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Competing Western and
Russian narratives on the
European order:

Is there common ground?

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Competing Western and Russian Narratives on the European Order: Is there common ground?

Thomas Frear and Lukasz Kulesa

April 2016

On 7th November 2015 the European Leadership Network (ELN), in cooperation with the Russian International Affairs Council (RIAC), hosted an event in London on the competing legal and political narratives between Russia and the West. The 18 participants represented a broad range of academic institutions from across Europe, with representation from the UK, Russia, Hungary, Ukraine, Italy, and Poland.

The seminar forms part of a larger project, initiated in 2015 by the European Leadership Network in partnership with RIAC, with the financial support of the Carnegie Corporation, to provide a platform for European and North American experts to discuss openly the competing narratives on the Russia-West relationship and the principles which should underline it. At a time when many channels for official dialogue between Russia and the West are closing down and there is an abundance of harmful propaganda and hostile rhetoric, the project's objective is to create a space for dialogue aimed at better understanding of each side's narratives as a first step towards overcoming differences.

This report is a summary of a discussion held under the auspices of the European Leadership Network and the Russian International Affairs Council in London. During the off the record discussion many views were expressed and many disagreements aired. This summary reflects the main themes of discussion among participants but it's contents should not be directly attributed as the personal views of any individual participant or the European Leadership Network.

Western and Russian interpretations of the basic principles of European order: Is there common ground?

The relationship between Russia and the west is arguably at its lowest ebb since the mid-1980s and there is potential for it to get worse. This could lead to a direct military confrontation, undermine worthwhile cooperation across Europe and could stifle attempts at global cooperation on a range of 21st century threats and challenges.

The present crisis between the western countries and Russia has been fuelled by a number of **competing narratives developed by all the actors involved**. These narratives serve to rationalize and validate the actions of each side by offering a particular interpretation of the past and present developments in Europe. They also underpin views on the sources of the crisis and provide a framework within which to interpret and understand the values, norms and principles said to be at the heart of European order. They have, furthermore, provided a foundation for the conceptualization of each actor's interests and the formulation of strategies to deal with the current crisis.

The November 2015 meeting was intended to facilitate focused debates on the Western and Russian interpretations of a series of key concepts and principles related to the European and wider international order. In relation to these concepts and principles, the ELN asked participants not to present their personal interpretations of these issues but offer their reading of the official Russian and or western interpretation, such as it exists.

During the seminar, **the primary aim was identifying the crucial differences between the "Western" and Russian narratives, and attempting to identify any common ground that remains**. The aim was not to seek to assign blame for the crisis or to force consensus where the positions of the participants diverged, but rather to bring greater clarity by exploring the contested territory.

For the purposes of expediency, **the ELN made the working assumption that a single western narrative exists**. Whilst this is a problematic assumption, as indeed may be the parallel assumption that there is a single Russian narrative, this has been done to try and make it possible to outline the core elements of narratives that have become dominant on either side. The ELN also operated under the premise that an exploration of the differences between the dominant narratives on either side was at least if not more important than a debate about whether each side in fact exists as a single entity or has a singular view.

The meeting was divided into three sessions devoted to three contextual topics, namely:

- **Russian and Western views on the nature of European security order in the 21st century;**

- **Respect for sovereignty, use of force and the principle of non-intervention in the internal affairs of other States and;**
- **Inviolability of borders, territorial integrity of states and self-determination of peoples.**

This document summarises the discussion that took place. Although participants in the meeting have been asked to review and comment on it, and although many of these comments have been taken on board in the drafting of this summary, the summary is published in the name of the authors named on the front cover only and not in the name of all participants in the discussion. The aim has been to capture the central themes of the discussion that took place and its broad conclusions and to open those conclusions up, through publication, to wider scrutiny and debate.

The first three sections of the document deal with each of the sessions and themes outlined above. The fourth section contains conclusions and identifies some areas of tentative agreement to have emerged from the discussion. The first appendix provides a list of the participants. The second appendix contains written contributions provided by some of the participants in the discussion. These contributions have for the most part been revised after the meeting and represent the views of their individual authors and not all participants in the discussion.

Session One: Russian and Western views on the nature of the European security order in the 21st century

This session was prefaced by the affirmation that the point of the dialogue was not to condone specific actions of any country but to understand analytically the behaviour and actions of others.

As a way of introducing the main theme of the session, it was argued that in recent years, Russia and the west have developed different responses to the question of what constitutes an acceptable and sustainable security order in Europe. They also seem to have developed different interpretations as to what the main threats to that order are. Each of the sides selects and interprets events from post-cold war history to back its case.

The discussion began with an attempt to characterize the Russia-West relationship and the nature of European order more broadly.

The prevailing Western approach highlights that the European security order needs to be based on the Paris Charter principles and the 'Europe whole, free and at peace' vision of the 1990s. Russia's actions against Ukraine are presented in the western narrative as an unprovoked assault on the relatively well-functioning security order of post-cold war Europe and its basic principles. From the western point of view, the desired way forward is for Russia to comply with the previously accepted norms and obligations which are the building blocks of that order.

According to the Russian narrative, the post-cold war security order in Europe was built according to a western design, with gradual – and detrimental – changes to the geopolitical status quo happening as a result of NATO and EU enlargement processes. From the Russian viewpoint, the security order in Europe can operate properly only if the security interests of all major countries, including Russia, are taken into account. Russia also seems to consider the western discourse on principles and values that underpin the European security order as a pretext for attacking its internal political regime and its foreign policy.

During the discussion, it was agreed that Russia and Europe belong to the same cultural area and participate in a number of common international structures, epitomised in particular by the OSCE and 'common European home' ideal of the 1990s. Still, a number of participants asserted that Russia had been blocked from joining a number of western political structures. The role of the United States remained a contested factor. There is a Russian perception that it was the US that acted to block Russia's deeper integration with the rest of Europe. A number of western participants noted in response that it seems to be a long-standing Russian desire to isolate the US from the European continent, which explains the Western reluctance to build structures which may 'push out' the US.

The discussion helped to highlight that, following the failure of the 'common European home' project, Russia has stopped thinking in terms of common values. The notion of common values itself is now derided by many in Russia as an example of western hypocrisy. In the interpretation of some non-Russian participants, Russia now operates a parochial policy centred on its reading of the national interest. This, it was argued, marks a palpable shift away from the model of 'gradual change' of the international system favoured by the USSR and Russia in the 1990s to a model of 'snap changes' of the international environment, of which the Russian annexation of Crimea is a clear example.

Such a shift was acknowledged by a number of Russian participants but interpreted as a response to what is perceived as a 'hostile western concept of gradualism' that exploited Russian weaknesses, epitomised by the eastward expansion of NATO and attempts at regime change in those states deemed hostile to the west. The anti-Russian nature of this process was allegedly further strengthened after the inclusion of Eastern European states in NATO and the EU. Since these countries are said to maintain their own grievances toward Russia, these grievances now influence western decision-making towards more hostile policies on Russia.

It was argued that the founding of the new European order following the dissolution of the USSR and the Warsaw Pact was not properly elucidated to the leadership of the Russian Federation. Moreover, Gorbachev's policy of 'conflict transcendence', it was argued, was not acknowledged by the west. Instead, there was a continuation of power politics that exploited Russian weakness. Russian participants insisted that following the dissolution of the Soviet Union, Russia was not treated as even a residual power. The necessity of others honouring the position of Russia as one of the great powers was presented as a concept fundamental to Russia's vision of a stable international system. It was noted that the Soviet Union/Russia's position was formalised at the Yalta/Potsdam conferences towards the end of the Second World War and through the founding of the UN Security Council.

This viewpoint was challenged by a number of western participants, who argued that the post-cold war European order was not imposed by the US or western powers, but until the 2013/14 revolution in Ukraine seemed to have Russia's broad acceptance. Accession to western institutions was and continues to be voluntary. Membership of NATO and the EU provided a stable platform for developing relations between the newly admitted countries in Eastern Europe and Russia. Whilst attempts at closer partnership with Russia have indeed failed, efforts to engage it were made on numerous occasions. The continued functioning of the OSCE, an institution that operates on the principle of equality, also proves that Russia cannot claim to be isolated. Furthermore, as was highlighted by one participant, formal opportunities to raise concerns about the state of the European security system, in particular the 2010 Astana Summit, were not utilised by Russia for this purpose.

There was broad agreement among the participants that the focus must be brought back to conflict transcendence, with particular attention on the 'borderlands' between the western institutions and Russia. Conflict transcendence, as multiple Russian participants maintained, must begin with an acknowledgement that nobody was defeated in the Cold War.

Some participants asserted that it must be acknowledged that key Cold War agreements, such as the Helsinki Founding Act, that provided a basis for European relations, have ceased to function effectively. One Russian participant drew attention to the fact that the European state system has changed so dramatically since the Helsinki Founding Act was signed, including the emergence of many states that did not exist in 1975, that it should not be surprising that some states are not interested in the Act's principles. This was countered by other participants who reiterated that the Helsinki Final Act, despite being a 'soft law' document rather than a treaty, still includes a number of obligations which are derived from international law and continue to be binding.

It was agreed that better mechanisms are needed to share information and coordinate responses before and during crises. A fundamental problem is that there is often no common interpretation of events as they are unfolding. Lack of common understanding inevitably leads to different responses, furthering mistrust and confrontational attitudes. Some participants suggested that work on a 'code of behaviour' to better manage unforeseen events and changes needs to be expedited. Crisis avoidance must take precedence over a debate on 'old versus new values', but it was also proposed to formulate an idea of a token grand common goal (e.g. 'Greater Europe', the fight against terrorism, or a world free of nuclear weapons) as a way to facilitate greater a degree of contact and cooperation. Confidence and security building measures (CSBMs) and arms control agreements may have a role in stabilizing the situation during crises, but the participants acknowledged the difficulty of gaining consensus on any such measures in the current environment, and noted the problems with implementation of some of the existing instruments.

Finally, several participants noted that the major European schisms of recent years, such as the Crimean annexation and the 2008 Georgian war, are evidence of longstanding problems of the post-Cold War European security system. These problems, it was highlighted, have been apparent since the mid-1990s. The events of the last twenty years drew a comparison, for some, with E.H. Carr's diagnosis of The Twenty Years' Crisis as two decades of failed attempts to balance ideological approaches to international affairs with realism.

Session Two: Respect for sovereignty, use of force and the principle of non-intervention in internal affairs of other States

Session two began with a discussion on the nature of sovereignty. The traditional concept of state sovereignty has come under pressure in recent years. On the one hand, this is a result of fresh efforts to legitimize external intervention in the affairs of other states through reference to new norms such as the responsibility to protect (R2P). On the other hand, sovereignty has been increasingly challenged by advanced globalization, the rise of non-state actors, and greater state integration into international organizations.

Against the backdrop of these changes, participants in the discussion initially noted that western states appear to think that Russia's conception of sovereignty is stuck in the past, uninterested in the protection of human rights or in grappling with the genuine implications of a world which is more interconnected and in which events in one country can have serious impacts in another. The west appears to think that Russia's preference is always for order, stability and non-interference over legitimacy, democracy, and human rights. In addition, for many in the west, Russia's development of various forms of hybrid warfare, and of 'deniable intervention', has raised new questions about how force should be defined in international law and how international legal instruments should be revised in response to it.

The Russian leadership appears to think that the West is intent on using universal norms like R2P as a vehicle for undermining its sovereignty and for intervening in the affairs of others in order to instigate regime change in the west's own interests. This entire western approach to sovereignty is viewed in Moscow as a recipe for disorder and confrontation on a global scale. Russia also accuses the west of behaving as though it alone is the arbiter of what is and is not legitimate in relation to international law.

The remainder of the session focused on the relationship between human rights and intervention, in terms of the legality of humanitarian intervention and the R2P concept. This was identified as one of the areas where Russian and Western interpretations diverge significantly.

The international legal complexities of such interventions were acknowledged by all participants. It was also conceded that intervention remains legitimate in order to protect one's own citizens should the host government prove unable to provide protection.

Several participants reiterated that humanitarian intervention and R2P are not an established practice of international law and that ultimately the use of military force in this regard is only justified with the authorisation of the UN Security Council. Indeed, the UN has made

a considerable effort to keep the principle of R2P separate from the wider operation of UN human rights bodies.

The nature of R2P proved to be a vivid focal point of contention between participants, however all agreed that humanitarian intervention has been heavily instrumentalised in recent years and that this is a major feature of the atmosphere of distrust in Europe.

Russian participants cited the initially UN-sanctioned NATO intervention in Libya in 2011 as a prime example of how an initial mandate can be exploited and expanded to encompass regime change, and that this particular incident has severely undermined the case for humanitarian intervention. This concept, it was highlighted, is in stark contrast to the Russian perception of intervening to prevent regime change. It was observed that Russia has also referred indirectly to R2P during its engagements in South Ossetia and Crimea.

