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Avoiding Hazardous Incidents in the Euro-Atlantic Area

Report on the workshop on Avoidance of Hazardous Military Incidents between NATO and Russia, held in Brussels, 21-22 September 2016

Rapporteurs: Łukasz Kulesa, Denitsa Raynova and Thomas Frear

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Rationale, Aims and Modalities of the Workshop

On 21st-22nd September 2016 the European Leadership Network (ELN), in conjunction with Egmont - The Royal Institute for International Relations, hosted in Brussels a private workshop on managing hazardous incidents in the Euro-Atlantic area. The event brought together experts from non-governmental institutions (think tanks, academia, and retired military officers) from the US, the UK, Germany, Turkey, Italy, Estonia, Poland and Russia, as well as representatives from NATO and the OSCE.

The workshop formed an element of a larger ELN project on managing close encounters between NATO and Russia, which was initiated in late 2014.¹ It was specifically designed to formulate recommendations on issues of critical importance to reducing the chances of unplanned confrontation. The discussions, held over two days, aimed to clarify national positions, identify gaps in the existing frameworks for managing military-military or military-civilian encounters and provide the groundwork to assist policy-makers in deciding on the way ahead.

This report contains an overview of the proceedings held in Brussels. In line with the concept of the workshop specific comments are not attributed to individual speakers, and the report reflects the rapporteurs' understanding of the main points of the discussion. Thus, the observations and recommendations made in this report do not reflect the consensus view of all the participants. They also should not be seen as an official position of NATO, the OSCE, or the European Leadership Network.

¹ In the framework of the project, the European Leadership Network will issue a separate report on the management of hazardous incidents, containing its own set of recommendations.

The Problem of Hazardous Military Incidents

Since the annexation of Crimea in March 2014 there has been a significant increase of military activity across the Euro-Atlantic area, and close encounters between Russian and NATO-member state armed forces have become worryingly frequent. The European Leadership Network first highlighted this issue in a November 2014 report, showcasing that it let to dozens of specific incidents across several regions including the Baltic Sea, Black Sea, and Atlantic Ocean. Formal announcements by NATO and the Russian authorities confirm higher number of incidents involving respective militaries since 2014. Importantly, while overall numbers might have gone down in 2016, there have been recent reports about new incidents in the air and at sea.

Whilst many of the encounters between the militaries have been of a routine nature (including interdiction and identification of aircraft in international airspace), there have been some instances reports of violations of national airspace, as well as behaviour which may be described as unprofessional or dangerous. There have also been incidents involving civilian airliners and ships.

During the workshop, the participants acknowledged that the overall atmosphere of mistrust and political tension, increased military activity, combined with a projected increase in civilian air traffic across the shared area, poses **a risk of hazardous incidents that must be better managed**. Despite the fact that the November 2015 shoot-down of a Russian Su-24 by a Turkish F-16 was the first incident between a NATO member state and Russia since the Cold War that resulted in the death of military personnel, it was neither unforeseen nor unavoidable. A detailed analysis of the incident, conducted by one of the participants, showcased that even when pre-existing agreements on managing encounters are in place or are being negotiated, the lack of established and tested communication channels, ambiguities in the rules of engagement, and a tense political context can result in incidents with serious repercussions for international relations.

Several participants contrasted the current situation negatively with the Cold War era, arguing that at that time there were mutually recognised rules of behaviour during incidents and each side understood the consequences of transgression.

It was suggested by one participant that a loss of experience may in part explain the nature of contemporary incidents. During the 1990s, the Russian Federation performed very few military exercises, halted its long-range aviation flights and reduced its naval and submarine operations, which significantly brought down the number of contacts between the military aircraft and naval vessels of Russia, NATO Allied countries, and third party military and civilian aircraft and ships. It is possible that this decades-long hiatus from military activities in the region damaged institutional memory on all sides, in the civilian and military realms, resulting in a reduced understanding of correct procedures when coming into contact with foreign military forces.

It was also argued that, taking into account the modernisation of the Russian armed forces and the increased scale and tempo of their operations in the Baltic and Black Sea areas – as well as NATO's strengthening of its deterrence and defence along its Eastern flank - the incidents have become part of a 'new normal'.

