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The OSCE's Contrasting Roles in Managing the Ukraine/Crimea Crises in 1992-96 and 2014-15

Introduction

The crisis that erupted in Ukraine in 2014 brought about a change of government in Kyiv, a Russian move into the previously autonomous Ukrainian region of Crimea and its transfer to the Russian Federation, and finally the outbreak of violence by rebels in eastern Ukraine, who also sought separation from the Ukrainian state and closer ties with Russia. These were widely interpreted as novel and unexpected events within post-Soviet space. However, a similar crisis occurred immediately following the breakup of the Soviet Union in December 1991, which, after extensive negotiations led by the Conference on Security and Co-operation in Europe (CSCE, as the OSCE was called before 1995), was resolved peacefully. The Russian government agreed to recognize the territorial integrity of Ukraine, including Crimea, in exchange for Ukraine's decision to give up the Soviet-era nuclear weapons that remained on its territory and to join the Nuclear Non-Proliferation Treaty as a non-nuclear-weapon state. Furthermore, the governments of Ukraine and of Crimea co-ordinated their constitutions in order to grant Crimea deep autonomy within Ukraine, while Russia accepted Crimea's status as an integral part of Ukraine. This peaceful settlement represented a significant accomplishment for post-Cold War preventive diplomacy.¹ After almost 20 years of relatively peaceful relations, this agreement fell apart in early 2014. Although the OSCE once again engaged as the primary international actor, it entered only after the crisis had escalated, and mostly in a monitoring rather than a peace-making role.

These two similar crises, essentially involving the same actors (albeit with different individuals in position of political authority) across a period of almost two decades, provide an opportunity to analyse what accounts for the difference in the management and outcomes in these two cases.

1 Cf. P. Terrence Hopmann, *Disintegrating States: Separating Without Violence*, in I. William Zartman, *Preventive Negotiation: Avoiding Conflict Escalation*, Lanham, MD, 2001, pp. 113-164.

The Crimean Conflict, 1992-96

Origins of the Conflict over Crimea

Ukraine was a feudal state throughout the Middle Ages, and at various times came under Polish, Tatar, Ottoman, and Russian influences. In 1654, its leaders accepted the overlordship of the Russian Tsar, and it gradually became incorporated into the Russian Empire. After World War I and the Russian Revolution, Ukraine was incorporated into the Soviet Union as the Ukrainian Soviet Socialist Republic (UkSSR) in 1919, and it remained one of the 15 Union Republics of the USSR until December 1991, when the USSR was dissolved and replaced by the Commonwealth of Independent States (CIS). The international community recognized the independence of all 15 Union Republics, the highest administrative subdivision within the USSR, and all 15 were admitted into the CSCE in early 1992 within their territorial boundaries from Soviet times. In Ukraine, tensions appeared immediately between the western regions, where Ukrainian nationalism was influential, and the eastern regions, especially in the industrialized Donbas basin near the border with the Russian Federation, where economic integration with the Soviet Union and the prevalence of Russian language and culture were more strongly present. In the eastern industrial town of Donetsk, worker protests broke out as early as 1993 due to worsening economic conditions.

The greatest tensions, however, occurred in Crimea, which was conquered by Russia under Catherine the Great in 1783, ending a long period of control by the Ottoman Empire. It was the homeland of the Crimean Tatars, a predominantly Islamic people who speak a Turkic language; they were deported to Central Asia in 1944 by Stalin for allegedly collaborating with the Nazi forces that had occupied Crimea. These Tatars presently claim the status of an "indigenous people" of Crimea. Crimea remained part of the Russian Soviet Federative Socialist Republic (RSFSR) within the Soviet Union until 1954, when it was transferred to Ukraine by Nikita Khrushchev to mark the 300th anniversary of Ukraine's incorporation into the Russian Empire. It subsequently retained the status of an oblast, but within the UkSSR. In fact, this transfer from one Union Republic to another had little, if any, significant impact on its residents at that time.

With the breakup of the Soviet Union appearing to be inevitable, a referendum was held in Crimea in January 1991 in which 93 per cent of those who voted supported the creation of an Autonomous Republic within the Soviet Union outside Ukraine. When the Soviet Union was dissolved, the oblast of Crimea, with a population that was about 70 percent ethnic Russian, suddenly found itself within the jurisdiction of an independent and sovereign Ukraine. Russians, who had identified with the powerful majority of the former Soviet Union, became a minority within a new state with which they had little or no sense of identification.

The crisis between a newly independent Ukraine and Crimea developed rapidly. A citizens' movement of ethnic Russians opposed to Crimea's status as part of an independent Ukraine began to organize in the spring of 1992. Fuel was added to the fire when the Russian Supreme Soviet adopted a resolution proclaiming that the transfer of Crimea to Ukraine in 1954 lacked legal force. At first, Ukraine's leadership agreed to grant Crimea full political autonomy without territorial separation as well as more economic rights vis-à-vis the government in Kyiv. However, Crimeans began to press for even greater concessions from Ukraine, which in turn caused Ukrainian nationalists to insist that Crimea be recognized as an integral part of Ukraine. In May 1992, Crimea adopted an Act of State Independence and a constitution proclaiming the Republic of Crimea to be a sovereign state. A referendum was called for August 1992 to ratify the declaration of independence. The Supreme Council of Crimea proposed to negotiate treaty arrangements with Ukraine on an equal footing. The Ukrainian *Verkhovna Rada* (parliament), however, ordered the Crimean declaration annulled. Subsequently, the *Verkhovna Rada* passed a new law delineating the division of power between Ukraine and Crimea, and Crimea's leaders agreed in return to drop the referendum on independence. This modus vivendi ended the immediate crisis but did not resolve the underlying issues.