A key difference was highlighted by some non-Russian participants, however, between cases of unilateral intervention (such as Russian actions in Crimea), and cases where an integral role was played by regional organisations, such as in the Libya intervention.

Western participants were also critical of Russia's inconsistent approach to sovereignty where it concerned Russia's neighbours. It was argued that while Russia guards closely its own sovereignty, it has limited respect for the sovereignty of those states on its borders, in what was termed a 'sphere of exceptionality', and that this seems to represent an approach based on power rather than legality or respect for sovereign equality.

These differing interpretations of R2P lead to a consensus that the concept must be clarified, if not as international law then at least as a form of political action. It was observed that Pillar 3 of R2P (collective action to enforce protection and its authorisation) is now so contentious that the main focus of the discussion should switch to Pillar 2 (assisting the state to fulfil its primary responsibility of protection).¹ One participant argued that R2P's validity may be improved through the inclusion of an additional pillar focusing on recovery, for example post-conflict management and reconstruction of civilian infrastructure. Full consensus was reached that it would be dangerous to begin reimagining or expanding R2P to the extent that it started to undermine such basic principles as the non-use of force.

1 The three pillars of R2P are as follows: 1) The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement; 2) The international community has a responsibility to encourage and assist States in fulfilling this responsibility; 3) The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations.

However, as one of the participants noted, the nature of international law as a form of diplomatic communication, in which 'interpretation of law is distilled through national interest', can prove a severe stumbling block to agreeing a way forward on R2P. Retaining a freedom of manoeuvre allows states to act in multiple ways in different crises, according to their own perceived interest.

More broadly, it was determined that international law regarding sovereignty cannot be readjusted at the behest of just one major power. The participants went on to highlight additional areas that require more detailed study in the future, in particular cyber warfare, which is currently a violation of the principle of non-intervention but is not as yet categorised as aggression, and the use of proxy forces. The right of western states to impose economic sanctions on Russia after the Crimean annexation was also called into question, with Russian participants maintaining that sanctions are only valid with the authorisation of the UN Security Council.

Session Three: Inviolability of borders, territorial integrity of states and self-determination of peoples

Session three served to highlight the failure of the international state system in addressing the concept of self-determination following the decolonisation period of the 1960s and 1970s. This failure is evident in the self-determination conflicts that have been a prominent feature of the European security order since the dissolution of the Soviet Union and Yugoslavia.

Principles of inviolability of borders and territorial integrity of states arguably should provide a clear and stable foundation for the European security order. In recent years however, national self-determination movements from the former Yugoslavia to Chechnya and the annexation of Crimea have meant the understanding and operationalisation of these concepts has become deeply contested. According to Russian Foreign Minister Sergei Lavrov, “what took place in Crimea is stipulated in the UN charter: self-determination”. The West does not accept the Russian self-determination narrative with regards to Crimea. At the same time, Moscow considers as not acceptable what it sees as the West’s use of force against Yugoslavia in 1999 and the dismemberment of this OSCE member state via a decision to unilaterally recognize the independence of Kosovo.

During the discussion, there was general consensus that it is not possible to formulate a common approach to secession. Each case is unique and must be addressed as such. This necessity appears to have been borne out in practice, with states declaring support for international law as it applies to secession but acting in a more pragmatic fashion as specific cases emerge. Examples raised by participants include various approaches to the recognition of the successor states of Yugoslavia² by members of the European Community, as well as the approach taken by the Russian Federation to the secessionist entities that emerged on the territory of the former Soviet Union.

At the same time, it was highlighted that the general rules governing territorial integrity and self-determination are not that widely contested between the west and Russia; it was in their practical application that differences emerged. Russian participants went on to state that Russia has maintained a more balanced approach between self-determination and territorial integrity since the 1990s.

The discussion moved to the legal argument used by Russia with regards to the inviolability of borders and the occupation of Crimea. Russia consistently claimed to act in accordance with international law, in this case respecting Ukraine’s territorial integrity but also respect-

² The case of Kosovo remains an aberration, with the member states of the EU maintaining individual policies regarding recognition.

ing the right to self-determination of the Crimea population. Yet it glossed over some actions to which international law would apply, for example the presence of Russian military personnel operating on Ukrainian territory outside of their legally assigned basing areas and 'securing' the conduct of the referendum.

This approach, when the legal arguments are apparently used to justify actions that have already taken place, was described as an example of 'widely prevailing legal nihilism' in international relations by some participants. The prevailing legal nihilism concept was challenged by one participant, who argued that at least in some countries the issue of legality of the proposed action does influence politics and the policy process, giving the example of the British parliament's decision to extend air strikes against Islamic State into Syria; a process heavily influenced by the perceived legality of the action.

Examples of self-determination such as Kosovo or Crimea will remain unique. Some participants called for an acceptance that there will be no universal agreement on rules for determining the legality of self-determination and its impact on the principle of territorial integrity, only ad-hoc agreements on a case-by-case basis. Some participants raised the possible acceptability of remedial secession³ in the face of discrimination by the governing state, but agreed that this is only plausible on an ad-hoc basis.

More broadly, it was noted that a lack of consensus on what constitutes the European order resulted in a steady degradation of international law. One non-Russian participant highlighted that this confused situation has enabled Russia to use a form of 'hybrid circumvention' of international law, simultaneously applying certain legal facets rigidly, while contesting the facts that would indicate legal breaches elsewhere.

Leaving aside legality issues, it was suggested that it may be possible to establish some broadly accepted political and military rules of the game to address developments concerning territorial integrity and/or self-determination. Without such precautions, a military response to a challenge to sovereignty may take precedence over a political response, which would always be a dangerous and escalatory development within which international law will be even more instrumentalised.

3 Remedial secession refers to the right to unilateral secession, stemming from the right to self-determination of peoples, as a result of serious injustices suffered by a people.

Conclusions and next steps

The purpose of this initial meeting was to bring together a varied group of experts from across the European continent to discuss those issues that seem to be the most intractable when determining the current and future European security order. A particular advantage of this meeting was that many participants had not had the opportunity to engage with the 'other's' viewpoint first hand. The facilitation of interpersonal exchanges served to highlight that the Russian and western narratives are not simply products of official propaganda, but they often reflect deeply held beliefs reflecting well developed intellectual and legal perspectives. The meeting also provided an opportunity to discuss and question the basis of particular perspectives offered by various participants.

Despite notable differences, some **areas of tentative agreement** emerged. **Key points are singled out below:**

- **The situation remains serious and the stakes are high**

This confrontation is taking place in the context of an ongoing unravelling of the European order. Accusations that each side is violating the principles and norms that should underpin this order are rife on both sides. There seems to be little appetite for high level dialogue to address the fundamental points of disagreement. Each side currently appears to prefer freedom of manoeuvre in its decision-making over pursuit of any kind of agreed order. In the meantime, military risks are being run. Further crises are possible and perhaps likely. Potential common interests are being obscured and costs associated with the dispute, both direct and indirect, are being incurred.

- **Managing unexpected events and change may be the core challenge**

The deliberations in London clearly show that the challenge is how to collectively manage the process of ongoing historical change. This change inside Europe has already been profound given the number of borders that have changed since 1989. The number of unresolved disputes and abundance of areas of tensions in Europe remain high, so it is likely that further challenges to the European order will present themselves in the form of unexpected events and snap developments.

- **The basic disagreement may be less over fundamental questions of principle but rather over the way those principles should be applied in any given case**

The mood of the meeting in London seemed to strongly suggest the latter but to establish that, some re-examination of historical cases and the legal arguments surrounding them would be valuable. In particular, it seems important to establish whether either Russia or the US/EU have been behaving consistently with regard to the principles of international law or whether both use law to justify politically expedient positions.

- **The dispute over the applicability of key principles is further clouded by a lack of agreed procedures**

Participants felt it might be worth exploring whether there are procedural innovations that could be pursued in Europe to help address this gap and which particular mechanisms could be established to enhance conflict avoidance, prevention and management.

- **We may need additional political dialogue mechanisms to be put in place to prevent or manage disputes**

When significant events do happen, such as in Ukraine, there is almost always no agreed Russia/US/EU account of what has been happening and why. There are no mechanisms for trying to achieve an agreed account as the situation develops. Additional political dialogue mechanisms are vital not only for technical managing of a crisis, but also for achieving a convergence of views on the situation.

- **Military risk reduction mechanisms can be put in place in the short to medium term to help ensure that the confrontation does not become even worse**

The group thought it was worth exploring mechanisms to manage dangerous military incidents and design new confidence and security building measures. It should also be examined whether any lessons of earlier periods of détente and of superpower conflict prevention during the Cold War could be usefully applied to current events.

At its next meeting, the group will explore in more detail the following questions:

- Is it possible to bring together relevant experts and to work out the common understanding of the key contested international law principles identified in London?
- What new legal and political principles and norms of behaviour in Europe may be introduced to prevent the development of serious crises and conflicts?
- What political/diplomatic measures may be agreed to operationalize such principles and norms?
- Is the overall or partial modernisation of the European security system plausible and possible

Appendix 1

List of Participants

1. **Dr Derek Averre**, Senior Lecturer in Russian Foreign and Security Policy, Centre for Russian, European and Eurasian Studies, University of Birmingham
2. **Professor Marc Weller**, Director of the Lauterpacht Centre for International Law, University of Cambridge
3. **Natalino Ronzitti**, Scientific Advisor, IAI Istituto Affari Internazionali, Rome
4. **Oleksandr Tytarchuk**, Senior Research Fellow, Foreign Policy Research Institute (FPRI) at the Diplomatic Academy of Ukraine
5. **Professor Richard Sakwa**, Professor of Russian and European Politics, University of Kent
6. **Professor Roy Allison**, Professor of Russian and Eurasian International Relations, Head of Russian and East European Studies, the School of Interdisciplinary Area Studies (SIAS), University of Oxford
7. **Dr Xymena Kurowska**, Associate Professor, Department of International Relations, Center for European Union Research, Central European University, Hungary
8. **Dr Mikhail Troitskiy**, Associate Professor at the Department of International Relations and Russia's Foreign Policy of the MGIMO-University
9. **Dr Vera Rusinova**, Associate Professor at the Department of International Public and Private Law of the NRU HSE, First Deputy Dean of the Faculty of Law of the NRU HSE
10. **Professor Boris Ashavsky**, Professor at the Department of International Law, Diplomatic Academy of the Ministry of Foreign Affairs of the Russian Federation
11. **Dr Sergey Markedonov**, Associate Professor of Department of Regional Studies and Foreign Policy at the Russian State University for the Humanities
12. **Dr Sergey Oznobishchev**, Head of Division, IMEMO RAS; Professor of the MGIMO-University
13. **Dr Ian Kearns**, Director, European Leadership Network

14. **Shatabhisha Shetty**, Deputy Director, European Leadership Network
15. **Lukasz Kulesa**, Research Director, European Leadership Network
16. **Denitsa Raynova**, Research Associate, European Leadership Network
17. **Thomas Frear**, Research Fellow, European Leadership Network
18. **Natalia Evtikhevich**, Programme Manager, Russian International Affairs Council

Appendix 2

Written Contributions

The following contributions were submitted by participants in order to inform the meeting and have since been revised to take account of the group discussion.

- The Procedural Foundations of the European Security Order: Russian and “Western” Perspectives – Mikhail Troitskiy – page 17
- Russia’s “energetic” policy in the struggle for a new international order: a Ukrainian perspective - Oleksandr Tytarchuk – page 23
- Reflections on Post-Cold War Order - Richard Sakwa – page 28
- Respect for Sovereignty, Use of Force and the Principle of Non-intervention in the Internal Affairs of Other States - Natalino Ronzitti – page 37
- Contested understandings of sovereignty, the use of force and the wider international legal order: the political context - Roy Allison – page 43
- Territorial integrity and self-determination: rules and standards - Sergey Markedonov – page 49

The Procedural Foundations of the European Security Order: Russian and “Western” Perspectives

Mikhail Troitskiy

The preferences of Russia and the Euro-Atlantic community differ greatly with regard to the processes and forms of further development of the European regional order. Nevertheless, a compromise is possible if the sides can agree on the procedural frameworks and rules for the development of this order without pre-determining the outcome of the evolution.

Transferring the concept of moral and ethical values from the world of people to the community of states and international institutions is a difficult task from a methodological point of view. The regulatory foundations of the European international order (including the security interests of the participants in this order) consist not in specific values or principles, but in rules that guide the evolution of the order. The supremacy of these rules distinguishes the “European World” from other regional orders, for example, the East Asian or Latin American regional orders. The European order is essentially “procedural”.

Norms and the European Security Architecture

A normative assessment of the European order concerns not so much the shape of this order at a given point in time, but the process of its evolution or conservation. The normative principles reside in the specificities of the process rather than in any current or desired status quo. From the normative point of view, European security is the process whereby the European order constantly adapts to changing external and internal conditions. Thus, the main aim of the European security architecture are to avoid abrupt and uncontrolled change while remaining open to evolution under the influence of a changing internal and external environment.

