I. The European security order under strain

IAN ANTHONY

The year 2014 saw major armed conflict return to Europe. During the year, the number of deaths recorded for the Ukraine conflict reached at least 4364—more than twice that recorded for the previous major armed conflict in Europe, in Georgia in 2008.[1] Moreover, at the end of the year, fighting in eastern Ukraine intensified and there were no indications that the conflict could be resolved quickly or easily. However, the issues at stake in Ukraine were not confined to the tragic loss of life, the displacement of people and the destruction of property. The Ukraine conflict was the catalyst for a further deterioration in the overall European security environment, with the attendant risk of a potentially dangerous slide into escalating confrontation between major powers. Diverse reasons are advanced for this progressive deterioration in the European security environment.

Successive Russian governments have been critical of policies, in particular those pursued by the United States, that they consider to be both selfish and inconsistent with the commitment to inclusive decision making made at the end of the cold war. In October 2014, Russian President Vladimir Putin summarized Russia's perspective in a speech where he accused the USA and what he called its 'satellites' of 'presenting the policies they put together in their corridors of power as the view of the entire international community. But this is not the case'. In order to impose these policies, according to Putin, 'The measures taken against those who refuse to submit are well-known and have been tried and tested many times. They include use of force, economic and propaganda pressure, meddling in domestic affairs, and appeals to a kind of "supra-legal" legitimacy when they need to justify illegal intervention in this or that conflict or toppling inconvenient regimes'.[2]

However, for most countries in Europe—and all of the countries in the western part of the continent—Russia's behaviour has been inconsistent with the decisions taken after 1990, when European leaders stated their intention to build a common and cooperative security system. The alleged inconsistencies include what is seen as Russia's broad failure to respect core principles and commitments in the economic, environmental and human dimensions—notably in the areas of human rights and fundamental freedoms. However, many European countries, as well as the USA and Canada, also assert that Russia does not respect core commitments in the politico–military dimension. Such commitments include the right of sover-

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[1] See chapter 3, section I, in this volume.
[2] Putin, V., Meeting of the Valdai International Discussion Club, Excerpts from the transcript, Moscow, 24 Oct. 2014, <http://eng.kremlin.ru/news/23137>.

eign equality and the promise to abstain from the threat or use of force against the territorial integrity or political independence of any state, as defined in the 1975 Helsinki Final Act, which was reaffirmed by European leaders at the end of the cold war and elaborated in November 1990 by the Organization for Security and Co-operation in Europe (OSCE) in the 'Charter of Paris for a New Europe'.[3]

After 1990, the new framework for European security was immediately challenged by conflicts of unexpected intensity and duration—not least in the Balkans—that indicated the need to adapt in light of events that could not be foreseen. Subsequently, there have been other events that have revealed deep differences in how to interpret the rules that are the basis for the European security order. However, these shocks have usually been followed by an effort to promote dialogue in order to find common ground.

For example, the military intervention by North Atlantic Treaty Organization (NATO) forces in Kosovo in the spring of 1999 was a major shock to the emerging European security system. NATO saw the action as a necessary preventive measure to safeguard the lives of almost 250 000 civilians exposed to unacceptable risk. However, the intervention was seen by Russia as an illegal attack on the territorial integrity and sovereignty of a European state and the principle of civilian protection appeared to be applied unevenly in the Balkan region. Nevertheless, in spite of the strong differences of opinion, OSCE member states agreed on the 'Charter for European Security' in November 1999.[4]

In 2008 there were deep divisions over the origins and implications of the conflict between Georgia and Russia. Russia explained the conflict as a response to attacks on a peacekeeping force protecting minorities inside Georgia.[5] However, the USA and many of its allies interpreted the conflict as a pretext to block the adoption of NATO Membership Action Plans for Georgia and Ukraine.[6] Nevertheless, the OSCE member states reaffirmed their respect for agreed principles in the commemorative declaration 'Towards a Security Community' in December 2010 and committed to continuing their dialogue in pursuit of a durable common approach to security in Europe.[7]

In contrast to these earlier agreements, however, at the end of 2014 there appeared to be little appetite for dialogue or reconciliation as fighting in

[3] OSCE, Charter of Paris for a New Europe, Paris, 21 Nov. 1990.
[4] OSCE, Charter for European Security, Istanbul, 19 Nov. 1999.
[5] Russian Ministry of Foreign Affairs, 'Interview by Minister of Foreign Affairs of the Russian Federation Sergey Lavrov to BBC', Moscow, 9 Aug. 2008, <http://www.mid.ru/brp_4.nsf/0/F87A3FB7A7F669EBC32574A100262597>.
[6] At a meeting of the NATO–Russia Council in Apr. 2008, Russian President Vladimir Putin is alleged to have told NATO leaders that Russia would work to break up Ukraine if the country joined NATO. 'Putin hints at splitting up Ukraine', *Moscow Times*, 8 Apr. 2008.
[7] OSCE, Astana Commemorative Declaration: Towards a Security Community, Astana, 3 Dec. 2010.