The situation in Crimea was complicated by a dispute between Russia and Ukraine over the status of the Black Sea Fleet based in the port city of Sevastopol. After the dissolution of the Soviet Union, both Russia and Ukraine claimed possession of the fleet, the pride of the former Soviet navy. Following bilateral negotiations the fleet was divided, and Ukraine "sold" some of its share to Russia in exchange for the forgiveness of debts accumulated by Ukraine, primarily for energy imports. Russia later leased a portion of the base for 50 years from Ukraine to be used by its navy.

Further complicating the situation, in 1989 Mikhail Gorbachev had permitted approximately 250,000 Crimean Tatars to return to their original homeland. Most encountered difficulty finding jobs and housing, hindering their peaceful integration into Crimean society. The Tatars sought effective participation through guaranteed proportional representation in political bodies, the restoration of their language and culture throughout the region, rights to historic lands, and functional autonomy on issues such as education and social affairs.²

President Leonid Kravchuk of Ukraine appointed a special representative to Crimea to pursue negotiations at the grassroots level in January 1993. The Russian State Duma aggravated the situation in July by declaring Crimea to be part of the Russian Federation, a claim never supported by the government of President Boris Yeltsin. However, Crimea's status as an integral part

2 Cf. John Packer, *Autonomy Within the OSCE: The Case of Crimea*, in: Markku Suksi (ed.), *Autonomy: Applications and Implications*, The Hague 1998, pp. 295-316, here: p. 315.

of Ukraine was confirmed in the tripartite treaty among Ukraine, Russia, and the United States concerning Ukrainian participation in strategic arms control, renunciation of nuclear weapons, and entry into the Nuclear Non-Proliferation Treaty as a non-nuclear-weapon state.

In elections held in January 1994, Yuri Meshkov, a pro-Russian nationalist who headed the “Rossiya” bloc advocating unification of Crimea with Russia, was elected the first president of Crimea with 73 per cent of the vote. Reports of possible intervention by armed Russian Cossacks in support of the outcome of the elections circulated widely throughout Crimea. Immediately upon assuming office, Meshkov set out on a confrontational path, and the Crimean parliament declared that Crimea was not subject to Ukrainian sovereignty.³

OSCE Engagement

The CSCE first became involved in Crimea in late 1993, when the High Commissioner on National Minorities (HCNM), Max van der Stoel, opened contacts with Ukrainian authorities regarding the status of ethnic Russian populations in various parts of Ukraine. In May 1994, Ambassador van der Stoel visited Donetsk in the Donbas region of eastern Ukraine, and Simferopol, capital of Crimea. Afterwards, he wrote to Ukrainian Foreign Minister Anatoly Zlenko, recommending a settlement that would “reaffirm the need to maintain the territorial integrity of Ukraine, but which, on the other hand, would contain steps to resolve various issues concerning the implementation of the formula of substantial autonomy for Crimea, especially in the economic field”.⁴ Zlenko replied by agreeing to most of van der Stoel’s recommendations, while noting that the decision by the Crimean parliament violated the Ukrainian constitution. He stated bluntly: “This illegal decision provoked by the irresponsible policy of the present leadership of the Crimea and aimed at undermining the constitutional order of Ukraine and its territorial integrity cannot be qualified other than an obvious attempt by separatist forces to put the internal political stability of Ukraine at risk and provoke tension in the relations between Ukraine and Russia.”⁵

Partly on the basis of the report of the HCNM to the CSCE’s Committee of Senior Officials in August 1994, the CSCE created a mission of long duration to Ukraine, with a focus on Crimea. In November this mission opened its headquarters in Kyiv and a regional office in Simferopol. Its mandate included: “[...] providing objective reporting [...] on all aspects of the situation

3 Cf. Natalie Mychajlyszyn, The OSCE in Crimea, in: *Helsinki Monitor* 4/1998, pp. 30-43, here: pp. 30-32.

4 Cf. *Letter from Ambassador Max van der Stoel to Foreign Minister Anatoly Zlenko*, 15 May 1994, OSCE Ref. Com no. 23.

5 *Letter from Foreign Minister Anatoly Zlenko to Ambassador Max van der Stoel*, 7 June 1994, OSCE Ref. Com no. 23.