The above interpretation of normative foundations has two major consequences. First, the European order defies attempts to conserve any status quo for an indefinite period of time. A trend in the evolution of the European order may have negative implications for the declared interests of a specific player, but attempts to arrest that trend on the part of a minority of participants in the order are unlikely to succeed.

Such attempts are akin to building a dam across a big river that results in bypass ways being discovered. For example, the provision of the Basic Law for the Federal Republic of Germany on possible reunification with the “eastern lands” without reforming the foundations of the German state prevailed over the norms of the “inviolability of borders” in Europe enshrined in the Helsinki Final Act.

Second, under European order specific policy goals are achieved gradually, preferably through a highly institutionalized and juridical procedure, and with the consent of the largest possible number of participants (at times, over the opposition of a small dissenting minority).

The process of evolution must be informed by an idea of progress that justifies and often determines the direction of this evolution. Such motivating ideas may include economic development, democratization of the internal politics of participating states, humanization of international relations, etc. Sometimes the implementation of a certain idea of progress (for example, quickly bridging the economic development gap between Western and Eastern Europe) eventually turns out to be problematic, but for a certain period of time the idea commands a consensus of national and transnational policy-making elites and serves as their roadmap.

Third, the subjects of the European order set a high premium on the mutual transparency of intentions and predictability of actions. Maintaining uncertainty with regard to one's intent on issues that are vital for the other members of the community is not an acceptable form of behaviour in the contemporary European order. Even if the intentions of one player run counter to the declared interests of others, these intentions are usually proclaimed openly. For example, the referendum on the United Kingdom's membership in the European Union was announced about two years ahead of the scheduled date. This gave London and its EU partners time to discuss the ways to adapt the terms of UK's participation within the European Union.

Predictability and stability of intentions of the players in the European order are ensured by the relatively transparent procedures of the players' decision-making. The players are not obliged to disclose to the world all their intentions and plans on every conceivable issue. However, they are expected to give upfront answers on issues that are essential for other participants.

European nations usually avoid abrupt foreign policy changes or surprise manoeuvres aimed at achieving unilateral advantages, even if not at the expense of other players. In other words, springing surprises on one another is not common practice. The EU and NATO countries set their long-term strategic priorities in the 1950s and adapted them to the changed situation in the early 1990s. Over the course of six decades, neither grave economic crises nor the organizational problems of interaction within NATO and the EU caused these organizations to substantially rethink their place – and main goals – in the region and the world.

Fourth, if abrupt changes in the policy of the actors with regard to each other or to common goals do occur, they are justified by exceptional and convincing considerations. For example, attempts to erect barriers on the national borders within the Schengen zone in 2015 were explained by the respective governments by the unprecedented and uncontrolled influx of immigrants from the Middle East whose presence could affect social and political stability in the receiving countries.

Changes of intentions arising from public opinion or sentiments are considered to be valid. Only a referendum or a near-unanimous vote in parliament confers legitimacy on a drastic change of the position of an EU or NATO member state, for example, accession to or withdrawal from the European Union or the euro area. Participants in the European order generally reject references to “supreme national interests” formulated exclusively by the country’s elite (let alone one or several of its leaders) as justification for a sudden and risky change of intentions.

Although the European order is averse to sharp and sudden change, it is fairly flexible when it comes to details. It is supposed to recognize new realities and adapt itself to them even if these realities have arisen against the will of the main players. Examples in point are the collapse of the Soviet bloc and the willingness of the post-communist Central and Eastern European states to become integrated into the EU and NATO, the increased flow of refugees heading for Western Europe from conflict zones in the Middle East in 2015, the debt crisis of the South European EU members, the slump of the euro and the economic slowdown. Up until now, the relative effectiveness of the bureaucratic apparatus, including the EU bureaucracy, and the constructive involvement of civil society has enabled the Europeans to cope with the difficulties without drastically revising the basic principles of their foreign policy and the foreign policies of individual NATO and EU countries.

What Principles of the European Order are Important for Each Side?

For the participants in **the Western segment of the European order**, the sense of progress that determines policy goals is vital. If the sense of progress is lost, demands for a policy shift become more vocal both among the elites and the wider electorate.

The experience of positive change that has taken place in Western Europe over the 70 years since the end of World War II (resolved conflicts, greater security, economic growth, strengthening of democracy and human rights) has created a sense among the populations of EU and NATO states that reforms always bring benefits and has made Europeans confident in their ability to adapt to external shifts and shocks without giving up their ideas of progress.

Faith in reform has guided the EU in tackling the Greek debt crisis, for example. Athens was left with no other option but to tailor expenditures to revenues, improving economic efficiency and identifying new sources of economic growth. Similarly, proceeding from the notion that democratic transformations in North African countries were necessary and inevitable, France and Britain decided to recognize the opposition forces in Libya and provide direct military support to them in the spring of 2011.

Major West European powers are somewhat less inclined than the United States to change policy goals and directions for the sake of progress and “making the world a better place”. These nations rely more on institutions that had already been created, so that only dramatic shifts in external or internal circumstances could induce them to embark on institutional reforms. Europeans generally seek to extend the time required for change to take place in order to cushion its effect and to be able to adjust the process at any stage.

US political culture usually demands a “policy” (a clear-cut action plan) in response to any existing or putative problem. Thus, in spite of the warnings by many economists, the European Union chose not to resolve the Greek debt problem completely in 2010–11, when the price of writing off the debt or a Greek default would probably have been significantly smaller than three years down the road. Similarly, in spite of the pleas from many quarters, the EU and its members are in no hurry to provide massive economic and organizational assistance to Ukraine, essentially limiting its support for Ukrainian reform to anti-Russian sanctions.

On its part, **Russia** has been complaining about its vulnerability in the face of Western superiority in the main parameters of national power. Moscow has also stated that it is “disappointed” with the prospect of an “alliance with the West”.⁴ It has resisted unfavourable changes in relative power and sought to secure recognition by the West of Russia’s status. Moscow would like to secure the status quo that is slipping away, or else swing the status quo in its own favour. Russia also seeks to reserve the unconditional right to influence the ongoing changes.

4 Multiple publications by astute observers of Russian politics and foreign policy, such as Sergey Karaganov, Dmitri Trenin, or Mikhail Zygar, have described Russian President Vladimir Putin’s shift from attempts to embrace the West early in his tenure at the Kremlin to his conviction that the United States, NATO, and the EU were inherently hostile to Russia and its interests and that finding a compromise with would be difficult, if at all possible. See: Sergey Karaganov, ‘Evropa: porazhenie iz ruk pobedy? [Europe: Defeat out of the jaws of victory?]', *Russia in Global Affairs*, January–February 2015, <http://www.globalaffairs.ru/number/Evropa-porazhenie-iz-ruk-pobedy-17304>; Dmitri Trenin, *From Greater Europe to Greater Asia: The Sino-Russian Entente*, (Moscow: Carnegie Endowment for International Peace, April 2015), http://carnegieendowment.org/files/CP_Trenin_To_Asia_WEB_2015Eng.pdf; Mikhail Zygar, ‘Vsyakremlevskaya rat’: *Kratkaya istoriya sovremennoi Rossii*, [All the Kremlin’s Men: A Brief History of Contemporary Russia], Moscow: Intellectual Literature, 2016.

For Moscow, recognizing Russia's status is more important than meeting its concrete current demands. Status is the political capital that can be used to influence multilateral decisions at any time and on any issue. Status is a universal currency; it is highly liquid, unlike agreements on a specific issue between rival players. Status is converted into profit in games with both high and low levels of antagonism. Russian leaders insist on recognition of the country's status when they demand "equal partnership" with other actors, regardless of the specific nature of the problem being negotiated. Status is also important for other major European powers – the United Kingdom, France and increasingly Germany.

Conservatism, which is paradoxically combined in the Russian approach to the European order with a penchant for sudden manoeuvres aimed at sharply changing the status quo in its favour (the 2008 war in Georgia, the Crimean takeover in 2014, and the Syria operation in 2015), stems from the experience of negative consequences that major global and regional changes have brought to Russia over the last 70–80 years. The geopolitical shifts in Europe at the turn of the 1930s and 1940s led to the tragedy of the Second World War. The post-war attempts at social mobilization and then demobilization and, finally, the experience of sweeping Perestroika and market reforms led Russians to regard change, whether spontaneous or deliberate, with irony and cynicism at best, and with fear at worst.

Besides, since the mid-1990s, Moscow has increasingly felt that changes in the European order were happening in spite of Russia's will and, later, since the mid-2000s, that these changes were engineered in order to harm Russia's interests.

Against this psychological background, Russian leaders in the early 2010s concluded that internal political conservatism, i.e., rejection of radical reform, resonated with the public sentiments of the Russian people. In foreign policy, conservatism meant the preservation of the status quo (or even a return to the situation of the 1980s) and enhancing Russia's formal and actual status by generating uncertainty through surprise manoeuvring.

Overcoming Differences: Is the European Order in Need of a "Systemic Reform"?

The European security architecture is not a rigid system. Instead, it is a process of a slow but steady evolution of the order in the direction indicated by the "arrow of progress". Can the recognition of Russia's status be "inscribed" into this process?

The answer need not be negative. The solution may consist in agreeing on certain procedural rules acceptable to the sides. Such rules would not however predetermine the direction or outcomes of the evolution of the European order.

For example, the parties could agree on rules to guide the process of NATO expansion without granting Moscow a veto over the enlargement. Tensions could be eased by an agree-

ment whereby NATO enlargement would not be seen as a political imperative by Brussels, i.e., as a process on which the viability of the alliance hinges. Each round of NATO expansion should be openly and transparently justified by Brussels as increasing the alliance's defence capability by adding new members. The alliance should not expand if the admission of a candidate country spells no obvious benefit to NATO members in terms of strengthening collective security.

Similarly, the process of EU enlargement or rapprochement between the EU and the states around Russia must be accompanied by intensive good-faith consultations to ensure that both Brussels and the candidate countries take Russia's concerns into account.

The set of moral and ethical values that form the foundation of the current European order is limited. The widely recognized norms are "procedural" in character and imply a clear idea of the desired future (expanding and strengthening the security community, overcoming economic disparities in Europe, etc.) as the long-term policy goal. A participant in the European order may temporarily renounce the "progressive" image of the future in its policy due to parochial national interest considerations. However, such a decision would exact a heavy price from such a participant, because other players would refuse to interact with the offender on the usual favourable terms.

While not being able to stop the undesirable trends in the evolution of the European security architecture (NATO expansion, the "drawing" of Russia's CIS partners into exclusive relations with the European Union, etc.), Moscow has ample opportunity to negotiate with other participants in the European order on the procedural aspects and criteria justifying the need for action that could infringe upon Russia's security interests.

Russia's "energetic" policy in the struggle for a new international order: a Ukrainian perspective

Oleksandr Tytarchuk

Against the current backdrop of a struggle for a new international order whilst making concerted efforts to revive its national potential, the Russian Federation attempts to legitimize the results of its military incursion in Ukraine and a military operation in Syria, as well as inspiring disturbances throughout Eastern Europe and far beyond. In so doing, the meaning of Russia's aggressive policy is actively cloaked by the ambiguous nature of modern Russian hybrid warfare.

There are numerous formal conceptual approaches with which to analyse Moscow's "energetic" policy and identify the main drivers of the Kremlin's foreign policy strategy, namely:

- Dissatisfaction with the place allocated to the Russian Federation on the global political scene due to a weakened Russian position after the collapse of the Soviet Union, when Moscow, pretending to be a world leading power, was openly neglected and ignored, being "unfairly" displaced at the periphery of global politics;
- Invocation of the new global tendencies as a reason to reorient attention towards the Middle East and other regions, where Russia considers itself to have predominant influence and is eager to implement its so-called "energetic" policy on an equal footing with the West;
- Implementation of "revisionist" approaches aimed at reconsidering the current international system based on the post-Cold War order, enshrining as it does the predominant role of Washington's interests within the framework of unipolarity;
- Confidence in the necessity of changing the main normative provisions and principles of the existing international security order, with emphasis given to specific conditions for the recognition of state sovereignty.

Russia's foreign policy can be also conceptualized as an integral part of the internal policy process, basic provisions of which are considered as a main motivator of Moscow's external "energetic" behaviour oriented towards supporting the maintenance of the ruling political regime. However, Russian officials intentionally dismiss this concept.

The former Yalta-Potsdam system of international relations, which existed after the Second World War and was based on the division of spheres of influence between world leading powers, has been identified by Moscow as a rather useful one that needs to be reinstated.

One of the so-called “advantages” of this international system that could be of great interest for Moscow is a shortage of strong legal foundations of the established security order.