Ukraine escalated. On the contrary, a significant number of senior leaders signalled that relations would be difficult to repair.

In April 2014, the foreign ministers of NATO allies decided that, while political dialogue in the NATO–Russia Council could continue when deemed necessary, all civilian and military cooperation between NATO and Russia should be suspended, because 'Russia has violated international law and has acted in contradiction with the principles and commitments agreed in the Euro–Atlantic Partnership Council Basic Document, the NATO–Russia Founding Act, and the NATO–Russia Rome Declaration— the key principles upon which our cooperation is based. The Alliance is, therefore, in the process of re-evaluating relations with Russia'.[8] At a summit in September 2014, NATO leaders concluded that the conditions for a cooperative and constructive relationship with Russia no longer existed and could only be restored by 'a clear, constructive change in Russia's actions which demonstrates compliance with international law and its international obligations and responsibilities'.[9]

In October 2014, the Russian Foreign Minister, Sergei Lavrov, noted that relations between the European Union (EU) and Russia 'have approached a kind of moment of truth, when we need to make a decision about the long-term vector of cooperation and answer the question: are we strategic partners for each other, or do we still remain geopolitical rivals?'[10]

At a joint press conference in the beginning of December 2014, the new president of the European Council, Donald Tusk, and the incoming Secretary-General of NATO, Jens Stoltenberg, agreed that Russian actions had undermined Euro–Atlantic stability by violating the fundamental principles that borders cannot be changed by force and that disputes should be settled peacefully. Noting that 'the era of spheres of influence is over', the two leaders stated that while the EU and NATO 'maintain our channels of dialogue open, Russia has to return to those fundamental principles'.[11]

From a Russian perspective, however, recent actions, policies and programmes of Western countries—not only in the eastern part of Europe, but also in the Middle East, North Africa and further afield (e.g. in the Western Pacific)—appear as attempts to consolidate existing or explore new spheres of influence.

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[8] NATO, Public Diplomacy Division, 'NATO–Russia relations: the background', Media backgrounder, Sep. 2014, <http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2014_09/201409 01_140901-Backgrounder_NATO-Russia_en.pdf>, p. 4.

[9] NATO, 'Wales Summit Declaration: issued by the heads of state and government participating in the meeting of the North Atlantic Council in Wales', Press Release (2014) 120, 5 Sep. 2014.

[10] 'Lavrov: Russia–EU relations approach "moment of truth"', Sputnik International, 14 Oct. 2014, <http://sputniknews.com/politics/20141014/194054200.html>.

[11] NATO, 'Remarks by NATO Secretary General Jens Stoltenberg at the joint press point with President of the European Council Donald Tusk', 3 Dec. 2014, <http://www.nato.int/cps/en/ natohq/opinions_115662.htm>.

National self-determination and the inviolability of borders

In Europe, as elsewhere in the world, most, if not all, states are the product of the historical combination of subunits into larger entities. In many cases the process of forming states by uniting subunits, as well as revising state boundaries, was accomplished through (or at least accompanied by) war. The set of principles agreed in the Helsinki Final Act (and repeatedly reaffirmed after the cold war) were intended to reconcile the principle of national self-determination with other principles—including respect for the territorial integrity of states, the inviolability of borders, refraining from the threat or use of force and the accompanying requirement to resolve disputes peacefully.[12] The balance between different principles reflected concern that a general unrestricted right to exercise self-determination could lead to continuous fragmentation and destabilization in Europe.

Under the Helsinki Final Act all signatory states agreed 'that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement'.[13] At the end of the cold war, the unification of Germany and the subsequent separation of Czechoslovakia into the Czech and Slovak Republics through a 'velvet divorce' were practical demonstrations that state borders could be changed by consent.

