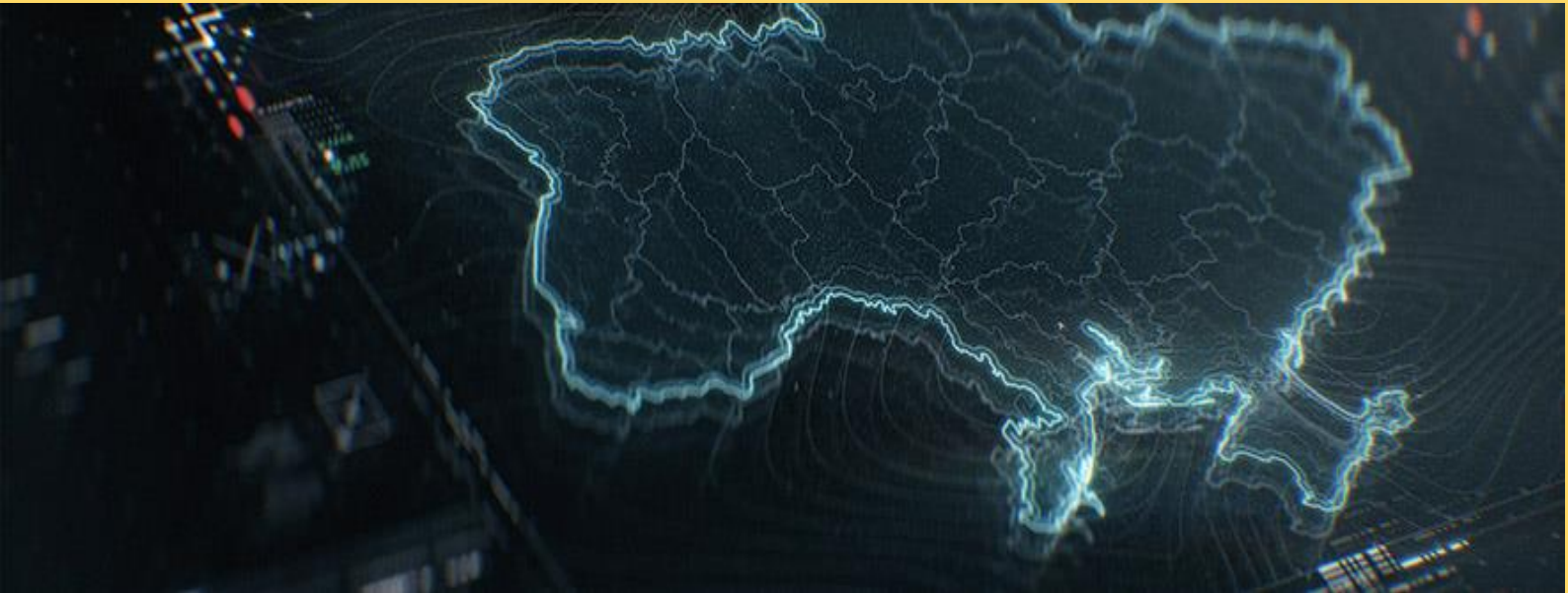




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UKRAINE SETTLEMENT PROJECT



UKRAINE SETTLEMENT OPTIONS:

New European Security Order

By Walter Kemp

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**UNIVERSITY OF
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Department of Politics and
International Studies

Harvard Negotiation Project

**HARVARD
LAW SCHOOL**



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UKRAINE SETTLEMENT OPTIONS PAPER: NEW EUROPEAN SECURITY ORDER

Walter Kemp is Director of the Global Strategy against Transnational Organized Crime at the Global Initiative against Organized Crime, a former Senior Adviser at the Organization for Security and Cooperation in Europe, and former Vice President of the International Peace Institute. He also teaches at the Diplomatic Academy in Vienna. He is author of Security through Cooperation: To the Same End (Routledge, 2022). The views expressed in this paper are his alone.