At the same time, the Kremlin emphasizes the importance of maintaining and promoting international cooperation at both bilateral and multilateral levels, including with the use of existing international organizations, primarily the UN, which was founded as a crucial international element of the Yalta-Potsdam system.

Coming back to the Yalta conference of 1945, the importance of this historic event has been steadily emphasized by the Kremlin amid the illegal annexation of the Crimean peninsula. It is being presented, among other things, as a symbolic outset for re-establishing a new European and world order with active Russian participation.

The very perception of war has been changed to be considered by the Kremlin as a part of everyday life and as a main vehicle for establishing a new post-cold war international order. Moreover, war is also recognized as a normal state of international relations. Moscow has made an attempt to make a case for the inevitability of use of force in contemporary international relations. Against the backdrop of hostile political rhetoric, the approach to the use of force has been drastically modified so as to have a multidimensional application not limited only to the military sphere, but also covering economic, political, religious, and ideological areas.

Non-intervention in internal affairs of other states, safeguarding equal rights and self-determination of peoples as well as co-operation among states (first of all, in the maintenance of international peace and security) could be declared among the most important formal principles for Russia when it comes to specific conditions for recognition of state sovereignty. Customary international law and the use of international precedents are those instruments comprising modern Russia’s toolkit, being broadly used to reinforce and compliment implementation of international law, as interpreted by Moscow. At the same time, Moscow’s reference to international precedents (especially in the case of Kosovo) undergoes constant changes depending on developments on the ground.

The principle of the inviolability of frontiers, which served as a core element for establishing the Conference on Security and Cooperation in Europe in 1975, is the most neglected one within the framework of Moscow’s current “energetic” policy. This principle closely relates to the principle of territorial integrity of States. The latter is exclusively dedicated to maintaining the stability of the international order because nothing is more destabilizing than encroachment on the territorial integrity of States.

Respect for human rights and fundamental freedoms is also brought into question by Moscow amid its attempts to diminish the role of the U.S. in settling protracted conflicts, especially in the Middle East.

Russia is obviously not so supportive of those principles that promote equality and do not contribute to the reestablishment of the bipolar system. This might be also the reason for the ongoing crisis in the Organization for Security and Cooperation in Europe, as it faces a deep divide amid failure to implement the Helsinki+40 process.

Russia's strategic approach over a short-term perspective could be evaluated against a possible multipolar scenario of international developments. According to common perceptions, the above-mentioned multipolarity does not necessarily mean the reestablishment of the Westphalian international system within the framework of *realpolitik* that the Kremlin is keen on implementing. U.S. domination of global policy would most probably provide some background for a certain kind of limited bipolarity, being more relevant to Washington's relationship with Beijing. Such a situation would be also characterized by strengthening unified resistance of the peripheral states with homogenizing social-economic structures amid a shrinking Russian economy under the continuing pressure of Western sanctions.

The West is concentrating now on getting a dialogue with Russia back on track to reduce tensions while engaging in a pragmatic effort to find ways that would enable an agreement based on shared interests and obligations without having common values. There was a suggestion to start with issues where it would be easy to reach an agreement with Russia that would help to build mutual confidence and trust, and then build on these to tackle more complex challenges. International terrorism and illegal migration have been identified among the most urgent transnational threats requiring a unified approach.

Yet, in order to curb Russia's expansion, the West would most probably need to remain concentrated on gradually applying "soft power" measures while formally supporting old principles and norms of the post-Cold War international order, and promoting its values based on sustainable governance, anti-corruption activities, human rights protection, strengthening democracy and supporting unified moral norms.

Moscow would be more liable to use "hard power" methods in protecting its far-reaching ambitions for gaining a foothold among the world's major powers, not caring so much about agreed principles and norms as such, but interpreting them on a case-by-case basis, unless facing adequate countermeasures. Therefore, the Kremlin's strategy would go in line with the Yalta-type bipolar security order characterised by the absence of clearly declared norms and principles. The first manifest example proving this conclusion and a "dress rehearsal" to start the process was the neglect of the Budapest Memorandum on Security Assurances of 1994 that resulted in the illegal annexation of Crimea.

According to Russia's president, military power is and will remain a vital instrument of Russian international politics. Nuclear weapons play a crucial role here, especially when we are speaking about nuclear sabre-rattling aimed, inter alia, at legitimizing the results of the Russian invasion of Ukraine and in particular the illegal annexation of Crimea. Another example of Moscow's use of the nuclear weapons issue is an attempt to remain on a par with the U.S. while proposing to re-establish the strategic offensive arms controls that used to be a main pillar of the bipolar balance of power.

According to the Russian perception, periods of peace should be dedicated to securing and maintaining the existing balance of forces. From Moscow's point of view, this balance now comprises the Russian Federation opposing Ukraine on one side, and Ukraine with its Western allies on the other. Thus, the Russia-Ukraine conflict has been recognized by Moscow as both regional and global, and as directly related to the Russia-West confrontation. At the same time, Ukraine is presented by Russia as a "main obstacle" in re-establishing dialogue with Western countries.

Therefore, the current objective of re-establishing West-Russia dialogue without Ukraine-Russia rapprochement could hardly be completed successfully. Thus, it should be of paramount importance for both Russia and the West to find compromise first of all with Ukraine, although not on the premise of Ukraine as a country "in-between". While maintaining political dialogue, both sides should take due account of possible implications regarding Ukraine to prevent further escalation and avoiding obscure reactions to possible arrangements that could impede their implementation on the ground.

Generally, there is no reason to expect in the near future changes for the better in the Kremlin's policy towards Ukraine, as it is currently focused on the destruction of Ukrainian statehood. As a result of Russian aggression, Ukraine has suffered huge territorial, human and economic losses. These losses created a background for a new political-ideological reality in the relationship between Ukraine and Russia that needs to be reviewed and newly evaluated.

There are a number of basic questions regarding bilateral relations between Ukraine and Russia that currently make reaching a modus vivendi impossible, starting with the illegal annexation of Crimea and the issue of European and Euro-Atlantic integration of Ukraine.

As a way to facilitate Ukraine-Russia rapprochement I propose the following:

- Further developing of informal contacts between representatives of Ukrainian and Russian civil societies, including academic and think tank institutions, aimed at restoring trust and mutual interest for peaceful coexistence of both states with respect to the

choice of the political system and the vector of civilizational development, while keeping in mind current differences on systematic and normative levels;

- Elaborating and adopting a format of so-called “restricted coexistence” based on the hard defending of Ukrainian national interests with a reasonable compromise not exceeding the above-identified margins.

In the near future, the frozen conflict in illegally annexed Crimea and the conservation of the situation in Eastern Ukraine will together define the atmosphere and character of bilateral relations between Kyiv and Moscow. These circumstances represent a possible model of Ukraine’s “**restricted coexistence**” with a totalitarian Russia. It would duly take into account the current realities on the ground triggered by Russia’s “energetic” policy, as well as the prospects of future development of bilateral relations, including the position of Western partners and all international organizations involved.

Reflections on Post-Cold War Order

Richard Sakwa

In the quarter century of the cold peace after 1989 none of the fundamental issues of European security and the management of global affairs was resolved.⁵ As far as the 'victors' were concerned, there was not a problem. The despotic system of European communism had dissolved and its associated geopolitical power system had disintegrated, allowing the former 'captive states' to exercise their sovereign choice to align with the Atlantic community, while extending the sphere of freedom and democracy. If Russia did not like this, then that was its problem, and reflected Russia's failure to complete its democratic transformation and its ill-founded and intemperate claims to be a 'great power', a status warranted neither by its economic weight nor its social power. However, as far as Russia was concerned, a unique opportunity to reshape the European security system and the quality of international politics at the end of the Cold War has been squandered. With the end of the long-term contestation between the rival ideologies of revolutionary socialism and market capitalism the era of contesting blocs could have been transcended at the global level, while domestically there was the opportunity to create a new cross-class alliance for democracy, peace and development. Instead, the struggle for power, status and resources simply took new forms. This was another of the 'lost alternatives' that shapes our era.⁶

From cold peace to little cold war

Incommensurate views of European order meant that the continent entered a 25 years' crisis, which in recent years has turned from a cold peace to a 'little cold war'. The year 2014 is the turning point, bringing an end to the myths and illusions of the quarter century of the cold peace after 1989. The latter was the breakthrough year, with the first non-communist government since World War II returned to power in Poland and the Berlin Wall breached in November of that year. Gorbachev's reforms and the application of the New Political Thinking meant that by 1989 the Cold War as a struggle between competing value systems was at an end.⁷ The European Communist order as a whole dissolved, followed soon after by the disintegration of the Soviet alliance system as a whole. But the Cold War ended in an asymmetrical manner, generating conflicts that by 2014 had become unmanageable.

5 A version of this paper was presented at the European Russian Forum at the European Parliament on 30 November 2015, and published in the subsequent collection of contributions.

6 Stephen F. Cohen, *Soviet Fates and Lost Alternatives: From Stalinism to the New Cold War* (New York, Columbia University Press, 2009), and in particular Chapter 7, 'Who Lost the Post-Soviet Peace?', pp. 162-198.

7 Archie Brown, 'The Gorbachev Revolution and the End of the Cold War', in Melvyn P. Leffler and Odd Arne Westad (eds), *The Cambridge History of the Cold War*, Vol. 3, *Endings* (Cambridge, Cambridge University Press, 2010), Chapter 10, pp. 224-266.

The crisis in Ukraine, as well as the Russo-Georgian war of 2008, was a symptom of that deeper crisis rather than its cause. Since 2014 we have entered a new era of great power contestation and conflict. There are good reasons not to call this a 'new Cold War', since the basis of the confrontation is very different from the 45-year period between 1944 and 1989, lacking a consistent ideological basis and being rather more limited in geographical scope. Nevertheless, the new division of Europe is accompanied by intense propaganda from all sides, the uneasy management of nuclear confrontation, and by a struggle to recruit allies both regionally and globally, features that are certainly reminiscent of the first Cold War. Thus, taking into account the rather more limited character of the struggle today, there are grounds for calling it a 'little Cold War' – although of course it is too soon to tell whether it will remain 'little'. There is the constant danger that the current confrontation between Russia and its allies on the one side, and the ramified Atlantic system on the other, could spiral out of control, provoking consequences bigger than anything seen in the post-war years.

It was soon clear that the post-Cold War security system did not work to the satisfaction of all parties. As early as December 1994 at a security conference in Budapest the Russian president, Boris Yeltsin, talked of a 'cold peace'. Thereafter, Russia's sense of marginalisation only intensified, with the American president, Bill Clinton, announcing an era of NATO enlargement, a programme eagerly seized by most of the former communist countries in Eastern Europe and even some former Soviet states. NATO activism in the various struggles in the former Yugoslavia only intensified the growing popular and elite alienation between Russia and the Atlantic security system. In his early years in power Vladimir Putin tried to find a way of overcoming the growing confrontation, but in the end a series of events – America's unilateral abrogation of the ABM treaty, the unsanctioned invasion of Iraq, continued NATO enlargement to Russia's borders and the promise of ultimate membership to Georgia and Ukraine, plans to deploy a ballistic missile defence (BMD) in Eastern Europe, and what was perceived to be a revisionist programme of regime change – turned the gulf between Russia and the Atlantic system into a chasm.

It is easy to blame one side or the other, but even if one of the parties feels aggrieved – irrespective of the validity of their concerns – then we have a security problem. In this case substantive issues are in play, and the failure to address them provoked the Little Cold War. All the rest, including the Ukrainian imbroglio, the failure to ally over Syria, are symptoms of the deeper underlying crisis. Four key processes determined the onset of the cold peace and its subsequent evolution into the Little Cold War.