In contrast, violent efforts to redraw state boundaries in Europe have rarely succeeded in the recent past. In France, Spain and the United Kingdom, the violence associated with separatist groups appears to have been contained. Where conflicts broke out in the territory of the former Soviet Union, peace initiatives succeeded in reducing the levels of violence, but without resolving the underlying issues at the root of the conflict.

In one part of Europe, the territory of the former Yugoslavia, armed conflicts led directly to the redrawing of state boundaries—which still generates controversy today. Russia has consistently referred to the process of achieving statehood for Kosovo as evidence that legal arguments over the relationship between national self-determination and territorial integrity have often been one-sided and essentially political.

In October 2014, President Putin said: 'I do not understand why people living in Crimea do not have this right, just like the people living in, say, Kosovo . . . Why is it that in one case white is white, while in another the same is called black? We will never agree with this nonsense'.[14] However, few observers would accept Crimea and Kosovo as equivalent cases.

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[12] OSCE, Helsinki Final Act, Final Act of the First Conference on Security and Co-operation in Europe (CSCE) Summit of Heads of State or Government, Helsinki, 1 Aug. 1975.

[13] This is part of the first principle established in the Final Act, on 'Sovereign equality, respect for the rights inherent in sovereignty', OSCE (note 12).

[14] Putin (note 2).

In Kosovo the objective of military action was to force combatants off the battlefield in order to create the conditions for protracted and inclusive negotiations. In 1999 the United Nations Security Council (by a unanimous vote) placed Kosovo under temporary UN administration while a process of political negotiation was undertaken to decide its future status.[15] More than seven years later, at the end of 2006, the Special Envoy of the Secretary-General on Kosovo's future status, Martti Ahtisaari, reported that, based on the experience of his exhaustive negotiations, the only viable option for Kosovo was independence.[16] No such process was applied in Crimea, as discussed below.

Furthermore, although the Kosovan Parliament declared its independence from Serbia in February 2008 following a unanimous vote, whether or not Kosovo is an independent state remained contested at the end of 2014. Kosovan statehood was recognised by a majority (108 out of 193) of UN member states, but not by, for example, China or Russia.[17] In December 2014 the Serbian Prime Minister, Aleksandar Vučić, reiterated that the Serbian Government remained 'firm in its position not to recognize the secession of Kosovo and Metohija and its self-proclamation as a State'.[18]

Changing borders by referendum

The relationship between the principle of national self-determination and respect for the territorial integrity of states was under scrutiny in several parts of Europe during 2014, not only in Ukraine—although the seriousness and implications of the challenges are different, as are the potential consequences.

Exercising the right of self-determination (whether by creating a new independent state, by free association with an already existing independent state, or by integrating two or more entities to create a new state) should be the result of a free and voluntary choice by the people of the territory concerned, expressed through informed and democratic processes. While there is no specific agreed method to determine the free and voluntary choice of the people concerned, there are many precedents for using a

[15] United Nations Security Council Resolution 1244, 10 June 1999.

[16] United Nations, Security Council, Letter dated 26 Mar. 2007 from the Secretary-General addressed to the President of the Security Council, S/2007/168, 26 Mar. 2007.

[17] The position of China is that only a solution acceptable to all parties reached through negotiation can be supported, until which time China will continue to recognize the territorial integrity of Serbia.

[18] United Nations, Security Council, 'Top envoy tells Security Council resumption of Kosovo, Serbia high-level meetings critical to efforts towards European Union integration', Press Release SC/11684, 4 Dec. 2014, <http://www.un.org/press/en/2014/sc11684.doc.htm>.

referendum on the issue—mostly in the context of liberation from colonial rule.[19]

In Catalonia, a non-binding vote was held on the question of statehood and whether or not a Catalan state should remain part of Spain or separate from it. In Crimea, a referendum in March 2014 led to the separation of the region from Ukraine. In Scotland, a referendum was held on separation from the UK, with a majority of the population voting to remain as part of a political union. Each of these processes challenged the territorial integrity of the borders of recognized, sovereign states—Spain, Ukraine and the UK. In each case the state authorities were firmly opposed to the modification of borders. However, the three cases were managed in different ways, and led to very different outcomes.

In Spain the central government in Madrid and the regional representatives in Catalonia were unable to agree on the procedural aspects of a referendum, leading to a controversial, but non-violent, public consultation on Catalonian secession. It is clear that the issue of Catalonian statehood remains unsettled, and attempts to separate from Spain will continue in one form or another. In Ukraine, the legality of the referendum was challenged, and the process took place at short notice against a background of escalating unrest. In the UK, after a long period of discussion and in the framework of a consensual process, a referendum reached a clear verdict accepted by all parties.