in the Autonomous Republic of Crimea (Ukraine), or factors influencing it, and efforts towards the solution of its problems; [...] to facilitate the dialogue between the central Government and the Crimean authorities concerning the autonomous status of the Republic of Crimea within Ukraine; [...] preparing reports on the situation of human rights and rights of persons belonging to national minorities in the Autonomous Republic of Crimea (Ukraine) [...]”.⁶ The limited mandate permitted the CSCE’s Mission to Ukraine only to facilitate negotiations rather than engaging in active mediation or other measures of preventive diplomacy. The CSCE Head of Mission, Andreas Kohlschütter of Switzerland, warned against the consequences that could ensue if external parties were to interfere in the situation, presumably referring to possible actions by political and military authorities in the Russian Federation in support of the ethnic Russian community in Crimea and eastern Ukraine. In this vein he argued for the CSCE to promote dialogue and to introduce a voice of “moderation and compromise into the decision-making process on all sides,” which constitutes the essence of “quiet and preventive diplomacy.”⁷

As a result of rising tensions between the Russian community in Crimea and the government in Kyiv in the spring of 1995, the HCNM became engaged as a “go-between” in an effort to help the parties bring their constitutions into conformity with each other. He employed an innovative conflict resolution approach often called “seminar diplomacy”, in which political officials from the contending parties and experts from other participating States engaged in “seminars” to discuss possible solutions for the conflict in a non-confrontational manner.⁸ HCNM van der Stoep organized a conference in Locarno, Switzerland, on 11-14 May 1995, which came on the heels of an announcement by the Crimean parliament of its intention to hold a referendum on the reinstatement of the 1992 constitution. As a result of the Locarno conference, the HCNM proposed a formula intended to head off escalating tensions, suggesting that the Crimean authorities cancel the referendum and recommending that parallel constitutions of Crimea and Ukraine be negotiated that would grant Crimea irrevocable autonomy in many key areas, a right to appeal to the Ukrainian Constitutional Court if it considered that Ukrainian legislation infringed on its autonomy, while also acknowledging Crimea’s status as an Autonomous Republic within the state of Ukraine. He proposed that the parliaments of Ukraine and Crimea create “an organ of conciliation with the task of suggesting solutions to differences arising in the course of

6 Organization for Security and Co-operation in Europe, Secretariat, *Survey of OSCE Long-Term Missions and other OSCE Field Activities*, Vienna, 7 October 1997, p. 19.

7 *Ibid.*, p. 10.

8 Cf. Emanuel Adler, Seeds of peaceful change: the OSCE’s security community-building model, in Emanuel Adler/Michael Barnett (eds), *Security Communities*, Cambridge 1998, pp. 119-160, here: pp. 138-142.

the dialogue about relevant legislation”.⁹ These recommendations were generally well received in Kyiv, and the Ukrainian authorities acknowledged that the decision by the authorities in Simferopol to cancel the referendum served as “evidence of a certain influence of recommendations developed in Locarno”.¹⁰ Based on this success, a second round table was held in September 1995 in Yalta focusing on the reintegration of Tatars returning to Crimea.¹¹

Meanwhile, the Crimean leadership acquiesced to most of Kyiv’s demands.¹² Although supported by Russia’s Duma, Crimean separatists received little support from the government of President Yeltsin. Crimea’s almost complete economic dependence on financial support from Kyiv made autonomy difficult to sustain. In addition, the Ukrainian central government gained control of the law enforcement agencies in Crimea, and particularly the structures of the ministry of the interior. Crimean leaders generally accepted the HCNM’s recommendations, and on 1 November 1995, a new constitution on the status of the Autonomous Republic of Crimea was adopted that incorporated many of the suggestions from the Locarno conference, although it failed to guarantee representation for the Crimean Tatar community as the HCNM had encouraged.¹³ The OSCE Mission also urged the government in Kyiv to institute economic development projects in Crimea to capitalize on its economic potential. They proposed creating a regional development bank with capital controlled by both Kyiv and Simferopol, along with a free economic zone to attract investment.

Negotiations between Crimean Russians and the government in Kyiv concerning the status of Crimea within Ukraine continued into 1996. Crimea sought the greatest autonomy possible through the adoption of its new constitution.¹⁴ In order to close the gaps between the two constitutions, HCNM van der Stoel organized a third round table at the Dutch coastal resort of Noordwijk on 14-17 March 1996. He brought together participants from both disputing parties along with international experts on topics such as constitutional law and economics. This conference revealed agreement on most essential issues, so the HCNM urged the Ukrainian government to adopt the constitution of the Crimean Autonomous Republic without delay. He recommended that matters such as defence, security, and control over the continental shelf should remain under the exclusive jurisdiction of the central government, while many other functions should come under Crimean jurisdic-

9 Letter from Ambassador Max van der Stoel to Foreign Minister Hennady Udovenko, 15 May 1995, OSCE Reference no. HC/1/95.

10 Letter from Foreign Minister Hennady Udovenko to Ambassador Max van der Stoel, 30 June 1995, OSCE Reference no. HC/4/95.

11 Cf. Foundation on Inter-ethnic Relations, *The Role of the High Commissioner on National Minorities in OSCE Conflict Prevention*, The Hague, 1997, pp. 75-77.