Turning to specific incidents, the explanation put forward by a number of participants was that some 'assertive' Russian operations, such as the instigation of close passes by fighters over ships and

reconnaissance aircraft, or intrusions into national airspace or territorial waters, might be an effort to signal unhappiness with national actions or to demonstrate disaffection with NATO forces operating close to Russian national territory. In response, other participants highlighted that NATO and its member states would nevertheless continue such operations as they see them as important elements of their deterrence/assurance posture and stemming from the right of all nations to access the global commons.

Participants also suggested that some of the military actions culminating in hazardous incidents, for example patrols of strategic bombers and submarines, may be an effort to strengthen deterrence. Another theory, offered by one participant, is that the instigation of incidents can actually be a part of a Russian diplomatic engagement or "compellence to dialogue" strategy, a method by which to bring the state actors concerned to the negotiating table.

In addition, the participants noted that intelligence gathering (e.g., the collection of SIGINT, observation of exercises, or the 'testing' of defence systems and overall response times in response to air or sea incursions), an increase of air and sea traffic during exercises, and the logistical movements linked to military activities such as the Russian operation in Syria, may explain the majority of incidents. As one participant put it, only a political decision by Russia or NATO to change their overall policy would put an end to hazardous incidents, however such a change is unlikely in present circumstances.

The arguments about the 'new normal' and the professionalism of the armed forces of NATO member states, partners, and the Russian Federation, were countered by other participants with an assertion that the mere increase in number of encounters increase the probability of incidents or accidents. The behaviour of certain aircraft and ships, whether acting on the individual volition of their commanders or (most likely) as instructed by higher command, has been unnecessarily provocative or dangerous. Examples provided involved fighters engaged in 'tailing' reconnaissance aircraft approaching much closer than is technically necessary to their target. One participant also drew attention to the high likelihood that an accident, technical malfunction or human error will be seen by the 'other side' as deliberate action.

The Utility of Bilateral Agreements

Turning to the bilateral agreements and arrangements, several mechanisms such as "hot lines" and other such military-to-military communication channels (e.g., the well-established links between Norway and Russia and Finland and Russia) were mentioned as highly useful, albeit their weaknesses were also noted. Some participants pointed to the extreme time delays during a possible incident in the air between, for example, an Allied aircraft communicating with headquarters, which communicates with the national command authorities, which then communicates with the Russian command headquarters, and thence back down to the Russian aircraft. A more direct method of communication between and among airmen and seamen is more useful in avoiding proximate conflict, while headquarters communications can be used to stabilise larger-scale crises.

The seminar focused on **the bilateral agreements between NATO** member states and Russia, which were examined as key tools that could prevent more aggressive encounters. The discussion opened with a presentation on the US-Russia agreement on the prevention of Incidents at Sea (INCSEA)² as a point of analytical departure. The dialogue then continued with further examples from other countries with bilateral agreements. All contributors shared a very strong consensus about the utility of the procedures and behavioural constraints included in the INCSEAs and expressed the view that maintaining formal instructional military agreements should be a priority when relations are in a downturn. Equally importantly, the participants highlighted the value of the agreements as the fora for military representatives to talk, negotiate or raise concerns without undue politicisation. In this context, one participant noted that the news coverage after some incidents, for example those involving the USS Donald Cook in the Black Sea (where some Russian media boasted that the close aircraft passes 'frightened' the crew) and later in the Baltic Sea (where some Western officials suggested the Russian aircraft could have been shot down) are unhelpful for managing the problem.

One of the ideas put forward by the ELN was to initiate work on additional bilateral INCSEAs between Russia and those NATO states and other partner states that currently do not have such agreements in place but maintain relevant forces (aircraft and vessels). Some participants disagreed, mentioning that the agreements concluded during the Cold War were signed between the major naval powers at the time and Russia, and that their remit is sufficient as it covers all the countries engaged in significant military activities in the Euro-Atlantic area. However, this notion was countered by other participants who noted that NATO-led operations and Russia's interactions with some 'frontline states' such as Lithuania, Latvia, Estonia, Poland, Romania and Bulgaria are not covered by the existing INCSEAs. The participants subsequently agreed that, when it comes to NATO countries, Poland and Romania have at their disposal some notable military capabilities and thus the adoption of bilateral agreements between them and Russia could be beneficial for Euro-Atlantic security.