First, the turning point was the December 1989 Malta Summit, which brought Soviet leader Mikhail Gorbachev and President George H. W. Bush together on two ships to decide the fate of Europe. The absence of a European leader is indicative of the way that Europe failed to gain a substantive independent political subjectivity in the post-Cold War. Once again, as at Yalta in February 1945, the great powers held the fate of Europe in their hands, but

Malta registered the change in the diplomatic and strategic balance of power. Gorbachev understood that the Cold War stand-off between the Soviet Union and the Western powers served to undermine the development of both. With the end of the Cold War, it seemed that a new era of peace was at hand, reinforced by the reunification of the European continent. Gorbachev envisaged that Russia would remain a great power, but now one that worked co-operatively with the West. Gorbachev went to Malta to formalise a politics of transcendence, but in the event the summit registered only a power shift within the framework of the politics of Yalta but with a reversed polarity. The opportunity for a common victory was squandered. Perceiving the decline of Soviet power, Bush seized the opportunity to strengthen US dominance, and the summit merely registered a power transition rather than transcendence. The conditions were created that ultimately exploded in Ukraine in 2014. The countries that had become the Soviet Union's unwilling allies later became the most enthusiastic supporters of Atlanticism, reintroducing a bloc politics that reinforced the alleged victory of the West. This only reinforced the asymmetrical end of the Cold War, which was accompanied by elements of Western triumphalism (despite enduring attempts to sweeten the bitter pill for Russia). For some these sweeteners, like the creation of the NATO-Russia Council, represented little more than appeasement and a failure to exploit Western victory.⁸

Second, the Malta agreements built on the Helsinki Final Act of August 1975, and these were codified in November 1990 in the 'Charter of Paris for a New Europe'. Helsinki had confirmed Yalta, above all the borders established in 1945 and the framework for the conduct of relations between the great powers, but at the same time Helsinki's 'third basket' of human rights commitments provided a mechanism for the transcendence of Yalta. The paradox is that Helsinki established a particular method for Yalta's transcendence, which itself ultimately proved corrosive of post-Cold War international relationships. In his powerful study of the inter-war years, E. H. Carr argued that the mix of idealism and realism proved fatal, preventing the exercise of traditional diplomacy while inhibiting realistic appreciations of the power consequences of one's own actions. While the Soviet Union and Russia endorsed the principles inspiring the Charter of Paris, the perceived instrumental and selective application of these principles for geopolitical advantage by the dominant powers created a situation in which the normal diplomatic intercourse between nations was distorted by normative agendas. The endemic tension between 'regime transformers' and 'power balancers' was disrupted for a period and allowed regime transformers to predominate.⁹ This is not to suggest that values should be part of international relations, but this needs to be accompanied by the pursuit of mutual interests. There is no recorded case of an 'ethical foreign policy' being pursued consistently and universally by any state. Instead, the radicalisation of the

8 Garry Kasparov, with Mig Greengard, *Winter is Coming: Why Vladimir Putin and the Enemies of the Free World Must be Stopped* (London, Atlantic Books, 2015).

9 James M. Goldgeier and Michael McFaul, *Power and Purpose: US Policy Toward Russia after the Cold War* (Washington, DC, Brookings Institution, 2003).

democratisation and human rights agenda by the Atlantic powers provoked a range of defensive reactions in Russia, which in the end weakened the democratic impulse. The idea of 'sovereign democracy' was only one manifestation of the search for an autochthonous balance between adaptation to international norms and the search for some sort of authentic native tradition to sustain post-communist political order. The problem can be couched in various ways, but in general terms it is a variant of the enduring tension between Enlightenment universalism and nativist particularism.

The third determining factor maintaining the cold peace and its ultimate degeneration into the Little Cold War is the failure of Europe to assume an independent political subjectivity. Addressing the Council of Europe in Strasbourg on 6 July 1989, Gorbachev outlined his idea for a 'Common European Home' and with that of a different vision for post-Cold War Europe. Now commonly described as 'Greater Europe', this is a programme for geopolitical and normative pluralism in Europe. Gorbachev argued eloquently and forcefully that different systems could coexist peacefully. In this speech and later Gorbachev argued for the transcendence of Yalta and Malta. He advocates a European international relations that encompasses the interests of both the small and great powers. This is a multipolar Europe with space for experimentation and diversity. Instead, the European Union (EU) effectively claimed to be the sole legitimate voice of Europe, although in partnership with the more specialised Council of Europe and OSCE. This is the Wider Europe project, which is part of the broader Atlantic community. This is a monist vision of Europe, which until recently has been unable to imagine any substantive alternative political, let alone ideational, community. Just as liberalism in the post-Cold War era finds it hard to accept alternatives to its own hegemony, and thus erodes its own liberality, so the Atlantic community has not been able to find an appropriate form of engagement with outsiders. The assumption is that the way that the problem of history has been resolved in one context is universally applicable to others. Even if a leadership in Russia were to accept this theoretical postulate (as it did to a large extent in the Yeltsin years), the fact that historical problems of territorial unity, political identity, security cooperation, economic modernisation and international integration have still not been resolved means that tensions, if not conflict, would inevitably be engendered.

The fourth factor in this far from definitive list is the failure to find an appropriate way for Russia and its neighbours to interact. There have been numerous attempts to give institutional form to Eurasian integration in the post-Cold War years, but only in Putin's third term did this become the priority, leading to the creation of the Eurasian Economic Union on 1 January 2015. The very essence of the cold peace was the endless struggle between the great powers (including the EU, even though the EU has long been in denial about the power consequences of its actions) for influence in post-Soviet Eurasia. The final straw from Russia's perspective was the perceived attempt to wrest Ukraine away from Moscow's economic and security sphere. While Zbigniew Brzezinski may not be a household name in the West, his argument in 1994 that 'It cannot be stressed strongly enough that without

Ukraine, Russia ceases to be an empire, but with Ukraine suborned and the subordinated, Russia automatically becomes as empire' has become the mantra of the Russian elite, and not in the positive sense.¹⁰ Russian intervention in Ukraine in 2014, including the reunification with Crimea and support for the insurgency in the Donbass, is perceived by the West to represent a violent challenge to the system of international law. However, from the Kremlin's perspective—and, it must be said, from the point of view of the great majority of Russian citizens—the struggle over Ukraine is considered to be a desperate last stand to defend not only Russia's interests but also that different vision of Europe's destiny enunciated by Gorbachev in the Cold War's dying days. Putin's Russia is a deeply conservative country at home, and in international affairs it claims to be defending a status quo threatened by what has come to be seen as the West's revisionism, manifested by the restless urge to remodel regimes in its own likeness while pushing its security system to Russia's borders. The Ukraine conflict is the child of the Cold Peace. Although there are profound internal contradictions in the Ukrainian model of state development, these would not have assumed such disastrous forms if the geopolitics of post-Cold War Europe had been sorted out earlier. Equally, although a fragile cease-fire is taking hold in Ukraine within the framework of the Minsk II agreement, no sustainable peace is possible unless the Minsk peace is embedded within a broader European and global settlement.

We lived for forty-five years in a world shaped by Yalta, and then another twenty-five years in a world shaped by Malta. As the Ukraine crisis made painfully clear, fundamental questions of European security remained unresolved. The West lived in a world where time had stopped: the myth of its victory in the Cold War was considered the foundation of the contemporary international order. Gorbachev understood where all this was heading, and since his forced retirement in December 1991 he repeatedly lamented this outcome. In his speech of 8 November 2014, celebrating the twenty-fifth anniversary of the fall of the Berlin Wall, he noted that 'instead of building new mechanisms and institutions of European security and pursuing a major demilitarization of European politics ... the West, and particularly the United States, declared victory in the Cold War'.¹¹ It is for this reason that he broadly endorsed Putin's policies regarding Ukraine in 2014. The Cold Peace was always pregnant with conflict, and it now gave birth.

10 Zbigniew Brzezinski, 'The Premature Partnership', *Foreign Affairs*, Vol. 73, No. 2, March-April 1994, p. 80.

11 Mikhail Gorbachev, 'Speech for 25th Anniversary of the Fall of the Wall', 8 November 2014, *Russia in Global Affairs*, 12 November 2014; available at <http://eng.globalaffairs.ru/book/Gorbachevs-full-speech-during-the-celebrations-of-the-25th-Anniversary-of-the-Fall-of-the-Berlin-Wal>.

The politics of transcendence: towards a new European security system

If we want to chart a path toward stability in Europe, we must challenge the myths underlying the cold peace quarter century while understanding the dangers of the Little Cold War. Europe now faces the danger of the creation of a new iron curtain, now running from Narva on the Baltic to Mariupol on the Sea of Azov. On the one side would be a newly militant Atlantic community, reinforcing the EU's subsumption into this community while it faces existential threats to its existence. On the other side, Russia is already becoming part of various Eurasian integration projects, while Greater Asia is gaining in weight. Instead of a Greater Europe stretching from Lisbon to Vladivostok, it is Greater Asia ranging from Brest to Beijing that is gaining in weight. The stakes could not be higher. The foundations of European and global security need to be rethought.

To break out of the stalemate, a number of fundamental postulates need to be clarified and given both processual and institutional form. In terms of process, this means the resumption of dialogue and engagement. In institutional terms, this means the imaginative creation of bodies that can sustain and breathe new life into the 'new Europe' envisaged in 1990. We have to begin with the potential normative foundations of a revised European security order. Three fundamental principles can be regarded as foundational.

- 1. The principle of equality.** Any engagement strategy based on a transformative dynamic of European international relations faces formidable challenges. Not least among them is the prevalent view among the Atlantic powers that Russia is not an equal in political terms (a similar pattern is now playing out with China). Of course, the power resources of the Atlantic alliance system, on the one side, and Russia and its allies on the other, are incommensurable. In nuclear terms, however, there is parity, and at the diplomatic level, Russia as a P5 member of the UNSC is as equal as the other four – something that certainly rankles in certain quarters. Yet the UN system, effectively a child of Yalta in 1945, enshrines geopolitical and ideological pluralism. Equality also presumes the political community in which it is instantiated, and certainly there can be no scope for the return of the bloc politics and heavy-handed imposition of spheres of influence of the Yalta period. However, part of the debate about equality must be about the indivisibility of security – the attempt to achieve security for one cannot be at the expense of the security concerns of the other. The cold peace eventually broke down because of the intensifying security dilemma. The Atlantic powers are justified in arguing that NATO does not pose a security threat to Russia. Yet Russia is right to fear that what at its best in post-Cold War conditions is a benign organisation may in certain circumstances turn into a genuine threat, especially since several of its East European members nurture a culture of grievance and recrimination. What is required is a new mode of reconciliation, of the sort that so successfully brought France and Germany together after World War II.

- 2. The principle of transcendence.** Gorbachev went to Malta in December 1989 believing that not only the Cold War but the very logic of great power conflict could be transcended. This remains a founding myth of post-Cold War order for Russia to this day. For the American side, however, all that happened was the registering of a power shift; with the initiative passing to the Western side. It is this from this incommensurate understanding (rival mythologies) of how the Cold War ended that the cold peace emerged and its recent aggravation to produce the Little Cold War. The cold peace years were based on the defence of the institutions and practices that had apparently allowed the West to triumph in the Cold War, and the impulse toward transcendence that had been so powerful in the late 1980s was stymied. Only now is this blockage on change being challenged, including by grass roots movements in a number of European countries and by the emergence of elites dissatisfied with the permanent tensions generated by the Atlanticist consensus.
- 3. The principle of pluralism.** The cold peace was characterised by the tension between structural and systemic approaches to the conduct of post-Cold War international relations. The structural approach is realist, founded on geopolitical perceptions of threat and the need to defend a given territory. In other words, realism is about how separate particularities interact and create an international order based on the balance of interests and power. The systemic approach appeals to norms and values, and in its post-Cold War manifestations (as in the inter-war years) is based on the universalistic applications of norms and ideals. When these norms become radicalised, as they were in the 2000s in the form of the 'transdemocratic' agenda of 'regime change' through colour revolutions and military intervention, then the stage was set for conflict. The problem then becomes how to reconcile commitments to universal principles, which now lie at the basis of the UN system, and the particularities that make up that system. The challenge is to adapt the particular to the universal, and vice versa.

There is a fundamental tension between hegemonic and pluralist representations of global stability. In the cold peace years the United States contributed to the pacification of potential conflicts in both Europe and Asia. The overwhelming predominance of conventional power resources, accompanied by the liberal internationalist ideology and institutions of global governance, provided the framework for many states to develop and thrive in conditions of relative peace. But this was a Cold War peace – the cold peace described earlier – in both the Atlantic and Pacific regions. The American alliance system forged in the Cold War remains the bedrock of world order, but by definition this is a system based on the politics of inclusion and exclusion. The politics of transcendence is based on the principles of equality and pluralism.

What would a politics of transcendence look like?

First, there would need to be a review of threat perceptions, not only of the major powers but also of Russia's neighbours. The notion of threat needs not only to be contextualised but also 'historicised'. By historicised I mean the attempt to understand not only the immediate context but also the broader pattern of historical change and structure of international politics that focuses on a particular moment. Does Russia constitute a 'threat', to its neighbours and to the existing system of international law, as so forthrightly argued by its critics? My view is that Russia is far from being a revisionist power today – it is instead 'neo-revisionist'. By this I mean that it does not challenge the system of international law and governance (from which it has benefitted so much), but has become critical of the practices and their apparent abuse by 'hegemonic' powers. As far as Russia is concerned, it is the West that has become revisionist, not Russia. Equally, it is not the principles of international law and governance that Russia condemns but the practices that accompany their implementation.

Second, the nature of 'choice' in the post-Cold War geopolitical environment needs to be assessed. For some this has become a sacred shibboleth, but in some ways the debate mimics that over the quality of post-modern freedom. The idea that contemporary freedom entails the absence of constraint and instead opens up limitless 'options' is absurd, but one that has gained considerable currency today. To be free of constraints means no basis on which to choose. What were the choices available to countries after the disintegration of the original Yalta system? Helsinki first confirmed Yalta and then transcended it; but as Malta demonstrated, the transcendence was at most partial, and certainly did not give way to creative forms of engagement. Although geography does not define destiny, there are physical constraints to the construction of social reality.