12 Cf. *ibid.*, pp. 46-53.

13 Cf. Packer, cited above (Note 2), p. 310.

14 Cf. Tor Bukkvoll, *Ukraine and European Security*, London 1997, p. 53.

tion, and urged that disputes on economic matters be referred to outside experts for adjudication.¹⁵

On 28 June 1996, the Ukrainian *Verkhovna Rada* adopted a new constitution, reconfirming the status of Crimea as an Autonomous Republic within Ukraine. The OSCE Mission noted that this constitution was generally in line with international standards regarding the protection of human and minority rights, and the resulting agreement was widely hailed as a result of successful “preventive diplomacy” that not only headed off potential violence between Crimea and Ukraine but also appeared to resolve tensions between Russia and Ukraine. The OSCE thus played a role in preventing escalation to a violent conflict between the two largest post-Soviet states that could have portended serious consequences for peace in the aftermath of the breakup of the Soviet Union.

Nonetheless, no detailed agreement on the division of political power between Kyiv and Simferopol was concluded at that time, and secessionist sentiment remained. Differences still existed concerning the issues of citizenship and language, which had been at the centre of the conflict from the outset. However, with tensions reduced after resolution of the constitutional issues in 1996, the OSCE Mission to Ukraine was downgraded in 1999 to a small “project office” in Kyiv, and the satellite office in Simferopol was closed. Although the Conflict Prevention Centre in Vienna continued to monitor the situation, it was widely considered to have been peacefully resolved until early warning signs began to be reported in 2012, but these were deemed insufficient to lead to the re-establishment of a larger OSCE mission. Furthermore, the situation was considered to be sufficiently stable for Ukraine to be awarded the OSCE Chairmanship during 2013, entering the OSCE Troika from 2012 to 2014.

The 2014 Crisis in Ukraine and Crimea

The situation in Ukraine remained relatively calm for almost a decade; although tensions continued over the role of the Russian language and other related issues, primarily dividing the country between the predominantly Ukrainian-speaking regions in the north and west and the predominantly Russian-speaking regions in the south and east. These tensions intensified in 2004 with the presidential election that pitted Viktor Yushchenko, whose support came largely from western Ukraine, against Viktor Yanukovich, supported mostly by citizens in the eastern regions. Yanukovich was initially declared the winner, but his victory set off mass protests in the *Maidan Nezalezhnosti* (Independence Square), which are generally referred to as the “Orange Revolution”. Election monitors from the OSCE’s Office for Demo-

15 Cf. Packer, cited above (Note 2), p. 311.

cratic Institutions and Human Rights (ODIHR) found that the elections failed to meet international standards, after which, on 26 December 2004, Ukraine's Supreme Court voided the election result and scheduled a new election for January 2005. In this round, generally found to be "free and fair" by ODIHR monitors, Yushchenko won 52 per cent of the vote compared to Yanukovych's 44 per cent and was declared the winner. This marked the victory of the "Orange Revolution", but it also set off calls within the pro-Russian regions for federalization of the country. Another reversal occurred in 2010, when Viktor Yanukovych and his Party of Regions rebounded from their previous defeat in 2005 and won the presidential election. In view of the frequent shifts in the Ukrainian leadership since independence, it is evident that there has never been a truly "national unity" government, as each successive government has tended to prioritize the region from which it draws its primary support.

These divisions came to a head in 2014. As Ukraine continued to face economic problems, Yanukovych tried to establish closer economic ties with Russia and the European Union (EU) simultaneously. On the one hand, he negotiated an Association Agreement with the European Union intended to begin the process of integration of Ukraine into the EU, which offered Kyiv funds contingent upon Ukraine's adoption of reforms necessary to make it eligible for accession. After initially agreeing to these conditions, Yanukovych subsequently declared them to be excessively harsh, so he refused to sign the Association Agreement in November 2013 at an EU meeting in Vilnius. Instead he turned to Russia, which offered Ukraine 15 billion US dollars in loans and lower gas prices, without demanding any specific reforms. This led to demonstrations in the Kyiv Maidan, consisting mostly of activists opposed to Yanukovych's government from western Ukraine, culminating in a clash on 18 February 2014, when about 20,000 demonstrators approached the parliament demanding a new constitution and a change of government, and about 80 demonstrators were killed by police fire.

In response, both parties asked the European Union and Russia to mediate. On 21 February, Yanukovych signed a compromise proposing to restore powers previously taken from parliament and to schedule early elections in December 2014. Although some members of the opposition signed this agreement, others continued their protests and demanded Yanukovych's resignation. On the next day the parliament selected Oleksandr Turchynov as interim president, voting to impeach Yanukovych and calling elections for 25 May to select a new president. At the same time, Yanukovych departed Ukraine. Russia's leadership branded this an illegal *coup d'état* and claimed that the new government in Kyiv was dominated by "fascists" and other nationalistic extremists from western regions of the country. The Ukrainian parliament exacerbated this problem by declaring Ukrainian to be the exclusive official language of the country, a move vetoed quickly by the interim

president, but not before it set off a violent reaction in the eastern, Russo-phone regions of Ukraine and in Crimea.