Preface

This is the second Options Paper published by the Ukraine Peace Settlement Project in cooperation with Opinio Juris. It will join the other options papers assembled on the [project website](#).

The topic of this paper is inspired by the events in the run-up to the invasion of Ukraine. On 17 December 2021, the Russian Federation presented two draft agreements. These were addressed to the USA and also, indirectly, to NATO. The draft agreements restated many of the long-held demands of the Russian Federation in relation to NATO. There would be no further Eastwards expansion. NATO would withdraw its military presence from all states that had joined after 1997—essentially all members in Eastern Europe. In addition, there would be a more nebulous undertaking not to engage in any activity that Moscow might consider to have adverse consequences for its security.

The USA and NATO both formally responded to this proposal. They rejected the proposed withdrawal of all forces from Eastern Europe and insisted on maintaining NATO's traditional 'open door' policy towards new members. However, specifically in relation to Ukraine, the US President suggested that its NATO membership would certainly not be imminent. The Russian Federation took this as a possible opening towards a possible moratorium on NATO enlargement concerning Ukraine and also perhaps Georgia—another territory that is partially under effective occupation by Russian forces (South Ossetia and Abkhazia).

Nevertheless, President Putin announced that the West had not seriously responded to the Russian initiative and Russian Federation security interests. The military build-up on the borders of Ukraine with the Russian Federation and Belarus continued, leading to the eventual invasion of 24 February 2022.

In a somewhat odd construction, the threat of the use of force applied by the Russian Federation was directed against Ukraine, a non-member of NATO. The principal demands of the Russian Federation were however addressed at the USA and NATO. Addressing the Ukraine conflict may therefore also require consideration of the wider concerns raised by the Russian Federation.

If there is to be a peace settlement involving Ukraine, it is likely to consist of several layers of agreement in any event. There will need to be a bilateral agreement between Ukraine and the Russian Federation, addressing military disengagement and withdrawal, perhaps the proposed future status of Ukraine as a permanently neutral state, and several other issues.

Ukraine has demanded that a potential permanently neutral status must be balanced by security guarantees. If they come about, these assurances will most likely be reflected in a declaration or treaty of guarantee involving Ukraine and the guarantor states.

Presumably the Russian Federation will seek assurances from the principal states that have imposed economic sanctions as to an agreed programme of sanctions-lifting, in parallel with implementation of the agreement between the Russian Federation and Ukraine. These assurances, too, will likely need to be tied into the set of settlements.

Beyond that, there is likely to be an undertaking from key states and international financial institutions relating to a major pledging conference for the reconstruction of Ukraine. If a settlement is reached, these pledges will need to extend specifically also to conflict affected areas of Donbas that were, as of 23 February 2022, beyond the control of the Ukrainian government and that feature a mainly Russian-speaking population. The entire package may then well be endorsed by the UN Security Council.

The Russian Federation may also seek to return to the starting point—its demand for a new, Cooperative European Security Order. While it is unlikely that this can be agreed in the context of settlement negotiations on Ukraine, there might be an undertaking to consider or negotiate about such a new, or revived (OSCE) system.

Walter Kemp, one of the leading experts on the OSCE and cooperative security, is offering four main options of how one could think about such a revived European Order which might stabilize relations after the shock of the invasion in Ukraine. This may be complemented, or include, a renewed agreement on the limitation of nuclear weapons of intermediate range (a new INF Treaty), further and revived agreements on the balance of conventional forces in Europe, new modalities on limiting large-scale military manoeuvres and providing for their transparency, and perhaps agreements on other stabilizing measures aiming to prevent incidents and build confidence. This could include agreements to prevent the aggressive probing of air defences by military flight into, or very close to, certain borders, as the Russian Federation demanded in the run-up to the invasion.

The contribution by Walter Kemp offers models for the conceptual and institutional bracket that would hold these steps and measures together and give them a collective shape in the form of a new Cooperative European Security Order.