The participants also discussed the utility of bilateral INCSEAs in complex situations involving armed forces from multiple states, engaged in **multinational or NATO missions**. It was highlighted that any substantial divergences in approach when managing incidents might create significant operational

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² This refers to the Agreement Between the Government of The United States of America and the Government of The Union of Soviet Socialist Republics on the Prevention of Incidents On and Over the High Seas (1972). Russia also maintains near identical agreements with Canada, France, Germany, Greece, Italy, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom.

difficulties when armed forces personnel would have to quickly make decisions about which rules of behaviour apply in complex situations. To that effect, one participant confirmed that the United States trains all of its allies on the operation of its INCSEA agreement when on combined exercises, and NATO, as well, uses the INCSEA standards and supplementary signals during all operations where they might encounter Russian forces.³

With regards to **implementation of the agreements**, it was highlighted that the officials representing the countries concerned value these agreements and treat them as relevant in the context of the present situation. They also claim that the norms and procedures established by the agreements are known to and implemented by their armed forces, and the channels established by INCSEAs are used to raise any incidents. The mandated annual review meeting between naval authorities are taking place, albeit not always as frequently as they should. In the case of the US-Russia INCSEA, the meetings were conducted in 2015 and 2016, but not in 2014.

Changes and updates to the existing agreements have been negotiated in the past. One participant drew attention to the fact that Russia proposed at the last review meeting in 2016 to upgrade the bilateral INCSEA with the US, i.e. by introducing fixed distances for warships and aircraft operating in close proximity.

The second type of bilateral agreements between NATO Allies and Russia, known as **agreements on preventing Dangerous Military Activities** (**DMAs**),⁴ also featured in the discussion. Participants agreed that their biggest added value lies in the fact that they apply to all armed forces, not just navies, and their application extends beyond international waters to all theatres of operation. Nevertheless, experts also pointed out that the DMAs remain largely unknown and thus underused (for example the consultation/review commission of the US-Russia DMA has met only twice since the agreement was concluded). Among their most useful elements, the Special Caution Areas and additional communication protocols were mentioned as measures that could be swiftly revisited by the parties to the agreement and possibly adopted by other countries.

³ It also is notable that Japan and South Korea have INCSEAs based on the US model with Russia, as do Turkey and Greece, Poland and Germany, while both South Korea and China have DMAs with Russia.

⁴ Agreements on Preventing Dangerous Military Activities; bilateral agreements currently in force between Russia and the following NATO states: the United States, Canada, the Czech Republic, and Greece.

The Utility of Multilateral Agreements

Moving on from the conversation on bilateral agreements, the discussion touched upon the possibility of concluding a NATO-Russia Memorandum of Understanding (MoU) on avoiding and managing incidents, negotiated in the framework of the NATO-Russia Council (NRC). However, not all participants were of the opinion that such a Memorandum is needed or likely to be concluded in the current political environment.

One expert elaborated on some of the previous attempts at adopting a multilateral instrument for managing military incidents. During the Cold War, the USSR's insistent efforts to extend the INCSEA measures to the Warsaw Pact countries was seen as an obstacle by NATO, as it translated into implicit recognition of the status of East Germany by NATO members. Swedish proposals for a regional instrument on preventing incidents for the Baltic Sea, formulated in the late 1980s, did not receive broad support and lost their urgency with the transformation of the regional security environment in the 1990s.

Explaining their scepticism towards a NATO-Russia MoU, some participants noted that the NATO-Russia Council should not be the primary forum to deal with the issue of incidents, as they also touch on the security interests of other countries, including Finland, Sweden, Ukraine and Belarus. They also drew attention to the role of the OSCE and to the work on military – civilian incidents initiated in the framework of ICAO, and expressed concern that this work would be negatively affected by focusing on the NRC channel.

The majority of participants noted, however, that the main issue for consideration is **the political context**, namely the continuing rejection of the annexation of Crimea and other Russian actions by NATO countries and the resulting suspension of practical cooperation with Russia, confirmed most recently by the NATO Summit in Warsaw. It was highlighted that while the NRC remains a medium for strategic engagement with Russia and general discussion on risk reduction (policy level discussion), it cannot be a forum for technical, expert discussions as long as Russia continues with its current policy.