Russian President Vladimir Putin then ordered large-scale manoeuvres inside Russia near the Ukrainian border, and pro-Russian militias, who lacked insignia and were thus of undetermined nationality, simultaneously occupied government offices including the Crimean parliament in Simferopol. Although Russia claimed that these were local self-defence forces, the Ukrainian government branded this an “armed invasion.” On 1 March 2014, the Russian Duma approved a request from President Putin to deploy Russian troops in Ukraine. In response, Ukraine invoked Chapter III on “Risk Reduction” of the OSCE’s Vienna Document 2011 on Confidence- and Security-Building Measures and asked the OSCE’s Conflict Prevention Centre to send representatives to dispel concerns about “unusual military activities” that might threaten peace and security. In response, 30 OSCE participating States sent 56 unarmed military and civilian observers to Ukraine, with a mandate to observe the military situation. However, these observers were stopped at border checkpoints and were thus not able to dispel concern about unusual military activity that threatened the territorial integrity of Ukraine. Furthermore, under the Vienna Document 2011, 25 countries conducted 19 verification activities in Ukraine, and ten countries conducted a total of six verification activities inside the Russian Federation. Russia, in return, requested consultations with Ukraine under the same provisions. The results of all of these inspections were discussed at three meetings of the Forum for Security Cooperation in Vienna, although the requirement for consensus within the forum made it impossible to agree upon concrete action in response to the escalation of military activity across international borders that clearly violated the foundational Helsinki Decalogue principles on the non-use of force for the settlement of disputes and non-intervention in the internal affairs of other participating States.

As pro-Russian elements took control in Crimea, a referendum on the future status of Crimea was scheduled for 30 March. This was soon moved forward to 16 March in an apparent effort to create a *fait accompli* on the ground before outside parties could react. In that referendum, which was boycotted by Crimean Tatars and most ethnic Ukrainians, some 97 per cent of Crimeans, according to official figures (not verified by any international monitors), voted to secede from Ukraine and join the Russian Federation. President Putin almost immediately signed a document allowing Crimea to join the Russian Federation, a move recognized by only a few states. As a consequence, Russia was dismissed from the Group of Eight (G8), and a G8 meeting scheduled for Sochi was cancelled, while the United States and the European Union imposed targeted sanctions on individuals closely associated with President Putin. The European Union signed the Association Agreement with the Ukrainian government that had been at the centre of the initial conflict on 21 March. On 27 March, the United Nations General Assembly

passed a resolution declaring the referendum of 16 March invalid. Meanwhile, pro-Russian forces seized Ukrainian military installations, especially the port facilities of the Ukrainian navy based at Sevastopol, and, on 29 March, acting Ukrainian President Turchynov ordered all Ukrainian forces to withdraw from Crimea in the face of the overwhelming pro-Russian military presence.

Action then spread to regions of eastern and southern Ukraine, where pro-Russian activists occupied government buildings in Donetsk, Luhansk, Kharkiv, and other cities, demanding a referendum on greater autonomy or the right to unify with Russia. The OSCE Permanent Council voted unanimously (including Russia!) to send a group of 100 international monitors to Ukraine to observe and report on events on the ground, allowing for the possibility to increase their number to as many as 500, subsequently raised to a maximum of 1,000. The mandate of the Special Monitoring Mission (SMM) to Ukraine called for them “to gather information and report on the security situation; establish facts in response to incidents; establish contacts and facilitate dialogue on the ground to promote normalisation of the situation” while operating “under the principles of impartiality and transparency”.¹⁶ Furthermore, the Permanent Council voted to send 100 long-term monitors and 900 short-monitors to observe the Ukrainian national elections on 25 May. The SMM reported daily on the escalating tensions and violence through much of Ukraine, especially in regions with large ethnic Russian minorities. Two ceasefire agreements were subsequently negotiated in Minsk in the framework of the Trilateral Contact Group: The first was agreed on 5 September 2014, the second, known as “Minsk II”, was signed on 12 February 2015. It called for a ceasefire, withdrawal of heavy weapons behind the ceasefire line, and charged the OSCE SMM with “monitoring and verifying the withdrawal of heavy weapons, and observing the removal of all foreign armed formations, military equipment and armed individuals”.¹⁷

Although active diplomacy regarding Crimea largely disappeared in the latter part of 2014, the OSCE HCNM, Astrid Thors of Finland, expressed her deep concern about the status of the Crimean Tatars, as well as Ukrainian-speakers in Crimea. As successive HCNMs had worked since the early 1990s to promote inter-ethnic harmony in the region, she feared that the new majority might not sufficiently protect the rights of vulnerable minorities in Crimea. The issue was compounded by the fact that Russian authorities refused to allow her entry into Crimea after its annexation by the Russian Federation. Similarly, the OSCE Representative on the Freedom of the Media (RFOM) expressed concern about media freedom in Crimea, as well as about numer-

16 Organization for Security and Co-operation in Europe, *OSCE response to the crisis in and around Ukraine*, as of 1 June 2015, at: www.osce.org/home/125575.

17 Organization for Security and Co-operation in Europe, *Joint Statement by the OSCE Secretary General and the OSCE Chief Monitor in Ukraine on the implementation of the Minsk package*, Press Release, 13 February 2015, at: <http://www.osce.org/secretariat/140556>.

ous attacks against journalists in and around Ukraine. In short, the human rights situation throughout the region deteriorated significantly. Nonetheless, the Russians apparently considered that the status of Crimea had become a settled fact, no longer effectively challenged by Ukraine or the international community. Therefore, the agreements reached between 1992 and 1996 that had granted Crimea autonomy within the Ukrainian state were effectively reversed, and Russia established de facto control over the region. This occurred without any diplomatic negotiations or effective intervention by the international community during the short period in which this change of status was effected, in marked contrast to the extensive negotiations that prevented violence and allowed for a peaceful resolution of the Crimea crisis in the years immediately following the end of the Cold War.