Catalonia. In regional elections in late 2012, parties fully supporting Catalonia's right to self-determination won almost 80 per cent of seats in the Catalan Parliament. The parliament subsequently decided to hold a referendum on self-determination in 2014. However, the Spanish Parliament refused a formal request from the Catalan Parliament to hold the referendum in Catalonia (as opposed to a vote in the whole of Spain) or to delegate temporary powers to the Catalan Parliament to hold such a referendum. The Spanish Government also blocked a proposed non-binding consultation (instead of the referendum) by recourse to the Constitutional Court.

On 9 November 2014 what was described as a 'voluntary participatory process' was held in Catalonia, when 2.3 million out of a total electorate of 5.4 million registered voters took part in a non-binding vote on independence for Catalonia. The two questions put to the electorate were: Do you want Catalonia to be a state? If so, do you want Catalonia to be an independent state? Of those that voted, over 80 per cent chose to vote yes to both questions.

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[19] New York City Bar Association, Committee on the United Nations, *The Legal Issues Involved In The Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* (New York City Bar Association: New York, June 2012).

Catalan authorities are now planning regional elections, which would have a legal status rather than being a voluntary consultation, with a single list of candidates representing all of the parties that support independence, all running on one issue: Do you want Catalonia to be an independent state?

Crimea. On 27 February 2014 the Parliament of the Autonomous Republic of Crimea decided to hold a referendum on the future status of Crimea, to be held on 25 May 2014. However, after the Ukrainian Central Electoral Committee declared this decision unconstitutional, the Supreme Council of Crimea voted to secede from Ukraine and brought forward the date of the referendum to 16 March.

According to official accounts after the vote, the referendum on 16 March returned an overwhelming vote (96.7 per cent) in favour of the region's accession to Russia.[20] On 17 March 2014 the Crimean Parliament declared independence from Ukraine and immediately applied to become part of the Russian Federation. On 21 March 2014 President Putin signed the Agreement between the Russian Federation and the Republic of Crimea on the Accession of the Republic of Crimea to the Russian Federation and the Formation of New Federal Constituent Entities within the Russian Federation. Russian Prime Minister Dmitri Medvedev explained this action by saying that Russia was guided by the right of people living in Crimea to self-determination, expressed in the referendum.[21]

At the end of 2014, the status of Crimea was contested and likely to remain so indefinitely.

One group of spokespersons for Russia asserted that the 'proclamation of independence by the Republic of Crimea and its accession to the Russian Federation are a legitimate form of the implementation of the right to self-determination by the people of Crimea in the situation when a coup accompanied by the use of force was carried out in Ukraine with an external support'.[22] Russian authorities also noted that the citizens of Crimea were never consulted over the original decision to join Crimea with Ukraine, that the legal status of Crimea had been altered by the Ukrainian Parliament without the consent of the Crimean representatives during the 1990s, and that the original constitutional framework at the time of Ukrainian independence provided for Crimean independence from Ukraine, subject to approval in a referendum.[23]

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[20] While the level of support for Crimean secession is contested, there is no dispute that a significant majority of voters supported the option of accession to Russia. Gregory, P., 'Putin's "Human Rights Council" accidentally posts real Crimean election results', *Forbes*, 5 May 2014.

[21] Russian Government, 'Dmitry Medvedev's interview with Bloomberg TV', 20 May 2014, <http://government.ru/en/news/12509/>.

[22] Permanent Delegation of the Russian Federation to UNESCO, 'Legal arguments for Russia's position on Crimea and Ukraine', 7 Nov. 2014, <http://russianunesco.ru/eng/article/1637>.

[23] United Nations, Security Council, 'Security Council fails to adopt text urging member states not to recognize planned 16 March referendum in Ukraine's Crimea region', Press Release SC/11319, 15 Mar. 2014, <http://www.un.org/press/en/2014/sc11319.doc.htm>.