This approach was countered by some participants who insisted that the work on risk reduction can and should be detached from the wider suspension of practical cooperation at the NRC. The potential utility of the NRC as a forum for negotiations and as the vehicle for managing incidents with Russia was highlighted by these participants. They also noted the important practical work done by the NRC until the suspension of its working groups, including the jointly managed Cooperative Airspace Initiative (this was countered by one participant who stated that the CAI example illustrates rather the inappropriate nature of the NRC for these types of discussion, as many Allies declined to participate). Even these participants agreed that taken the current positions of the NATO member states and the current emphasis on strengthening the Alliance's collective defence policy, it would be nearly impossible to agree internally on negotiating an incidents-management arrangement at the NRC.

Another multilateral tool that was considered throughout the discussion was **the OSCE's Vienna Document** (VDOC). Compared with NATO, the advantages of the OSCE include its broad membership and reduced political friction as compared to the NRC. Participants agreed that the CSBMs and risk reduction mechanisms comprising the VDOC can complement, but cannot fully substitute for

bilateral agreements. Some participants claimed that in its present form the OSCE procedures cannot be used for preventing or managing incidents in real time, however the OSCE network does provide real-time messaging among capitals and could be used by those nations that maintain real-time operations-centre capacities in this manner.

The experts reviewed the operationalisation of various Vienna Document risk reductions mechanisms, including Chapter III's consultation mechanism for unusual military activities (paragraph 16), the mechanism for co-operation as regards hazardous incidents of a military nature (paragraph 17), and the mechanism for the voluntary hosting of visits to dispel concern about military activities (paragraph 18). It was noted that procedures stipulated in paragraphs 16 and 18 could be used for the clarification or reduction in tensions regarding ongoing military activities, such as deployments, operations, exercises, or incident, but previous activations – including in the context of the Ukraine crisis – brought very limited results. Paragraph 17 procedures for the prompt notification of and clarification about hazardous military incidents have yet to be activated and are the subject of a detailed proposal by Poland at the OSCE.

On this same topic, the participants noted several other proposals on the modernisation of the Vienna Document's risk reduction mechanisms supported by NATO states. These proposals focus on strengthening paragraph 16 and 18's information-gathering and verification elements, including the possibility of inspections by a neutral party such as the OSCE's Conflict Prevention Centre.

However, some participants pointed to Russia's unwillingness to fully engage with the VDOC review and modernisation as a main obstacle to progress. In response, one participant noted that Russia seems fully satisfied with the current shape of the Vienna Document and, provided there are no broader political initiatives such as a comprehensive update of the European security architecture, Moscow would see no reason to modify its position. This exchange reflects the bigger challenge of working on strengthening of the risk reduction tools in the context of increased tensions between NATO and Russia and between the OSCE participating States. Since the OSCE itself is a consensus-based body, it was seen by the workshop participants as a less-than-ideal format for implementing crisis management provisions during crises instigated by one or more OSCE participating States.

To address some of the practical and political problems that the multilateral regimes are confronted with, one participant brought forward a proposal to 'borrow' procedures and tools from formats for managing incidents developed in other regions. The Code for Unplanned Encounters at Sea (CUES), and the US-China Memorandum of Understandings from 2014 and 2015 on air and maritime rules of behaviour and safety were presented as useful examples of solutions that can be adopted for the Euro-Atlantic area. The bi-annual Italian Navy Symposium was identified as possible avenue to pursue the extension of CUES to Europe and some of the more refined components of the US-China MoUs were suggested as possible additions to the bilateral INCSEAs.

The concept of **due regard** was the main aspect of the **military-civilian dynamic** participants discussed as a practical and politically plausible risk reduction mechanism that could be further improved. The experts welcomed some of the more recent developments made in the direction of enhancing military-civilian communication and exchange of information. Critical to their assessment was the endorsement of the NATO Air Traffic Management Committee of the sharing of due regard principles subsequently approved by the NATO Council in February 2015. This in turn led later in 2015 to NATO establishing its own specific due regard policy. This was hailed as a key step for

managing dangerous encounters as the policy confirmed adherence to the Chicago Convention and International Civil Aviation Organisation (ICAO) regulations except in the instance of 'imperative operational necessities'.