What Has Changed?

Global Structures and Russia's Foreign Policy Calculus

This striking contrast separated by some 20 years leads to the question of what changed. Some analysts assert that the current Ukrainian crisis represents a reversion to the policies of the Cold War, but I would suggest a different interpretation. Although there was a significant geopolitical component to the Cold War, it also featured two fundamentally opposed ideologies, with conflicting messianic and global goals. By contrast, the current situation reflects the rise of strident nationalism gaining priority over co-operative security policies carried out within the framework of multilateral institutions. This is more reminiscent of the *realpolitik* practiced by the great powers in the 19th and early 20th century prior to the outbreak of World War I than it is of the Cold War. Interestingly, after the signature of the Helsinki Final Act in 1975, the Soviet Union did not commit direct violations of the foundational principles of the Decalogue, with the exception of some of the human rights principles. By contrast, Russia's actions in Georgia and even more clearly in Ukraine, especially Crimea, represent stark violations of the principles of the non-use of force for the settlement of international disputes, respect for the territorial integrity of states, and non-intervention in the internal affairs of states; these are by far the most serious violations of the basic Helsinki principles in the 40 years since their adoption in 1975.

Explanations include structural factors, especially changes in the relative power status of the major states in the international system, domestic political changes in several key states, and individual motivations and world views held by political elites. The question also arises of why the international institutions charged with conflict management, especially the CSCE/OSCE, were more effective in the earlier crisis than in the later one. NATO, the EU, and the United Nations were almost entirely sidelined from

any role in the management of the 2014 crisis and were largely ineffective in preventing its escalation.

The structure of international relations has changed considerably during the intervening years. In the early 1990s, Russia was weak in all respects; its economy was undermined by the disintegration of the integrated market of the Communist Bloc, and its military forces were in disarray. Meanwhile, the United States military had emerged triumphant from the 1990-91 Gulf War as the leader of a global coalition operating under a mandate from the United Nations, and a new “unipolar” international system seemed to have emerged. Under these conditions, any kind of militarily assertive policy on the part of the newly independent Russian Federation was unthinkable, and it was clear to ethnic Russians in Crimea and eastern Ukraine that they would not receive significant support from Russia for a change in their status. Furthermore, in spite of support from the Russian Duma for Crimea’s reintegration into the Russian Federation, their efforts received no support from President Boris Yeltsin or Foreign Minister Andrei Kozyrev.

This contrasts notably with the situation in 2014-15. The Crimea crisis broke out in the immediate aftermath of the triumphant Sochi Olympics, which had paraded symbols of Russian nationalism across the globe and enhanced President Putin’s popularity at home. Indeed, Putin’s own personality and world outlook was different from Yeltsin’s, as he spearheaded the recreation of Russian nationalism and a desire to undo the humiliating consequences of the Soviet collapse. In addition, the Russian economy had rebounded from its post-Cold War crisis mainly due to oil and gas exports; not only did these replenish the state treasuries, but they gave Russia leverage over many countries in Western and Central Europe that depend on imports of Russian energy to keep their populations warm and their economies afloat. Europe, meanwhile, was stuck in a lengthy period of economic stagnation, and the United States was just emerging from its worst economic recession since the great depression of the early 1930s. On the military front, the Russians had largely reconstituted their military forces, while the United States was concluding two long-term, costly military engagements in Iraq and Afghanistan and was confronted with potential threats to its interests in many parts of the Middle East as well as rising Chinese military and economic power in East Asia. Americans were wary of any new foreign military adventures, confronted with political deadlock at home, and thus unlikely to mount any major military responses to Russian moves in their claimed “sphere of influence”. European military forces had generally been cut back in the post-Cold War years, and there was no appetite or capacity to challenge Russian actions.

In short, although Russia did not want a direct military confrontation with the United States or NATO, President Putin and his colleagues likely realized that the change of government in Kyiv provided them with an unexpected opportunity to reverse an old, but still unhealed wound. The bitter-

ness, perceived humiliation by the West, and economic and political anarchy of the 1990s in Russia, fuelled a rise in nationalism that spread from the Russian political right into the mainstream in the early years of the 21st century. This patriotic nationalism was further strengthened by support from the Russian Orthodox Church, which provided a messianic inspiration for the Russian desire to restore the historical Russian Empire, of which Crimea was seen as a vital part. When the crisis in Kyiv over the fall of the Yanukovich government arose in February 2014, this created a unique moment in which a surprise move into Crimea could create a fait accompli on the ground before outsiders could intervene. The quick victory in Crimea inspired pro-Russian opponents of the new regime in Kyiv, as well as political leaders in Russia, riding high on the public support that the success in Crimea had given them, to try to repeat their success in eastern Ukraine.

