTIFICATION FOR INVADING  
UKRAINE: ASSESSING THE LEGAL RAMIFICATIONS  
OF NATO EXPANSION IN EASTERN EUROPE

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I.INTRO..... 202  
II.HISTORICAL BACKGROUND OF NATO..... 203  
    A. *Unification of Germany and the ‘Assurances’ Made to  
        Gorbachev.....* 204  
    B. *Subsequent Eastern Expansion.....* 205  
    C. *Ukrainian Interest in NATO and Putin’s Response.....* 207  
III.LEGAL SIGNIFICANCE OF NATO-RUSSIA NEGOTIATIONS..... 208  
IV.CONCLUSION..... 210

I. INTRO

The current crisis in Ukraine can be directly traced to the expansion of the North Atlantic Treaty Organization (NATO) in Eastern Europe after the fall of the Soviet Union (USSR) in 1991. Putin has explicitly stated that the eastward expansion of the alliance to former Soviet client states represents a breach of assurances granted to Russia, and that it directly places Russian security in jeopardy.<sup>1</sup> The prospect of Ukraine joining NATO is a red-line for Putin, as he views Ukraine as an essential territorial buffer between Russia and the West. In a recent speech, Putin directly stated, “[a]nd who is the main enemy for the U.S. and NATO? We know that too. It’s Russia. In NATO documents, our country is officially and directly declared the main threat to North Atlantic Security. And Ukraine will serve as a forward springboard for the strike. If our ancestors had heard about it, they probably would simply not have believed it. And today we don’t want to believe it, but it’s true.”<sup>2</sup> Putin has in fact gone further, declaring, “[w]e need to assure the curtailing of the destructive NATO activities that have been taking place for decades and bring NATO back to positions that

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1. *Extracts From Putin’s Speech on Ukraine*, REUTERS (Feb. 21, 2022, 3:39 PM), <https://www.reuters.com/world/europe/extracts-putins-speech-ukraine-2022-02-21/> [hereinafter *Extracts*].

2. *Id.*

are essentially equivalent to what was the case in 1997.”<sup>3</sup> This article examines the expansion of NATO in Eastern Europe after 1991 and details NATO’s ‘betrayal,’ which Putin used to rationalize his invasion of Ukraine. Ultimately, this article argues that Putin’s rationale contains no legal validity.

## II. HISTORICAL BACKGROUND OF NATO

The North Atlantic Treaty was signed in 1949 by several Western European and North American countries in order to create a counterweight to the U.S.S.R., which amassed control of Eastern Europe following World War II.<sup>4</sup> The original members were limited, including the United States, Canada, Portugal, Italy, Norway, Denmark, Iceland, France, Britain, and the Benelux countries.<sup>5</sup> Essentially, the treaty established collective defense assurances and military integration among member nations.<sup>6</sup> Given the real possibility of nuclear war at the time, the key component of the Treaty was that a strike on any member would count as a strike on all. This provided a nuclear deterrent for member states, who were protected largely by the United States’ nuclear arsenal.<sup>7</sup>

NATO, headquartered in Brussels, was developed in the early 1950s largely in response to the spread of communism around the world.<sup>8</sup> Greece and Turkey were the first non-original members to join the alliance, joining in 1952 due to their concerns regarding communist agitation in the Eastern Mediterranean region. The real marker of expansion came in 1955, however, when NATO admitted West Germany into the alliance.<sup>9</sup> The U.S.S.R. responded in kind by initiating the Warsaw Pact, which was composed of Eastern European nations and mirrored NATO with mutual collective defense provisions.<sup>10</sup> The ‘Iron

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3. Anton Troianovski & David Sanger, *Russia Warns That U.S. Doesn’t Understand Its Goals on Ukraine*, N.Y. TIMES (Jan. 9, 2022), <https://www.nytimes.com/2022/01/09/world/europe/russia-ukraine-us-geneva.html?action=click&module=RelatedLinks&pgtype=Article>.