A number of participants with a military background, whilst expressing confidence in the ability of the armed forces to manage military-to-military encounters, voiced their concerns about a lack of experience and training among pilots (both civilian and military), as well as air control, when it comes to interaction between military and civilian aircraft. One participant suggested that, in some instances, the civilian pilots and air control may interpret as potentially dangerous the activities of military aircraft that are, in fact, conducted in accordance with international regulations for military flights.

Some participants drew attention to a possible 'regional' way forward through re-starting work along the model of the Baltic Sea Project Team (BSPT). The BPST was a technical working group initiative established by ICAO (at the recommendation of Russia) to examine civil-military air incidents over the Baltic Sea and recommend ways to address them. The involvement of the ICAO in the process of managing civilian-military interaction was praised by all participants and the results of the BSPT were praised by all. The BSPT completed its work in 2014, issuing a report with four recommendations on how military aircraft could more safely operate in the Baltic Sea in relation to civil aircraft. The recommendations are not binding, but all parties are making progress implementing them. If further measures are deemed necessary in this regard, a similar model can be followed in the ICAO format. It is notable that Finnish President Niinistö raised this issue with President Putin earlier in 2016, and Russia has subsequently suggested bilateral, regional, and NATO-Russia dialog on this topic.

However, in the subsequent discussion, participants from the Baltic Sea area argued that the Russian suggestion for further dialog lacked any details, and it was unclear under which grouping or format the topic could be addressed. They have also voiced unease about the establishment of regional arrangements with special rules of behaviour. Two other concerns included the wide perception that many Russian military aircraft are not equipped with transponders, and there has been no indication from Russia that it is willing to address this issue in other regions where its forces operate, such as the Black Sea.

Options and recommendations for addressing the problem

The participants agreed that awareness of the danger of incidents must be improved at all levels within the governments and militaries of the countries involved. Underestimation of the seriousness of these incidents by some countries has thus far resulted in a lack of political will to address the problem. It was noted that enhancing the understanding of the military-technical aspects of the issue by the political leadership and diplomatic staff would significantly improve the management of the current confrontation.

There was disagreement as to whether raising public awareness would be beneficial to this process, as attracting attention to existing technical and military agreements and arrangements may result in their operation being compromised by broader geo-political concerns and media-generated hype. Nevertheless, some participants maintained that publicising the existence of such agreements may to some degree address and calm down what they consider as ill-informed hyperbole relating to the danger of direct NATO-Russia confrontation.

The participants also discussed a number of options to lessen the risk posed by military incidents over both the short and long term. It was admitted by a majority of participants that existing agreements have been inadequate and that their modification or the negotiation of new agreements could be helpful, but no agreement will solve the underlying disputes that lead to states purposely embarking on risky or dangerous military behaviour.

The feasibility of a multilateral, NATO-wide agreement with Russia was contested among the participants. Several brought attention to the fact that risk reduction cannot be easily de-linked from broader points of divergence between NATO and Russia which make such narrow technical negotiations difficult. Furthermore, it was noted that the necessary involvement of third parties in any discussion may very quickly render a NATO-Russia format unrealistic.

The role of the NATO-Russia Council in managing incidents and the broader confrontation was debated, with the shuttering of the institution in times of stress being criticised by several participants. One participant suggested that the high-profile nature of the Council may actually inhibit its function, and that a diplomatic "downgrading" and re-packaging of the Council as a purely confrontation-management forum may permit it to meet on a more regular basis and focus on risk reduction without jeopardising the political prestige of either side. However, it is unclear how such a change of the NRC would be initiated in the current political conditions.

With regards to the OSCE activities, the majority of participants shared the view that the risk reduction mechanisms included in the Vienna Document can complement bilateral agreements. It was also noted that in its present form the document has some potential to help in preventing or managing incidents in real time, as well as investigating them afterwards, but requires strengthening and expanding. Despite the proposals on the table, the perspective of completing VD modernisation in order to strengthen the risk reduction mechanisms was seen as low for political reasons.

It was agreed that the conclusion of additional bilateral INCSEA agreements between those Allies and partners that have relevant air and sea assets, and Russia, would be a net security gain, but some caveats where identified. These included the need to ensure the harmonisation and compatibility of these agreements' provisions as much as possible to avoid operational confusion,

and also prioritising those pairs of states in possession of significant military capabilities and at particular risk of a clash.