Behind the conflict was also the prospect that possible Ukrainian entry into NATO might further shift the line of division in Europe eastward, something long opposed by Russia's leadership. During the 1990s, Moscow more or less acquiesced as former non-Soviet members of the Warsaw Pact entered NATO. Since 2000, however, they have effectively established the "red line" of opposing NATO enlargement to states bordering Russia, especially Ukraine, Georgia, and Azerbaijan. However, most NATO members showed little or no interest in enlarging NATO to include these countries, at least prior to the Russian military intervention in Georgia in 2008. Having succeeded in concluding their operation in Georgia without seeing Georgia quickly embraced by NATO, the Russians focused on preventing Ukraine from turning towards NATO and the EU. The showdown between President Yanukovich and the opposition therefore took on special significance for Russian policy-makers, as Russia tried to lure Ukraine away from new ties with the EU by offers of economic aid. The overthrow of Yanukovich and his replacement by pro-European elements, largely from western Ukraine, including some elements from the far right-wing described as "fascists" by Russian leaders, renewed fears in Moscow of the further eastward enlargement of the EU and NATO to Russia's western border. In effect, in the eyes of those Russian political elites who see world politics in terms of geopolitical, hard-core realist theories, this movement of the EU and NATO into their immediate "near abroad" would have shifted the balance of power distinctly against Russian interests. Prior to February 2014, there was little interest among NATO member states in bringing Ukraine or Georgia into NATO, but the Russian effort to prevent this change in the global balance of power has reopened this issue for discussion in Brussels: Ironically, Russian behaviour in Ukraine could result in exactly the outcome they sought most to prevent.

The Role of International Institutions: The OSCE and Conflict Prevention

The CSCE/OSCE has been the international institution most actively engaged in conflict management in Ukraine ever since the breakup of the USSR. This is largely because of its regional focus and the fact that all of the involved states participate in the OSCE, which is not true of NATO, the CSTO, or the European Union. Immediately after the end of the Cold War, many Russian foreign policy experts advocated making the CSCE the primary security institution in Europe, supplanting both NATO and the Warsaw Pact and thereby creating a Europe “free and undivided”. However, as Western states continued to show a preference for strengthening and enlarging both NATO and the EU, Russia became disillusioned with the OSCE, complaining that it focused solely on problems “East of Vienna” rather than dealing with issues throughout the entire continent and across the Atlantic.

Nonetheless, the CSCE/OSCE played a significant role in conflict management across the region throughout the decade of the 1990s and generally received support from the Russian Federation. However, Russian interest in the OSCE shifted to general antagonism after 1999. Although this change occurred simultaneously with the ascent of Vladimir Putin, it also reflected a broad Russian antagonism towards pan-European security institutions. To a large degree, this was precipitated by NATO’s use of military force to secure Kosovo’s separation from Serbia in 1999 without authorization by either the UN or the OSCE, where Russia would have held a veto. Indeed, for Russian leaders, Kosovo provided the precedent for their unilateral action in Crimea in 2014, believing that the United States and the EU had acted without engaging international institutions to advance their own interests against Serbia.

Shortly thereafter, Russian disillusionment with the OSCE was strengthened by the decision of the Permanent Council to terminate OSCE missions of long duration in both Latvia and Estonia, where they had defended the rights of large ethnic Russian communities in both countries. When both subsequently entered the EU and NATO without, in the view of Russian leaders, properly accounting for the rights of Russian minorities, many felt betrayed. This was followed by criticism of ODIHR’s role during the “Orange Revolution”, where ODIHR declared Yanukovich’s initial electoral victory to be illegitimate and then endorsed the election of his opponent, Viktor Yushchenko. Russian criticism of the OSCE culminated in a proposal made by President Dmitry Medvedev of Russia on 5 June 2008 to create a new European security institution, based on a legally binding treaty and founded on strengthened arms control measures and the right of states to remain neutral. Medvedev argued that security in Europe needed to be indivisible and that the dividing lines that NATO had created across Europe perpetuated the division rather than the unity of Europe. In short, by 2014 Russian leaders had little regard for the OSCE and a broad dislike for both NATO and the EU and thus saw little to be gained and a lot to be lost by en-

gaging the OSCE prior to their move to annex Crimea to the Russian Federation.

On the other hand, if the Russian government had sought to legitimize internationally the transfer of Crimea to Russian jurisdiction, they could have taken this dispute to the OSCE earlier, as they were obligated to do under the collective set of documents to which both Russia and Ukraine had subscribed. Citing the threat to the ethnic Russian populations of Crimea and eastern Ukraine, they might have invoked the unused Valletta Mechanism of 1991 on the peaceful resolution of inter-state disputes. They also could have requested ODIHR to monitor a properly prepared referendum calling for Crimea's transfer to Russian sovereignty. Although an internationally supervised referendum would not have provided Russia with the large majority that was obtained in its hastily called referendum, it is likely that a transfer to Russia would have received majority support. OSCE involvement at this stage would have also allowed engagement by the HCNM to ensure respect for the rights of the ethnic Ukrainian and Tatar minorities and the RFOM to defend the rights of journalists in Ukraine. In short, by using the OSCE mechanisms that were available, Russia might have achieved its primary objective while retaining international legitimacy and averting the harsh sanctions that have been applied in response to its violation in Crimea of the fundamental Helsinki and UN principles.