Third, there needs to be an examination of what the 'West' has become. The 'West' has traditionally represented a civilisational complex, and thus comfortably embraces many countries that are geographically far from the West, notably Japan. Rather than speaking of the west, it may be more coherent when discussing European security to talk of an Atlantic community. This is a community that has not only survived but prospered, and today is assuming increasingly ramified features in the form of what I call the new Atlanticism. The Soviet Union has gone, and after 25 years in which NATO went out of area to avoid going out of business, the alliance is now back to do what it had been established to do, namely to 'contain' Russia. The revived Atlanticism is the intellectual framework for the new confrontation with Russia, and includes attempts to impose 'bloc discipline' of the Cold War type, especially when it comes to imposing sanctions as well as the accompanying propaganda efforts that at their worst reach McCarthyite proportions.

Fourth, and far from final, there needs to be the determined effort to find processes and institution that could shape a new politics of reconciliation. The current crisis was provoked

not by the existence of different narratives and world views, but by their politicisation and the failure to find a mode of reconciliation to overcome their baleful consequences. This is the task facing us today.

Respect for Sovereignty, Use of Force and the Principle of Non-intervention in the Internal Affairs of Other States

Natalino Ronzitti

International law is based on states. They are the fundamental subjects of the international community. Sovereignty means that each State is free to determine its own destiny and its relations within the community of States. Usually sovereignty does not stand alone, but is qualified in respect to other States or in connection with a State's territory and population.

One of the main elements of States' sovereignty is constituted by the principle of "sovereign equality". This principle is enshrined in the Charter of the United Nations¹² and it is spelled out both in the GA Resolution on Friendly Relations (2625-1970)¹³ (FR Resolution) and in the CSCE Helsinki Final Act (HFA) of 1975.¹⁴ The FR Resolution affirms that "All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature". The FR Resolution enumerates the corollaries and consequences of sovereign equality in a list which is not exhaustive and includes a reference to basic norms of international law, such as the inviolability of the territorial integrity and political independence of States.

The principle of sovereign equality mentioned in the HFA (rectius Sovereign equality and respect for the rights inherent in sovereignty) does not follow the method of the list, but makes the principle explicit by reference to a number of duties that States should observe in order to implement it. In particular the principle of sovereign equality encompasses "the right of every State to juridical equality, to territorial integrity and to freedom and political independence" as well as "the right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations". Of utmost importance is also the second part of the principle restating the duty that frontiers may be changed only in accordance with international law, i.e. by peaceful means and by agreement. Taking into account the recent events in Eastern Europe one has also to underline the following elements:

- The right to belong or not to belong to international organizations;
- The right to be or not to be a party to bilateral or multilateral treaties, including the right to be or not to be a party to treaties of alliance;

12 Charter of the United Nations, Article (1).

13 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV).

14 Declaration on Principles Guiding Relations between Participating States.

- The right to neutrality.

The FR Resolution and the HFA principles are not in themselves binding, being documents of soft law, which are not per se obligatory unlike treaties and the international custom. However they are, in all or in part, declaratory of customary international law and for that reason they should be observed by States.

Have the HFA principles been repealed by the OSCE members and should a new European order substitute them? There are no signs, i.e. formal declarations, that this happened or that there is a process aimed at their substitution. One may quote the Final Report of the Panel of Eminent Persons on European Security as a Common Project, called *Back to Diplomacy*, issued in December 2015. According to the authors, "The disagreement between the West and Moscow was not so much on the permanent validity of such principles, as rather on their application in a given situation. For instance, as far as Eastern Ukraine and Crimea, the view from the West is that Russia ".....decided to resort to force by annexing Crimea and intervening in other parts of Ukraine. With this it seems to have abandoned the basic principles of international order: sovereignty, territorial integrity and non-use of force".¹⁵ On the contrary, according to Moscow, "The people of Crimea overwhelmingly favoured its reunification with Russia in a referendum. Russia, unlike the West in many cases, did not use force in Crimea, only assured that others would not use it".¹⁶

As already noted, State sovereignty is connected with State's territory and population. The limits in this regard may be derived both from customary international law and from treaty law. For instance, a State is obliged to respect the sovereign immunity of foreign States within its own territory and cannot subject a foreign State to its tribunals for *acta jure imperii*: for instance a domestic tribunal can judge a commercial transaction of a foreign State, but not the conduct of its army.¹⁷ Likewise a State cannot impose degrading and inhuman treatment to its own citizens. In particular, as far as human rights are concerned, the freedom of States is limited by the two UN 1966 Covenants (Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights). The European States are all members of the Council of Europe, with the exception of Belarus (and leaving aside those Central Asia Republics that are only OSCE members). They are thus obliged to respect the European Convention on Human Rights. Individual claims may be brought against a State party to the European Court on Human Rights. Inter-state claims are also possible, but less frequent. At the moment there are three cases pending, concerning claims lodged

15 Back to Diplomacy, Final Report of the Panel of Eminent Persons on European Security as a Common Project, December 2015.

16 Back to Diplomacy, *op.cit.*

17 See the UN Convention on Jurisdictional Immunities of States and Their Property (2004).

by Ukraine against the Russian Federation for the events related to Eastern Ukraine and Crimea.¹⁸

Intervention is prohibited by international law if it is “dictatorial”, i.e. if it is accompanied by the threat or use of force or other forms of coercion. Mere criticism or asking a foreign State to respect human rights do not constitute intervention. The same is true for representations as to the treatment of minorities in a foreign State. However, political pressure accompanied by a threat to use force is not permitted. There is a grey area in which the legality of such actions is doubtful, for instance hostile propaganda, financing opposition parties or corrupting State officials in order to obtain a change of government.¹⁹ Countermeasures against the wrongdoer are lawful, provided that they do not infringe basic principles of international human rights/humanitarian law. For instance, extreme forms of economic coercion are illegal. Countermeasures (sometimes improperly labelled as sanctions even if they are adopted by States) may be resorted to, even if the targeted State has not committed an international wrong against the State adopting the countermeasure, but has violated an *erga omnes* obligation (for instance the annexation of a territory of a third State).²⁰

The exceptions to the prohibition of the use of force are often controversial. There are also contending interpretations on the right to self-defence, for instance whether only self-defence after the occurrence of an armed attack is permitted, or whether also anticipatory (or

18 ECHR, *Ukraine v. Russia*, application no. 20958/14; *Ukraine v. Russia (II)*, application no. 43800/14; *Ukraine v. Russia (IV)*, application no. 42410/15. Another case, *Ukraine v. Russia (III)*, was struck out from the Court’s list since Ukraine renounced to pursue its application, because an individual application covering the same issue was lodged.

19 See, for instance, P. Kunig, “Intervention, Prohibition of”, *Max Planck Encyclopedia for Public International Law* (2008).

20 Countermeasures differ from sanctions in that the former may be taken only against a State which has committed an international wrong *vis-a-vis* the State adopting countermeasures. Countermeasures may also be adopted by a State which has not materially been affected by the violation of an obligation if the wrongdoer has committed a breach of an *erga omnes* obligation, for instance an act of aggression. On the contrary sanctions may be resorted to only by the UN Security Council whether or not an international wrong has been committed. According to the Moscow narrative in the Report Back to Diplomacy, sanctions may be taken only by the Security Council. It is there stated that “The sanctions against Russia are unjustified and counterproductive and another blatant violation of international law as they were imposed without a decision of the UN Security Council” (*op. cit.*). However this kind of reasoning cannot be accepted since the restrictive measures adopted by the European Union, United States and other OSCE Western countries should be qualified as countermeasures as they were taken in reaction to a violation of an *erga omnes* obligation, i.e. the violation of the norm of non-use of force and territorial integrity of States. On the legal difference between sanctions and countermeasures (and retorsions) and on the current debate on restrictive measures taken against Russia and other countries see N. Ronzitti (ed.), *Coercive Diplomacy, Sanctions and International Law*, Leiden/Boston, 2016.

even preventive) self-defence is lawful. As far as humanitarian intervention is concerned, the present writer does not believe that it is lawful, unless authorized by the UN Security Council. However, “genuine humanitarian intervention” is not aggression and opens the way for its ex post facto endorsement, as happened with Security Council Resolution 1244 (1999) concerning Kosovo. Intervention for protecting nationals abroad is an old customary rule which survived the entry into force of the UN Charter. Such intervention, which was in the past exercised only by Western countries, has now gained currency within the international community. The intervention is admissible only if the territorial sovereign is unable or unwilling to cope with the situation and the intervening country intends to rescue its own citizens and bring them back to their motherland (or to other safe place). The intervention should not be admissible as an excuse to maintain a presence in a foreign country.²¹

How is it possible to apply this categorization of the permissible use of force to new dimensions? Intervention or use of force by proxy is not a new categorization, but a time-honoured stratagem to try to avoid State responsibility. However a State, in such a case, is and remains responsible under international law. The GA Resolution 3314-XXIX (1974) on the definition of aggression qualifies “the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein” as an act of aggression. The Draft Article on the Law of States’ Responsibility by the International Law Commission (2001) contains provisions both on the attribution of a wrongful act committed under direction and control of a State and on complicity in participation to an international wrong. The Charter of Paris for a New Europe (1990) labels “illegal activities involving outside pressure, coercion and subversion” as a violation of the independence, sovereign equality or territorial integrity of the CSCE (now OSCE) States.²²

Cyber warfare represents a new dimension.²³ A cyber operation, to be considered a threat or use of force, must produce a kinetic effect, such as a flood provoked by the non-functioning of a dam whose electronic governance has been disrupted by a cyber-attack. The intrusion into a banking network in order to disrupt the financial system of the targeted State may also be considered as a violation of the principle of non-intervention, taking into account that it might also be evaluated under the principle of non-use of force. A cyber operation aimed at blinding the electronic defence of the adversary may show that an armed attack is imminent, and thus trigger the exercise of the right of self-defence. Cyber information warfare should be assessed in a different way, whether the cyberwar operations are conducted in a time of peace or in a time of war. In a time of peace intelligence gathering in

21 These ideas have been spelled out by the present writer in his book on *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity*, Dordrecht, 1985.

22 Charter of Paris for a New Europe, Paris, 19-21 November 1990, under Chapter “Security”.

23 See generally M. Roscini, *Cyber Operations and the Use of Force in International Law*, Oxford, 2014.

order to collect military information is not in itself illegal unless a crossing of the border into the country is involved.²⁴ In a time of armed conflict the rules of espionage apply, with the consequence that the operator gathering the information may be considered as a spy, if he/she is acting clandestinely or under false pretences in the territory under the control of the enemy.²⁵ However espionage does not carry out the responsibility of the party to the conflict benefiting from the information gathered, but only that of the individual acting as a spy, who may be tried and punished by the Captor State.

The above discourse on the principles of sovereignty equality of States and non-intervention deserves the following remarks by way of conclusion:

- The situation in Europe has changed since the conclusion of the Helsinki Final Act and the Charter of Paris. However, the two principles of sovereignty equality of States and non-intervention are still in operation and are the foundation of international law. They are enshrined in the Charter of the United Nations and were referred to several times by the International Court of Justice;
- The disagreement between the West and Moscow is not on the existence and the relevance of the two principles, but on their violation in given circumstances (for instance in Kosovo and Crimea);
- There are grey areas that deserve further examination, since there are different opinions and contending interpretations between the West and Moscow. These areas include:
 - a) humanitarian intervention;
 - b) sanctions and countermeasures;
 - c) cyber operations (which are quite a novelty for international lawyers and are not subject to a common understanding as their lawfulness even in the West).

A proposal of the future might be not to formulate new principles on sovereign equality and non-intervention, but, on the contrary, to spell out the existing principles by including new items on which consensus has already been achieved; a technique already experimented

24 See generally S. Chesterman, "Secret Intelligence", Max Planck Encyclopedia of Public International Law (2009).

25 The problem here is to apply classical rules on espionage in time of war, which are contained in Article 29 of the Hague Regulations annexed to the Hague Convention No. IV Respecting the Laws and Customs of War on Land (1907) and Article 46 of Additional Protocol to the Geneva Conventions of 12 August 1949 (Protocol I), relating to the protection of Victims of International Armed Conflicts (8 June 1977)..

with by the FR Resolution and with the HFA. For instance the Charter of the United Nations, in prohibiting the threat/use of force does not address the question of armed reprisals, whilst both the FR Resolution and the HFA affirm that they are prohibited.

Other principles stemming from sovereignty and non-intervention are objects of the disagreement between the West and Moscow and are more difficult to address in legal terms without changing them. The reference here is to the right to be or not to be member of an international organization or of a military alliance. For instance Moscow is challenging both NATO expansion to the East and also the EU neighborhood policy (Eastern Partnership).²⁶ In such circumstances it is very difficult to formulate new rules without undermining the existing principles. A possible way out is to draft treaties or formulate principles which are the expression of the free choice of States and at the same time meet the concern of the European States (or some of them). A number of proposals to address this issue are contained in the above-mentioned document Back to Diplomacy, under the Chapter "Toward a Security Meeting. Key Agenda items for this Process/ Security status".