4. *A Short History of NATO*, NORTH ATLANTIC TREATY ORGANIZATION, [https://www.nato.int/cps/en/natohq/declassified\\_139339.htm](https://www.nato.int/cps/en/natohq/declassified_139339.htm).

5. *Id.*

6. *Id.* (“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”).

7. *See id.* (The Soviet Union developed the nuclear bomb in 1949, raising the possibility of nuclear war in the event of a direct confrontation).

8. *Id.*

9. *Id.*

10. *Id.* (“In reaction to West Germany’s NATO accession, the Soviet Union and its Eastern European client states formed the Warsaw Pact in 1955.”).

Curtain' was established, and these two alliances became the military counterweights in Europe.<sup>11</sup> Given the nuclear ramifications of any conflict, there was never a direct confrontation between the two alliances.

A. *Unification of Germany and the 'Assurances' Made to Gorbachev*

In 1990, the United States and the U.S.S.R. began negotiating the re-unification of Germany—an issue which dominated the politics of Europe after the fall of the Berlin Wall in 1989.<sup>12</sup> These talks evolved during the 'Glasnost' period, when Soviet Premier Mikhail Gorbachev began opening and liberalizing the U.S.S.R. to outside influence and commerce.<sup>13</sup> Unification enjoyed considerable support in Germany, and it was seen as a way to reconcile differences between the U.S.S.R. and the West. However, due to regional security concerns, the Soviets were hesitant to agree to unification.<sup>14</sup>

To initiate discussions with the U.S.S.R., U.S. Secretary of State James A. Baker III met with Gorbachev in Moscow on February 9, 1990. During the meeting, Baker reportedly made assurances to Gorbachev that “[t]here would be no extension of NATO’s jurisdiction for forces of NATO one inch to the east.”<sup>15</sup> Baker apparently made clear that this was specifically in the context of German unification, given that West Germany was already part of the NATO alliance.<sup>16</sup> Allegedly, Baker did not mean to say that NATO would never expand east of the boundaries in 1990.<sup>17</sup> In fact, Gorbachev himself has said that the statement Baker made was in the context of German reunification.<sup>18</sup>

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11. Winston Churchill, *The Sinews of Peace (Iron Curtain Speech)*, INTERNATIONAL CHURCHILL SOCIETY, <https://winstonchurchill.org/resources/speeches/1946-1963-elder-statesman/the-sinews-of-peace/> (while coined in 1946, the Iron Curtain came to define the division points in Europe between Russian-dominated Warsaw countries, and NATO-allied Western countries).

12. Ashish Kumar Sen, *German Reunification: It Was Nothing Short of a Miracle*, UNITED STATES INSTITUTE OF PEACE (Feb. 1, 2021), <https://www.usip.org/publications/2021/02/german-reunification-it-was-nothing-short-miracle>.

13. *Id.*

14. *Id.* (There was apprehension about the potential imbalance of power that would come from a pro-Western unified Germany.)

15. Peter Baker, *In Ukraine Conflict, Putin Relies on a Promise That Ultimately Wasn't*, N.Y. TIMES: WASHINGTON MEMO (Jan. 9, 2022), <https://www.nytimes.com/2022/01/09/us/politics/russia-ukraine-james-baker.html> [hereinafter Baker].

16. *Id.*

17. *Id.*

18. *Id.*

However, he also later stated that NATO expansion to the east was “definitely a violation of the spirit of the statements and assurances made to us in 1990.”<sup>19</sup>

This communication, along with some additional assurances that NATO would not expand east in the event of German reunification, has been the main source of contention for Russia since the agreement took place in 1990.<sup>20</sup> However, the U.S.S.R. did not seek guarantees in the form of treaties or other legal documents to prevent NATO expansion. Despite this, Russia views the eventual expansion as a betrayal to the principles outlined during the reunification debates and as an affront to Russian security.<sup>21</sup>