However, the Russian government took a different path. By taking the international community by surprise, they evidently believed that they could forestall any significant opposition from the international institutions responsible for European security. Compounding the difficulty of invoking early OSCE action was the fact that Ukraine held the OSCE Chairmanship in 2013, and the government of Viktor Yanukovich was effectively able to keep its own internal crisis off the agenda. It was only in 2014, when Switzerland assumed the Chairmanship just as the crisis was coming to a head, that the OSCE became engaged. At this point, however, it was too late for effective preventive action, and the OSCE was left – as in many previous crises – with the task of managing an ongoing crisis only after force had been employed. The Swiss Chairmanship acted quickly to respond to the crisis, but only after Crimea had fallen under Russian control and the separatist movement was beginning to seize control in parts of eastern Ukraine. This crisis, however, generated renewed interest in the OSCE in most of the 57 participating States

Perhaps most significant was the ability of the Swiss Chairperson-in-Office to persuade a reluctant Russia not to break consensus around the establishment of the SMM in Ukraine on 21 March 2014, followed also by developing consensus around the deployment of the OSCE Observer Mission to the Russian Checkpoints of Gukovo and Donetsk, the deployment of military verification missions under the Vienna Document of 2011 on Confidence and Security-Building Measures, the creation of a National Dialogue Project in March-April 2014, the agreement for the SMM to monitor the Minsk cease-

fire agreement of 5 September 2014 and report on violations – of which there proved to be many on all sides – and finally the agreement for the OSCE to monitor implementation of the Minsk II agreement of February 2015 calling for a renewed ceasefire and the withdrawal of heavy military equipment from the “line of contact”. ODIHR and the OSCE Parliamentary Assembly organized observers to monitor the presidential election in Ukraine in May 2015. The HCNM also intervened to defend the rights of ethnic minorities in Ukraine, and the RFOM investigated and issued frequent reports on intimidation, harassment, kidnapping, and even killing of journalists covering the fighting in eastern Ukraine. In short, the capacity of the OSCE to respond quickly and flexibly to a crisis was demonstrated by its response to the Ukraine crisis of 2014-15, but only after the early use of military force had created new “facts on the ground”. Unfortunately, actions to resolve conflicts taken after the “Rubicon” of violence has been crossed are more difficult than preventive actions, in large part because the very nature of the conflict is changed by the outbreak of violence.¹⁸

Conclusion

In conclusion, there were a number of significant differences that the OSCE confronted in the 2014-15 crisis compared to the earlier Crimea crisis in 1992-96. First, the earlier Ukraine crisis evolved slowly, over a period of years, allowing the newly formed institutions of the CSCE to manage events and to engage in preventive action before it was too late. By contrast, the events in 2014 developed very quickly, partly as a consequence of the largely unanticipated popular opposition to President Yanukovich’s decision to reject the Association Agreement with the European Union and the ensuing crisis that led to his flight from Ukraine. Even more important was the deliberate Russian action to take advantage of that opportunity to seize control in Crimea in a sufficiently stealthy way that rapid reaction by the OSCE or any participating state was impossible; confronted with a *fait accompli* of a Russian takeover and a hastily organized referendum (unlike 1992, when there was time to convince the parties not to rush into a precipitous vote), there was little that could be done short of outright military action against pro-Russian forces in Crimea. This left the OSCE, the UN, and all major participating States with no viable options except to protest and impose sanctions on Russia. The sudden change in Crimea’s status also stimulated an uprising among ethnic Russians of eastern Ukraine, and likewise this occurred so rapidly that preventive action was precluded. Therefore, the OSCE effort

18 Cf. Bruce W. Jentleson, Preventive Diplomacy: Analytical Conclusions and Policy Lessons, in: Bruce W. Jentleson (ed.), *Opportunities Missed, Opportunities Seized: Preventive Diplomacy in the Post-Cold War World*, Lanham, MD, 2000, pp. 330-332.

turned to managing the conflict and to developing procedures to negotiate a ceasefire.

In summary, the largely unanticipated crisis in Ukraine in 2014 was stimulated by President Putin's decision to use force to oppose the extra-constitutional change in the Ukrainian government, which was in a state of disarray after the dismissal of President Yanukovich; to engage in rapid and deliberately ambiguous military action against Crimea; and to create a situation in which diplomacy could be invoked only after the crisis turned violent. This contrasts with the situation in 1992-96, when diplomacy was engaged prior to major violence, preventing escalation and enabling a resolution to be negotiated over a span of several years. Once the threshold of violence was crossed in 2014, options narrowed and the task of negotiating a stable peace became significantly more difficult. The recent Crimea crisis undoubtedly stemmed in part from the failure of early warning of brewing dissatisfaction within Crimea about the previous agreements, which evidently were not as stable as many believed; a renewed assertiveness on the part of Russia about its role in its "near abroad"; and weakened international institutions mandated to engage in preventive diplomacy. As a result, the most egregious violation of the fundamental norms of the Helsinki Final Act since it was signed in 1975 occurred, not only creating a serious challenge in the need to manage the crisis in Ukraine itself, but also representing a serious threat to the stability of the European security order that emerged in a period of *détente* in the mid-1970s and endured almost 40 years thereafter, well into the post-Cold War period. Although not a literal return to the Cold War, this crisis represents a serious revisionist challenge to the post-Cold War security regime in Europe, which needs to be strengthened to meet any similar challenges that lie ahead.