26 For instance in the Document Back to Diplomacy, already quoted, is written the following on the Moscow's view: "Under the slogan of promoting democratic values eastwards the West continued to expand its institutions at the expense of Russian security interests. It was the main dynamic after the Cold War. Consecutive waves of NATO's expansion reduced Russia's security. The EU's expansion took over Russia's markets, and as new member states joined Schengen the area of visa free travel for Russian citizens was reduced. In each case, as compensation, Russia was offered a formal junior partnership: the NATO-Russia Founding Act and the NATO-Russia Council were sugar coating for the bitter pill of enlargement; the EU's idea of partnership is that Russia should adopt its rules".

Contested understandings of sovereignty, the use of force and the wider international legal order: the political context

Roy Allison

The Russian 'pluralist' understanding of sovereignty

During the Putin presidencies Russia has consistently positioned itself among the sizeable group of states which may be described as adopting a 'pluralist' understanding of international order and of sovereignty more specifically. Among a spectrum of states in this group Russia may be considered centrist, not on a radical fringe, although Russia has sought to project itself increasingly as an international champion for this position. Pluralist states tend to privilege order over justice within states and the maintenance of international order over the pursuit of international justice. Russia has developed a particular narrative over international justice between states, but this seems essentially aimed at levelling down predominant Western power.²⁷

Pluralist states adopt a traditionalist interpretation of sovereignty, seeking to restrict extra-territorial 'intrusion' in the domestic political and judicial affairs of states; it is very much a territorialized view of sovereignty. Such states tend towards a restrictive interpretation of the UN Charter, which is frequently cited as providing the legal basis for this stance. Pluralist states acknowledge that evolving international norms, including the international human rights agenda, have eroded 'hard' sovereignty, but seek to limit this process. They are adamant that unconsolidated international norms, which have not been codified and generally acknowledged in the canon of customary international law have no legal force and create no legal obligation.

In contrast, 'solidarist' states, in brief, pay far greater attention to humans as the referent object of international law and qualify the rights of the 'sovereign' within states to conduct policies unconstrained by understandings and treaty commitments over international justice.

However, structural power in the international system plays a significant qualifying role in this schematic division between the pluralist and solidarist positions. Major powers, including Russia (certainly through its self-perception since the end of the Cold War) and the US also value 'decision-making sovereignty'. They do not wish to have their hands tied in advance through restrictions, especially ones that circumvent their UN Security Council veto power (of particular value to Russia as a major source of institutional power in the international system). So in the discussions on Responsibility to Protect (R2P) at the 2005

²⁷ This is a theme developed in Roy Allison, *Russia, the West and Military Intervention*, Oxford, Oxford University Press, 2013. See my summary, pp. 15-18.

UN World Summit the centrist Russian position reflected concerns not only about territorial sovereignty but also decision-making sovereignty.²⁸

Russian international conduct in many ways reflects a fixation on structural power and relative power rankings, a view that international order should be upheld and regulated (and those regulations should be interpreted) by a concert of great powers (in various clubs, with the UNSC at the apex), where Russia exerts not just influence but veto rights.

Russia talks of the sovereign equality of states, but as with other major powers this formal legal state is qualified by structural power relationships. In particular, since the breakup of the USSR Russia has asserted entitlements in its near neighbourhood formed of the former Soviet republics (less so with the Baltic States after the early 1990s). Whether termed the 'near abroad', 'post-Soviet space', or 'region of Russian privileged interests', Russia has claimed special rights and its relationship with these far weaker neighbours, which have various traditional commonalities with Russia, is clearly conceived in hierarchical terms – Russia seeks primacy at least.²⁹

In its policies Russia has consistently qualified the sovereignty of these states in various degrees and this is reflected in Russian views on the application of international law – i.e. it has developed region-specific interpretations, including the use of force. It has also tried to develop certain norms of conduct for the CIS region. The result is a hybrid approach, a dissonance: Moscow insists on a pluralist interpretation of sovereignty and legal constraint in the wider international system (and in other state's relations with Russia), and makes much of supposed Western abuses in this regard, while acting with discretion (that is quite inconsistently) in the region where it claims special entitlements. In other words Russia sought to carve out a field of exceptionality, which came most dramatically to be focused on Ukraine, even if for years Moscow had levelled the charge of exceptionalism against the US as a synonym for hegemonic behaviour.

Playing by the rules or breaking the rules

Despite tensions with Western states in this debate on sovereignty, outside the CIS in the wider system of states, Russia was on fairly solid ground in its conservative legal stance. For years Russia sought to recast the Western-dominated security architecture in Europe, to change the workings of the OSCE and acquire more meaningful agency in shaping the principles governing security policy relations between states throughout the Greater Europe. The approach was that of 'playing by the rules to revise the rules'.

28 *Ibid.*, pp. 65-8.

29 *Ibid.*, chapter 6, 'Contested norms in the CIS regional order', pp. 120-156.

However, for years Russian diplomacy has been permeated with a sense of resentment over 'who makes the rules'. Moscow found it increasingly unacceptable, despite suffering severely from the post- 2008 financial crisis, that its greater structural power in the international system, alongside the other BRICS states, was not much better reflected in the workings of international organisations in Europe and the wider international system, in rule-making processes and in shaping customary international law. Throughout Russia also feared its trump card, its UNSC veto, could once again (as in the cases of action over Kosovo, 1999 and Iraq 2003) be side-stepped by Western powers through the practice of liberal interventionism.

Moscow accused Western states, especially the US, of trying to carve out a new sphere of legitimacy with separate standards lying outside the working of customary or UN Charter-based international law - expressed in the notion of 'democratic legitimacy' (which qualified the sovereignty of Russia and other states whose democratic credentials were called into question). This critical stance drew Russia support not only from authoritarian CIS leaderships, but also attracted sympathy in the wider UN General Assembly among illiberal states, most notably China.

However, the Russian annexation of Crimea, as well as military intrusions into eastern Ukraine, overthrow spectacularly the quite well-formulated line of attack Moscow had developed about the illegality of the Western use of force in those cases which lacked a credible case for individual or collective self-defence, or a UN Security Council Resolution acting under Chapter VII, in response to threats to international peace and security. This raises the core question whether Russia is overturning its longstanding commitment to the very limited exceptions to the UN Charter prohibition of the use of force, or whether action in Ukraine is just a particularly egregious but sui generis case of a large power breaking international law as large powers occasionally do (regardless of how the claims of international law, as the language of diplomacy, are spun).

Russian justifications for military intervention in Georgia in 2008 provide the backdrop. In this case Russia sought to exploit the loosening of the prohibition on the use of force provided previously both by Western claims ('legitimate if not legal') over humanitarian intervention and occasional Western (and other countries) practice of the forceful emergency rescue of nationals abroad. Russia presented a variety of justifications in a scattershot way, with the hope that they would gain traction with different audiences (domestic, CIS, Western and wider international). These claims included the need to protect Russian citizens (albeit ones mostly recently created), to respond to a genocide, and to fulfil R2P requirements. When examined the latter claims seem instrumental and abusive. But they left a narrow sliver of

justification on self-defence grounds, linked to the deaths of a few Russian peacekeepers (though the timing of the Russian intervention and pre-preparation left many questions).³⁰

If we compare intervention in Ukraine, Russia offered self-defence claims in the case of Crimea (related to the Sevastopol base), but these were wholly unpersuasive, and it blocked off the need to enter a legal defence in eastern Ukraine through the whole practice of 'deniable intervention'. But there was a major contrast to the claims presented in 2008 (which many in the West judged to be a Russian Foreign Ministry smokescreen in an exceptional case). First, in the case of Crimea what was at stake was the territorial aggrandizement of the Russian state at the expense of a neighbour state. Russia presented an unconvincing 'remedial secession' argument (the 'will of the people', albeit this was done in the context of the threat of the use of force). But secondly, Russia offered a spectrum of moral, political, psychological and historical claims, clearly with a domestic audience primarily in mind, which had no basis in traditional international law. Among these was the call to protect not just ethnic Russians (not Russian citizens as in 2008), but the highly fungible category of 'compatriots' and to rectify historic injustices (the basis for various irredentist claims in conflicts in past times).³¹

The question arises whether Russia now seeks to repudiate what it views as the 'western' legal order and to project some alternative as a means of asserting Russian regional dominance and global influence. In July 2014 a senior Russian official called for the convention of a global conference to rewrite international law, taking account of the influence of all major world powers, since 'there are no agreed rules and the world may become an increasingly unruly place'.³²

It is hardly realistic, however, for Russia to expect major powers to come together to revise core principles of international law just in response to its challenge to legal principles in Ukraine. In the intricate web of interstate relations and intrastate arrangements with ethnic, religious and other minorities, major states would have no wish to unpick the carefully formulated language and structure of international communication formed by international law at the behest of one large aggrieved power. Lacking the support of many other states,

30 Roy Allison, 'The Russian case for military intervention in Georgia: International law, norms and political calculation', *European Security*, Vol. 18. No. 2 (2009), pp. 173-2000.

31 See Roy Allison, 'Russian "deniable" intervention in Ukraine: how and why Russia broke the rules', *International Affairs*, Vol. 90, No. 6 (November 2014), pp. 1261-8. A very full analysis of Russian legal claims can be found in Thomas D. Grant, *Aggression against Ukraine: Territory, Responsibility, and International Law*, Basingstoke, Palgrave Macmillan, 2015.

32 Eugenie Lukyanov, deputy secretary of the Russian National Security Council, in statement to RIA Novosti, 2 July 2014, cited in Pavel Felgenhauer, 'Ukraine as a battleground for a new world order according to Putin', *Eurasia Daily*

through state practice, or international judicial opinion (*opinio juris*), Russia cannot propel any decisive shift in customary international law. Moscow might hope for some tacit support from large states privileging sovereignty over democratic governance and stability over human justice. But it is notable that even Russia's partners in the BRICS have not rushed to join the Russian call to rewrite the international legal order.

We may conjecture about the kind of principles for which Putin would seek greater legal endorsement: those helping to confirm Russian regional primacy in the CIS zone; those prioritising stable and strong state leadership, over democratic governance, to avert the spread of 'extremism' and 'anti-constitutional' state uprisings (the narrative on 'colour revolutions' which has become staple of Russian diplomatic addresses); those justifying the protection of Russian ethnic nationals, or perhaps even the loose notion of Russian compatriots (rather than civilians at large as assumed by the R2P discourse) beyond Russian borders. Yet such an agenda is too disruptive for current legal understandings and offers too many obvious affronts to the post-Cold War evolution of international norms, to have any realistic prospect of making headway in the wider community of states.

Perhaps what Russia seeks instead, therefore, is more hard-headed and practical – to compel the codification of a new European security dispensation, centred on but not confined to a resolution of the crisis around Ukraine. The implied objective of many Russian commentators is the recognition of hard spheres of regional influence, an updated version of the division of Europe agreed at the 1945 Yalta Conference, with the *de facto* zone of Russian (then Soviet) hegemony transferred geographically further east.³³ Russian officials have heaped praise on the 'Yalta principles' of 1945 for reflecting the balance of military power and keeping the peace in Europe.³⁴ Yet Russian hopes for some realignment to retrieve the clear cut divisions of the past, for a reworking of the European security order to suit an ambitious Russian perception of its rightful territorial reach and influence seem misplaced and over-ambitious, even if we adopt a *Realpolitik* view of European security. A policy focused on shifting the centre of gravity of European security – tilting it eastwards – does not seem consistent with the military stalemate in eastern Ukraine, confirmed by Moscow's quiet abandonment by Moscow of its vision for Novorossiia and by its focus on extracting maximum advantage from the Minsk 2 Agreement. Nor is it consistent with Russia's deepening

33 For example, Dmitry Suslov, 'For a good long while: global aspects of the new Russia-U.S confrontation', *Russia in Global Affairs*, December 2014, at <http://eng.globalaffairs.ru/number/For-a-Good-Long-While-17211>.

34 Comments by State Duma Speaker Sergei Naryshkin at a conference in Moscow in commemoration of the 70th anniversary of Yalta, *Rossiyskaya gazeta*, 25 February 2015. Polish parliamentary speaker Radoslaw Sikorski, has claimed even that during Polish Prime Minister Donald Tusk's visit to Moscow in 2008 President Putin proposed that they divide Ukraine between themselves; <http://www.rferl.org/articleprintview/26647587.html>, accessed 23 October 2014.

economic recession, stretching into 2016 and perhaps beyond, which challenges Russia's perception of itself as a rapidly strengthening pole in an emergent multipolar global order.