In terms of practical implementation, it was noted that Allied and partner military aircraft and naval vessels transferred to NATO command during operations are trained and prepared to use the supplementary signals and otherwise operate in conformity with the US-Russia INCSEA (which provides the basis for other bilateral agreements), in effect creating a NATO-wide code of conduct and mitigating the problem of divergent procedures.

Some participants expressed support for the re-examination of the potential of return to the Cooperative Airspace Initiative (CAI) and the updating of its competencies, but others expressed a view that this was not possible due to the decision to freeze the cooperation functions of the NRC.

While it was broadly acknowledged that it may not be politically feasible to reinstate the CAI in its previous form, some participants noted that the technical assets, software, experience, and much of the connectivity of the CAI system are in place within the ICAO context, and could become a valuable resource when considering ways to improve the safety and transparency of military activity in the shared area. A limited reactivation of the CAI's connection between the Warsaw and Moscow data coordination centres should be considered, but would require considerable (and presently absent) goodwill.

Other participants stressed that initiatives such as the resumption of the CAI must remain conscious of diplomatic practicalities, noting that the inclusion of the term 'cooperative' in any NATO-Russia format was now no longer plausible. But this should not discourage the continued utilisation of technical components by EUROCONTROL, among others.

It was highlighted that more technical initiatives, specifically the work of the Baltic Sea Project Team (BSPT), made conceptual progress on a collaborative basis, in contrast with more political avenues such as ambassadorial level meetings of the NATO-Russia Council, and could be pursued further. The fact that the work of the BSPT focused on preventing military-civilian incidents was identified as a positive precedent indicating where progress might be possible on similar technical subjects. Whilst most participants remained sceptical of the potential for success of the Russian efforts to engage individual nations, a regional grouping, and the NRC on the narrow issue of transponders, there was agreement that this highlighted an area for further examination.

Conclusion

During the course of the workshop, the discussions often went beyond the issue of preventing and managing incidents, and touched upon the broader context of deepening confrontation between Russia and the West. One participant remarked that since the two sides have conflicting visions of European security, focusing only on risk reduction would not be sufficient to significantly improve the situation, taken the underlying drivers of the conflict. Beyond the incidents, there are other elements of military postures and activities which need to be addressed: participants from NATO countries drew attention to frequent and massive Russian snap exercises and deployments in the vicinity of the alliance, employment of nuclear weapons-related rhetoric, and military involvement in Ukraine, while Russian participants criticised NATO activities, especially deployments in the vicinity of Russian territory. At the same time, all participants recognised the value of working towards reducing the risk of military escalation and avoiding a military-civilian encounter. Some suggested that it may constitute a first step towards re-establishing trust between the two sides.

The discussions during the workshop confirmed that there is no easy or quick-fix solution to the problem of avoiding and managing of hazardous incidents. This led to a suggestion that the management of incidents must be a multi-layered system, encompassing the involvement of several international institutions and the operation of a number of agreements.

It was suggested that in a 3-layer framework, the OSCE may form a preventative layer, in which a more careful and restrained approach to military activities and exercises, in line with the OSCE principles and the spirit of Vienna Document, can reduce the opportunity for an incident. The second layer would consist of the real-time managements of incidents, conducted according to the provisions of agreements such as INCSEAs and DMAs (provided of course that these provisions can be more broadly adopted and updated) both bilaterally and in the OSCE context. Finally, an investigative function must be instituted, not only to examine the details of specific incidents, but also to enable a learning process whereby incidents may be avoided or better managed in future. It was acknowledged that such a function would require either the creation of a new institution or the further empowerment of the existing instruments in the OSCE toolbox to be effective.

It was also noted that ICAO has for several years offered itself as a repository for information on state concepts of due regard, and thus seems fitting as the host of an investigative function for incident management. The sharing of data for this function may be assisted by the CAI data-pooling system.

The difficulty of advancing such technical initiatives without an overt political support of all parties was readily acknowledged. Yet, the participants agreed that the gravity of the current situation makes the progress in the field necessary.

This report reflects the rapporteurs' understanding of the main points of the discussion. Thus, the observations and recommendations made in this report do not reflect the consensus view of all the participants. They also should not be interpreted as an official position of NATO, the OSCE, or the European Leadership Network. The organisation of the workshop was supported by NATO's Public Diplomacy Division.

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