From a Ukrainian perspective, the Crimean Parliament had raised questions in the referendum that were outside its legal authority, and therefore the referendum could not be valid. Moreover, the Ukrainian Constitution states that 'the territory of Ukraine within its present border is indivisible and inviolable', secession is illegal and the boundaries of the state could only be altered on the basis of an all-Ukrainian referendum.[24]

International bodies also questioned whether the referendum could be seen as a free expression of the will of the Crimean population. The Council of Europe, in its assessment of the referendum, concluded that 'circumstances in Crimea did not allow the holding of a referendum in line with European democratic standards. Any referendum on the status of a territory should have been preceded by serious negotiations among all stakeholders. Such negotiations did not take place'.[25] Voters were not offered the option of maintaining the existing constitutional arrangement. The only choices were unification with Russia or remaining part of Ukraine under the conditions of the 1992 Constitution of the Republic of Crimea (which afforded a degree of autonomy to Crimea within Ukraine, equivalent to that within a federation). The Council of Europe drew attention to a number of other factors that undermined confidence in the integrity of the process. In particular, (*a*) the influence of the massive public presence of paramilitary and military forces, (*b*) concerns over the right to freedom of expression in Crimea, (*c*) the excessively short period (10 days) between the decision to call the referendum and the referendum itself, and (*d*) the fact that prior to the referendum the Supreme Council of Crimea adopted a declaration on the independence of Crimea, raising doubt about the neutrality of the authorities.

On 27 March the UN General Assembly adopted Resolution 68/262 on the Territorial Integrity of Ukraine following a recorded vote of 100 in favour, 11 against and 58 abstentions. The resolution underscored 'that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol'.[26]

Scotland. After elections in May 2011, the Scottish Nationalist Party (SNP) gained an overall majority in the Scottish Parliament. On 15 October

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[24] Ukrainian Constitution, Official English translation, <http://www.kmu.gov.ua/document/1109 77042/Constitution_eng.doc>.

[25] Council of Europe, European Commission for Democracy through Law, Opinion no. 762/2014 on 'Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea's 1992 Constitution is compatible with constitutional principles', Venice Commission Document CDL-AD(2014)002, Venice, 21–22 Mar. 2014.

[26] The countries that voted against the resolution were: Armenia, Belarus, Bolivia, Cuba, North Korea, Nicaragua, Russia, Sudan, Syria, Venezuela and Zimbabwe. A draft resolution in the Security Council containing similar language was vetoed by Russia.

2012 the Edinburgh Agreement, signed by the Scottish First Minister, Alex Salmond, and the British Prime Minister, David Cameron, paved the way for a referendum with one question: Should Scotland be an independent country?[27] With the option to vote either yes or no, the referendum was held on 18 September 2014. Out of a total electorate of 4.3 million, roughly 85 per cent voted, with 55 per cent voting no.[28]

Under the terms of the Edinburgh Agreement, the governments of Scotland and the UK pledged to work together according to the principles of good communication and mutual respect, regardless of the result of the referendum, and 'to continue to work together constructively in the light of the outcome, whatever it is, in the best interests of the people of Scotland and of the rest of the United Kingdom'.[29]

New fault lines?

The year ended with a widespread sense of unease over the deterioration in the European security environment and the increased risk that the use of violence to modify state borders might once again be rehabilitated as an instrument of European statecraft.

In November 2014 Abkhazia and Russia signed an agreement on a strategic partnership that included military–technical cooperation, the creation of a collective defence system, cooperation between internal security services and financial aid.[30] However, the great majority of countries in the world regard Abkhazia as a part of Georgia (only Nauru, Nicaragua, Russia and Venezuela recognize Abkhazia as an independent state) and the Georgian Foreign Ministry asked for the agreement to be discussed in the UN Security Council, describing it as 'a step in the direction of the annexation of the region'.[31]

In December 2014 the heads of delegation of the OSCE Minsk Group co-chair countries (France, Russia and the USA) reported an upsurge in violence during the year along the Line of Contact separating warring parties to the Nagorno-Karabakh conflict, and at the Armenia–Azerbaijan border.[32]

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[27] Scottish Government, Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland, Edinburgh, 15 Oct. 2012, <http://www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence>.

[28] Scottish Independence Referendum website, <http://scotlandreferendum.info/>.

[29] Scottish Government (note 27), Article 30.

[30] Farchy, J., 'Vladimir Putin signs treaty with Abkhazia and puts Tbilisi on edge', *Financial Times*, 24 Nov. 2014.

[31] 'Georgia appeals to UN Security Council about Russian–Abkhaz treaty', *Kyiv Post*, 26 Nov. 2014.

[32] OSCE, 'Joint statement by the heads of delegation of the OSCE Minsk Group co-chair countries', 4 Dec. 2014, <http://www.osce.org/mg/129421>.