Territorial integrity and self-determination: rules and standards

Sergey Markedonov

The Ukrainian political crisis, aggravated by the change of Crimea's status and hostilities in Donbass caused the deepest confrontation between Russia and the West (the US and the European Union) since the end of the Cold War, the dissolution of the Warsaw Treaty and the collapse of the Soviet Union.

However, it has to be noted that aggravations in the relations between Moscow on the one hand and Washington and Brussels, on the other, happened before the current confrontation. Moreover, they tended to be particularly sharp and fierce in the periods when problems of national self-determination and territorial integrity were the focus of discussions and arguments. This was the case with Chechnya in 1998-1999 and Kosovo (the "Kosovo precedent") as well as the recognition of the independence of Abkhazia and South Ossetia in 2008, the Crimea referendum and differences over the interpretation of its outcome in 2014. Significantly, the Russian and Western positions on how to handle this or that ethno-political situation were not notable for universality or adherence to a constant set of criteria. Thus the US and its allies did everything to promote and support the unilateral declaration of independence of the former Serbian autonomous province of Kosovo, but condemned the unilateralism of the Russian side which recognized the independence of former autonomous entities within the Georgian SSR and made the autonomous republic of Crimea and Sebastopol parts of Russia.

Indeed, Moscow acted in many ways according to a similar algorithm. In November 1999 the First Russian President Boris Yeltsin, addressing the OSCE summit in Istanbul, focused on so-called "objective critics" of Russia and condemned external support of Chechen secession.³⁵ However, in January 2006 Vladimir Putin said that the self-determination of Kosovo could be used as a precedent by Abkhazia and South Ossetia.³⁶ Two and a half years later Russia recognized the independence of the two former autonomous entities of the Georgian SSR.

35 OSCE Istanbul Summit. Speech by President Yeltsin of the Russian Federation on 18 November 1999 // http://archive.mid.ru/bdomp/dip_vest.nsf/2b52bc67d48fb95643257e4500435ef7/30d93b83134c77aac3256886004d1ff5!OpenDocument

36 Transcript of the press conference by President Vladimir Putin of Russia for Russian and foreign journalists. 31 January 2006// http://archive.kremlin.ru/appears/2006/01/31/1310_type63380type63381type82634_100848.shtml

While categorically rejecting the unilateral actions of the Kosovo Albanians and not recognizing the independence of the former autonomous province of Serbia, Moscow, however, repeatedly invokes the Balkan precedent³⁷ which the West considers to be “a unique case.”

Thus, **Washington, Brussels, and Moscow each in turn were supporters of secession and “revisionism” and champions of the status quo and territorial integrity against separatist aspirations.** Both the West and Russia accuse each other of using “double standards.” In reality each side is concerned not so much about some ideal rules but is solving a specific political puzzle to promote its interests, while at the same time seeking to legitimize it. More often than not the principles of international law are invoked when it is thought to be expedient.

As a result we get two parallel political and legal realities that do not intersect. In one reality there are the independent states of Abkhazia, South Ossetia and Kosovo (although the numbers of states that have recognized them differ dramatically) which have diplomatic relations with those who have officially backed their self-determination. The other reality is “occupied” or “annexed” territories (which automatically downgrades national secession movements to the position of “puppets” of major players). There are either two constituent entities of the RF which have “reunited” with their Homeland and returned to the fold, and there is the territory of independent Ukraine which has been “annexed” by the neighbouring country pursuing an “imperial policy.”³⁸ Against the background of growing mutual mistrust and a reluctance to seek compromises no one can tell where and how the instrument of supporting or deterring secession will be used. And yet there are many points in the Balkans and in the post-Soviet space where the principles of territorial integrity clashes with the struggle for self-determination. The most salient examples of such a clash are Transnistria and Nagorno-Karabakh which in turn are linked by dozens of threads with broader contexts (be it the Ukrainian crisis in respect of Transnistria, Russia-Turkey relations or “the Iran factor” in the case of the stand-off over Nagorno-Karabakh).

Secession and inviolability of borders: checks and balances

The year 2015 saw some high-profile jubilees. The 70th anniversary of the Yalta and Potsdam conferences and the 40th anniversary of the signing of the Final Act of the Conference

37 This case was invoked in President Putin’s “Crimea speech” (18 March 2014) // <http://www.kremlin.ru/events/president/news/20603>

38 According to New Jersey Democratic Senator Robert Menendez, who chairs an influential Senate Foreign Relations Committee, “President Putin has upended the international order, and a slap on the wrist will not deter future Russian provocations”. // Cited on: Pace J. and Riechmann D. Obama, Ukraine President To Meet At White House // http://www.huffingtonpost.com/2014/09/18/obama-ukraine-poroshenko_n_5841892.html

on Security and Cooperation in Europe prompted a broad discussion on the effectiveness of the current world order. But the issue of the inviolability of borders and independence of multi-national states is the bedrock of every system of international relations.

In this context one has to admit that the mushrooming (described as a kind of “world record” by British expert Thomas de Waal)³⁹ of unrecognized entities on the territories of the Soviet Union and Yugoslavia after their breakup in the early 1990s was a consequence above all of the systemic crisis of the Yalta-Potsdam world order. From the outset it was based on the contradiction between the principles of territorial integrity and inviolability of post-war borders on the one hand and the right to self-determination on the other sealed in all the UN declarations and pacts. The architects of the Yalta peace needed that system of checks and balances because by 1945 they were poised to become enemies again.

As a result both poles of the international system contributed to the strengthening of ethnic separatism, using it as an instrument to further their geopolitical ends. The withdrawal of the Soviet Union from Central and Eastern Europe followed by the collapse of the USSR and ultimately of the bipolar world opened the floodgates for the emergence of “new democracies” whose ideology was based on the principle of ethno-national self-determination. The break-up of the USSR and Yugoslavia marked the start of the formation of nation states, a process the West clearly underestimated. Never since the end of the First World War (which implemented Woodrow Wilson’s Fourteen Points and the Bolshevik political platform of “self-determination, including secession”) have there been so many countries based on an ethnic principle. Prominent Bulgarian political scientist Ivan Krastev had a point when he noted: “Europe likes to think of itself as a stable continent, but in reality in the two decades following 1989 it saw the creation and destruction of more states than any other region of the world at any time. It is even more than Africa in the period of decolonization in the 1960s. There appeared 15 new states in place of the USSR, 7 in place of the former Yugoslavia and two in place of Czechoslovakia. This not to speak of 4 “unrecognized republics” and others that would like to follow the same path.”⁴⁰

Since gaining independence the new sovereign states of the former Soviet Union and Yugoslavia were covertly or overtly converting the principle of territorial integrity into the principle of the right of nations to self-determination. But, having gained that right, many of them, in their new capacity and within their new borders, immediately declared their “unity and indivisibility”, often without due account of the positions of the autonomies within them.

39 Thomas de Waal, Threats for the South Caucasus security// The Herald of Europe, 2002. □ 7-8. P. 35-38.

40 Quoted from : Ivan Krastev on Russian Fears and the European Order //http://www.caucasustimes.com/article.asp?id=20636

This “change of milestones” led to ethno-political conflicts which entered a “hot phase” in some regions (notably in Transcaucasia and the Balkans).

Vague contours of the world order

After a substantial revision of the Yalta-Potsdam world order the contours of this order became very vague. Accordingly, the criteria of recognition/non-recognition became diluted. Hence the use of legal standards not so much as political expediency in the process of recognition. Moreover, the International Court of Justice proved to be unable to give a clear answer regarding the consequences of successful practice of secession in its Advisory Opinion on the legality of the Kosovo Declaration of Independence. Its main legal argument was that “general international law contains no applicable prohibition of declarations of independence”.⁴¹

Yet it is in accordance with this logic that the leaders of other ethno-national movements and de facto entities started building a case for their recognition.⁴² What plays into their hands is the apparent legal uncertainty combined with the unilateral actions of the Western countries in the Kosovo case. A model according to which maximalist aspirations in relation to the “mother entity” (separation as an end in itself) gets significant outside support proves to be too effective to be overlooked or ignored by other players.

It is not by chance that Moscow constantly invokes the precedent and practical experience of Kosovo. What is the argument rolled out to prove that Kosovo is a unique case? That unlike in Abkhazia, South Ossetia and Crimea, self-determination was implemented under international control and supervision. But “international engagement” is not an abstract category. If the Kosovars had exercised their self-determination under Russian, Chinese or Indian supervision, the results might have been different from those achieved under US and Europe supervision with all the consequences that entails. The softening of Belgrade’s position (including de facto recognition of the current status quo) was not the result of some legal decisions, but of political and socio-economic expediency.⁴³

It has to be said, however, that the “Kosovo precedent” is the result of the fact that the processes of the break-up of Yugoslavia and the Soviet Union were to a large extent attempts

41 See the full text of the Advisory Opinion of the International Court of Justice: // <http://www.icj-cij.org/docket/files/141/16010.pdf>

42 See an instance of such a reaction to the International Court of Justice Advisory Opinion (from the then prime minister of Abkhazia Sergey Shamba) <http://ria.ru/politics/20100723/257739398.html>

43 See more on the “Kosovo precedent” for de facto entities in the post-Soviet space in: Harzi B. Nationalism and Politics of the Past: The cases of Kosovo and Abkhazia // *Review of Central and East European Law* (2011). # 36(2), pp. 53-77.

to shoehorn political decisions into legal formulas. Take, for instance, the self-determination of Croatia which was recognized as an independent state in December 1991 and admitted to the UN in May 1992, i.e. at the time when it controlled only 70% of its territory and had an unresolved conflict with the Serbs in Krajina. The International Tribunal for the Former Yugoslavia used these decisions to build its case against Slobodan Milosevic in solving the issue on the territory of which state – independent Croatia or the crumbling Yugoslavia – the war crimes had been perpetrated. As a result the self-determination of the former republic of federal Yugoslavia was interpreted not as an exercise of secession, but as the creation of a new state on the ruins of the old one because the central institutions of Yugoslavia allegedly had ceased to function.⁴⁴ It would not be irrelevant to ask whether the central authorities of a united Ukraine are fully functioning considering the “separate districts of Donetsk and Luhansk regions.”⁴⁵

Equally impressive is the example of Georgia which was recognized before the problems of South Ossetia, Abkhazia and Mingrelia (where a civil war broke out in late 1991 between supporters of President Zviad Gamsakhurdia and the State Council that toppled him) were settled. Neither the USA, nor Europe set any conditions for Tbilisi for admission to the UN, the IMF and the World Bank in the shape of ending internal conflicts or democratic legitimization through elections. Moreover, Georgia became a UN member in July 1992, less than a month before the start of hostilities in Abkhazia.

In search of uniform rules

One can argue incessantly that Russia has embarked on a dangerous and fraught game with Crimea, that the slogans of national self-determination cut both ways and can be used against the unity of Russia itself. But one cannot but see in Moscow's actions today much the same logic as that the West tried out earlier in the Balkans and Transcaucasia. Except that the security of Serbia or Georgia are of marginal importance for the USA while for Russia (70% of whose Black Sea Fleet infrastructure is located in Crimea) the situation in Ukraine (or indeed any other post-Soviet country) is a key foreign policy priority which is in many ways linked with internal political affairs.

One can go along with Fyodor Lukyanov, a noted Russian international affairs scholar, that the model of relations between Russia and the West that evolved after 1991 (but was formed

44 See the full text of the findings of the Arbitration Commission for the Former Yugoslavia (also known as the Badinter Commission“): Yugoslavia Through Documents. From its creation to its dissolution/ Ed. By Trifunovska S., Martinus Nijhoff Publishers. The Hague, 1996, P. 1020.

45 This is how the complex of measures on compliance with the Minsk accords refers to territories controlled by unrecognized Donetsk and Luhansk People's Republics //http://www.osce.org/rucio/140221?download=true

during the perestroika period) has exhausted itself. Within that model Moscow, notwithstanding all its disagreements with various moves of the USA and EU, tried to stay within the Western foreign policy discourse.⁴⁶ This was the case even in August 2008 during the “five-day war” in Transcaucasia. However, this did not make the West regard Russia as an equal partner. The extremely ideological view of Russian interests, the stake of the “new democracies” which have declared their adherence to the pro-Western choice, created multiple bilateral problems which were not discovered until the Ukrainian crisis. The events in Kiev, Crimea and Donbass merely accelerated the reaction started by earlier contradictions over the Caucasus and the Balkans.

The impasse could be broken by an agreement between the West and Russia on some common rules of the game which would include more precise criteria of recognition of new states and legitimacy or otherwise of secession and the preservation of territorial integrity, as well as possible procedures of transition to a new status. However, this is unlikely to happen unless a broader modus vivendi between the two, if not a comprehensive compromise, is achieved.

46 Lukyanov F.A. Апология недосказанности (In praise of not saying all)// <http://www.rg.ru/2014/12/23/lukianov.html>

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