### B. *Subsequent Eastern Expansion*

NATO has expanded significantly since the dissolution of the Soviet Union, and its purpose has notably changed.<sup>22</sup> In 1992, member nations signed the Conventional Armed Forces in Europe Treaty (CFE), which reduced NATO’s military footprint in Europe.<sup>23</sup> NATO also adopted an interventionist approach in Yugoslavia in the 1990s, deploying troops to protect human rights and prevent war crimes in the region.<sup>24</sup> Around the same time, NATO began dialogues with Central and Eastern European nations regarding NATO membership, several of whom had been members of the Warsaw Pact during the Cold War.<sup>25</sup> James Baker also openly advocated for opening talks with Russia about joining the alliance, signaling the shift of the organization’s purpose.<sup>26</sup>

The first round of additions occurred in 1999 when the Czech Republic, Hungary, and Poland were admitted to NATO.<sup>27</sup> NATO

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19. *Id.* (He made these comments in an interview several years later).

20. Jim Goldgeier, *Promises Made, Promises Broken? What Yeltsin Was Told About NATO In 1993 And Why It Matters*, WAR ON THE ROCKS (Nov. 22, 2019) <https://warontherocks.com/2019/11/promises-made-promises-broken-what-yeltsin-was-told-about-nato-in-1993-and-why-it-matters-2/>.

21. *Id.*

22. *Enlargement*, NORTH ATLANTIC TREATY ORGANIZATION (May 5, 2020), [https://www.nato.int/cps/en/natolive/topics\\_49212.htm](https://www.nato.int/cps/en/natolive/topics_49212.htm) [hereinafter *Enlargement*].

23. Daryl Kimball, *The Conventional Armed Forces in Europe Treaty and the Adapted CFE Treaty at a Glance*, ARMS CONTROL ASSOCIATION (Aug. 2017), <https://www.arm-control.org/factsheet/cfe>.

24. *Enlargement*, *supra* note 22.

25. See *Enlargement*, *supra* note 22 (discussing the results of a study that supported adding additional members within Europe).

26. See Baker, *supra* note 15.

27. *Enlargement*, *supra* note 22.

then continued to accept more countries into the alliance, explicitly making expansion one of its organizational goals.<sup>28</sup> Specifically, they created a 'Membership Action Plan,' which outlined the steps that countries who sought membership should follow in order to join the alliance.<sup>29</sup> NATO also reached out to more Eastern European countries to propose membership and military cooperation.<sup>30</sup>

The next expansion took place in 2004 when NATO admitted seven new countries, all of which had been in the Warsaw Pact during the Cold War. The new members were Estonia, Latvia, Lithuania, Bulgaria, Romania, Slovakia, and Slovenia.<sup>31</sup> Russia was outraged by this expansion and was particularly concerned about the Baltic states' membership.<sup>32</sup> Putin himself made it clear that he viewed NATO expansion as intolerable and would actively resist any more attempts to expand the alliance.<sup>33</sup>

In 2008, Georgia expressed interest in joining NATO, which led to 'intensified dialogue' to discuss steps for membership.<sup>34</sup> Putin cited this membership discussion, as well Moscow's support for Russian-backed separatists in northern Georgia, as his rationale for invading Georgia in 2008.<sup>35</sup> That war showed the lengths that Russia was willing to go in order to stop what it viewed as NATO encroachment. Even back then, Putin emphasized Russia's historical "sphere of control" which he believed was threatened by NATO expansion.<sup>36</sup> He has deployed the same rhetoric in his invasion of Ukraine.<sup>37</sup>

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28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Laurence Peter, *Why NATO-Russia Relations Soured Before Ukraine*, BBC (Sep. 3, 2014), <https://www.bbc.com/news/world-europe-29030744>.

33. Steven Lee Myers, *As NATO Finally Arrives On Its Border, Russia Grumbles*, THE N.Y. TIMES (Apr. 3, 2004), <https://www.nytimes.com/2004/04/03/world/as-nato-finally-arrives-on-its-border-russia-grumbles.html> ("In Moscow on Friday, Mr. Putin, meeting with Chancellor Gerhard Schröder of Germany, played down NATO's expansion, though he warned that Russia would closely monitor the deployment of NATO forces and "build our defense and security policy correspondingly."").

34. See *Enlargement*, *supra* note 22.

35. Denis Dyomkin, *Russia Says Georgia War Stopped NATO Expansion*, REUTERS (Nov. 21, 2011), <https://www.reuters.com/article/idINIndia-60645720111121?edition-redirect=in>.

36. *Id.*

37. See *Extracts*, *supra* note 1.

C. *Ukrainian Interest in NATO and Putin's Response*

In 2008, Ukraine sought to begin a Membership Action Plan to initiate the process of joining NATO.<sup>38</sup> However, in 2010, this was scrapped by Ukrainian President Viktor Yanukovych, a staunch Russian ally.<sup>39</sup> In response, protests erupted throughout Ukraine in 2014, known as the “Euromaidan movement,” which resulted in the ousting of Yanukovych and Ukraine’s pro-Russian government.<sup>40</sup> One of the goals of the Euromaidan movement was for Ukraine to develop closer ties with the West and to eventually join NATO.<sup>41</sup> Following the Euromaidan movement, Russia quickly invaded and seized control of Ukraine’s Crimean peninsula, which Russia viewed as its territory that was merely gifted to Ukraine during the Soviet era.<sup>42</sup> This created serious tension between the two countries, which was further exacerbated by a pro-Russian separatist movement in the Donbass region of Ukraine, developing into a low-level war.<sup>43</sup>

After the election of Ukrainian President Volodymyr Zelensky in 2019, the Ukrainian government prioritized European integration and NATO membership.<sup>44</sup> President Zelensky specifically ran on a campaign promising to join NATO, making clear that he no longer viewed Ukraine as under the sphere of Russian influence.<sup>45</sup> The Ukrainian Constitution was amended in 2019 to address this new political perspective. Specifically, the amendment states that Ukraine will achieve, “implementation of the strategic course of the state to gain full membership of Ukraine in the European Union and the North Atlantic

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38. *Relations With Ukraine*, NORTH ATLANTIC TREATY ORGANIZATION (Mar. 11, 2022), [https://www.nato.int/cps/en/natohq/topics\\_37750.htm](https://www.nato.int/cps/en/natohq/topics_37750.htm).

39. *Id.*

40. Max Fisher, *Everything You Need to Know About the 2014 Ukraine Crisis*, VOX (Sept. 3, 2014), <https://www.vox.com/2014/9/3/18088560/ukraine-everything-you-need-to-know>.

41. *New Ukraine Coalition Agreed, Sets NATO As Priority*, RADIO FREE EUROPE RADIO LIBERTY (Nov. 21, 2014, 12:22 GMT), <http://www.rferl.org/content/ukraine-parliament-coalition-agreement/26703123.html> (The Euromaidan movement consisted of protests in Ukraine in 2014 that led to the ouster of the Russian-backed government).

42. See Dyomkin, *supra* note 35 (explaining how Russia viewed Crimea as being historically part of its territory, that it merely gifted to the Ukrainian SSR in 1954).

43. *Id.*

44. Joshua Berlinger, *How Ukraine's Volodymyr Zelensky Went From An Actor Playing President on TV to Defiant Wartime Leader*, CNN (Feb. 26, 2022) <https://www.cnn.com/2022/02/25/europe/volodymyr-zelensky-profile-cmd-intl/index.html>.

45. *Id.*

Treaty Organization.”<sup>46</sup> In 2021, NATO leaders communicated their commitment to begin the process of granting NATO membership to Ukraine.<sup>47</sup>

Putin has responded aggressively. Essentially, he views this as the last step of a continuing progression of NATO overreach.<sup>48</sup> Appealing to historical ideas of Russian hegemony, and specifically alluding to the supposed promise that NATO would not expand “one inch” to the east, Putin has created a narrative of encroachment by an enemy that betrayed its promise not to expand.<sup>49</sup> Just before the invasion, he explicitly stated, “if Ukraine was to join NATO it would serve as a direct threat to the security of Russia.”<sup>50</sup> Since the invasion, Putin has also made demands that NATO return to its pre-eastward expansion boundaries, while arguing that Ukraine provoked this attack by ignoring Russian security interests.<sup>51</sup>

### III. LEGAL SIGNIFICANCE OF NATO-RUSSIA NEGOTIATIONS

NATO has never concluded a legally enforceable agreement with Russia that prohibits the alliance from expanding eastward, despite Russia’s claim to the contrary.<sup>52</sup> Baker’s alleged statement was a remark made during the course of broader negotiations, which carries no legal significance.<sup>53</sup> Only treaty text is legally binding, and statements or assurances made during these types of often precarious negotiations are

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46. *The Law Amending the Constitution on the Course of Accession to the EU and NATO Has Entered Into Force*, EUROPEAN INTEGRATION PORTAL (Feb. 21, 2019), <https://eu-ua.kmu.gov.ua/novyny/zakon-pro-zminy-do-konstytuciyi-shchodo-kursu-na-vstup-v-yes-i-nato-nabuv-chynnosti>.

47. *Brussels Summit Communiqué*, NORTH ATLANTIC TREATY ORGANIZATION (Feb. 28, 2022), [https://www.nato.int/cps/en/natohq/news\\_185000.htm](https://www.nato.int/cps/en/natohq/news_185000.htm).

48. Sarah Rainsford, *Putin’s Angry Speech Rewriting Ukraine’s History*, BBC, (Feb. 22, 2022), <https://www.bbc.com/news/world-europe-60458300>.

49. *Id.*

50. *Id.*

51. *Id.*

52. Bill McCarthy, *Fact-Checking Claims That NATO, US Broke Agreement Against Alliance Expanding Eastward*, POLITIFACT (Feb. 28, 2022), <https://www.politifact.com/factchecks/2022/feb/28/candace-owens/fact-checking-claims-nato-us-broke-agreement-again/>.

53. See Baker, *supra* note 15 (showing that Baker’s comment made during the negotiation with Gorbachev referenced that NATO would not expand one inch to the East).

not enforceable.<sup>54</sup> There was not a single mention of the eastward expansion of NATO in the Treaty on the Final Settlement with Respect to Germany, which officially reunified the country.<sup>55</sup> The document explicitly dealt with German borders and territorial claims (such as that to the Kaliningrad Oblast), yet did not mention, at all, the eastward expansion of NATO.<sup>56</sup> Gorbachev himself confirmed this when he stated, “the topic of ‘NATO expansion’ was never discussed; it was not raised in those years. I am saying this with a full sense of responsibility. Not a single Eastern European country brought up the issue, not even after the Warsaw Pact had ceased to exist in 1991.”<sup>57</sup> While there is some ambiguity around the ‘spirit’ of the negotiations, nothing about NATO was legally enshrined in the context of the German reunification.

Russia also signed the NATO-Russia Founding Act in 1997, which sought to re-pivot the security relationship in Europe from one of competition to cooperation.<sup>58</sup> The act explicitly mentions that NATO has repositioned itself and views its role as being different after the fall of the U.S.S.R.<sup>59</sup> Part of the document reads, “NATO has expanded and will continue to expand its political functions, and has taken on new missions of peacekeeping and crisis management in support of the United Nations (UN) and the Organisation for Security and Cooperation in Europe (OSCE).”<sup>60</sup> This explicitly acknowledges NATO’s post-cold-war reorganization, and the agreement further references NATO’s strategic revision, which itself included goals of expansion within Europe.<sup>61</sup> Russia signed the agreement, which created a “fundamentally new relationship between NATO and Russia.”<sup>62</sup> Once again, there was no discussion about the expansion of Europe,

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54. *International Agreements*, SCIENCE SAFETY SECURITY (Feb. 15, 2018), <https://www.phe.gov/s3/law/Pages/International.aspx> (““Unless a treaty contains provisions for further agreements or actions, only the treaty text is legally binding.””).

55. Mike Eckel, *Did the West Promise Moscow That NATO Would Not Expand? Well, It’s Complicated*, RADIOFREEEUROPE RADIOLIBERTY (May 19, 2021), <https://www.rferl.org/a/nato-expansion-russia-mislead/31263602.html> [hereinafter Eckel].

56. *Id.*

57. *Id.*

58. *Founding Act on Mutual Relations, Cooperation, and Security Between NATO and the Russian Federation Signed in Paris, France* NORTH ATLANTIC TREATY ORGANIZATION (May 27, 1997), [https://www.nato.int/cps/cn/natohq/official\\_texts\\_25468.htm](https://www.nato.int/cps/cn/natohq/official_texts_25468.htm).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

and if Russia had wanted to raise the issue, they could have certainly demanded written assurances against expansion.

Regardless of the lack of legally binding treaties or articles restricting NATO from expanding eastward, Russia has pushed the narrative that NATO has broken its promise.<sup>63</sup> While several other discussions took place in the early 1990s, none of them resulted in any legal or formal acknowledgement that NATO would not expand.<sup>64</sup> Despite the 1997 Act, Russia maintains that the alliance assured them they would not expand 'one-inch to the east' from their pre-1997 boundaries.<sup>65</sup> This portrayal of an aggrieved and consciously isolated Russia has been deployed for the majority of Putin's presidency.<sup>66</sup> Here, perception is more important than reality—many Russians, including Vladimir Putin, believe they have been betrayed. Putin's hostility towards NATO expansion, culminating in Russia's invasion of Ukraine, is a natural consequence of that perceived aggression.

#### IV. CONCLUSION

Since the dissolution of the Soviet Union and the Warsaw Pact in 1991, NATO membership has consistently expanded throughout Eastern Europe. Many of its members, the Baltic states, and Poland in particular, were once key Russian allies and share borders with the Russian Federation. Putin and the Russian government view this expansion as a betrayal of assurances that the United States made to the U.S.S.R. during negotiations surrounding German reunification.<sup>67</sup> Russia believes that the United States and NATO promised not to expand eastward, despite no written treaty or deal stating such. Ultimately, Russia cannot claim any legal justification for its actions, even if assurances were made during the course of negotiations, no legally enforceable treaties or agreements were ever signed. In fact, Russia's assent to the 2007 NATO-Russia Founding Act acknowledges NATO's post-Cold

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63. Jim Goldgeier, *Promises Made, Promises Broken? What Yeltsin Was Told About NATO In 1993 And Why It Matters*, WAR ON THE ROCKS (Nov. 22, 2019) <https://warontherocks.com/2019/11/promises-made-promises-broken-what-yeltsin-was-told-about-nato-in-1993-and-why-it-matters-2/>.

64. *Id.* (Several conversations took place between American and Russian leadership concerning the future direction of NATO, one possibility of which was 'locking in' the current members are not expanding the alliance).

65. See Eckel, *supra* note 55 (discussing the lingering perception that the West had agreed not to expand from negotiations during the unification of Germany).

66. *Id.*

67. See *Extracts, supra* note 1.

War strategic posture that explicitly referred to continued cooperation and expansion throughout Europe.

Putin clearly considers Ukraine's proposed membership to NATO as an unacceptable outcome for the Russian government. Since the Euromaidan movement in 2014 and the election of Ukrainian President Zelensky in 2019, it has become increasingly clear that Ukraine intends to join NATO. Putin has used this expansion to justify an invasion of Ukraine with the expressed goal of stopping any form of NATO expansion. Putin's rhetoric and speeches describing the invasion show that this is just the final link in a chain that has been developing since the 1990s. This idea of "betrayal through eastward expansion and the history of NATO development in Eastern Europe are essential in understanding Putin's decision to invade Ukraine and his ultimate political aims.