Marc Weller

INTRODUCTION: PAST PROPOSALS TO REFORM THE EUROPEAN SECURITY ARCHITECTURE

While the war in Ukraine has strengthened NATO and unified the European Union, it has badly damaged the idea of pan-European security as envisioned in the Charter of Paris (1990) that was supposed to usher in “a new era of democracy, peace and unity in Europe” or the idea of a Euro-Atlantic and Eurasian security community as envisioned in the OSCE Astana Commemorative Declaration of December 2010. After the war in Ukraine, what are options for a new European security order?

Ever since his speech at the Munich Security Conference in 2007, President Putin has been calling for a new European security order. Because of the war in Ukraine and the damage that has been done, the European security architecture will have to be repaired, even rebuilt. What was not possible by design is now required by necessity – but has become much more difficult. Addressing the creation of a new European security order could therefore be an incentive for the sides to approach a settlement – both to the conflict between Russia and Ukraine, and between Russia and the West.

The foundations of the current European security architecture originate in the Helsinki Final Act. This document, agreed on 1 August 1975, included ten principles guiding relations between states taking part in the Conference for Security and Cooperation in Europe (CSCE).

The CSCE was one of the few venues for representatives from the West, the Communist bloc and the neutral and non-aligned movement to meet, to have dialogue and to hold each other accountable to commitments that they had made whether it be on arms control or human rights and the rule of law. In the late 1980s, the CSCE was also a valuable forum for negotiating confidence and security-building measures that increased transparency, contacts and predictability across the Iron Curtain.

The dramatic events of 1989/90 led to discussions of a new order in Europe. At a speech in Strasbourg on 6 July 1989, Mikhail Gorbachev proposed the creation of a “European Common Home”. With the fall of the Berlin Wall on 9 November 1989, there were calls – not least by Gorbachev – for a Helsinki II. Some argued that the CSCE could become a [new unifying pan-European security organization](#).

These hopes reached their peak with a summit in Paris on 19-21 November 1990 that resulted in the adoption of the Charter of Paris for a New Europe.

However, the dream of a new era of peace and unity was quickly dashed by wars in the former Yugoslavia and in some newly independent countries of the former Soviet Union including Armenia, Azerbaijan, Georgia and Moldova. To cope with these crises, the CSCE was transformed from being a diplomatic forum into a more operational organization with field missions, institutions, and more permanent bodies.

The transformation from conference to organization was decided at the Budapest Summit of December 1994 where the CSCE changed its name to Organization for Security and Cooperation in Europe (OSCE). However, for the Russians the transformation did not go far enough as they pushed for a Charter to make OSCE commitments legally binding. Furthermore,

Russia was increasingly concerned about NATO enlargement. In his remarks to the Summit President Boris Yeltsin warned that Europe risked being divided and there could be a “Cold Peace”. Nevertheless, participating States agreed to launch “a broad and comprehensive discussion on all aspects of security, as appropriate, aimed at devising a concept of security for the twenty-first century”. This became known as the “security model”.

The security model discussion made little progress. Some States advocated the “OSCE First” principle under which participating States would be encouraged to use the OSCE as an instrument of first resort before referring crises to the United Nations. This was little more than an affirmation of the OSCE being a regional arrangement under Chapter VIII of the UN Charter.

But it was increasingly NATO rather than the OSCE that was playing a key role in security issues in Europe. NATO campaigns in Bosnia and Herzegovina in 1995 and Kosovo in 1998 as well as NATO enlargement made Russia increasingly upset.

A new attempt to buttress the European security architecture came at the OSCE Istanbul Summit of December 1999 – months before Vladimir Putin became Russia’s President. There, OSCE Heads of State and Government agreed to a [Charter for European Security](#) that was designed to “contribute to the formation of a common and indivisible security space”. There was also agreement on creating a Platform for Cooperative Security to enhance cooperation among European security organizations “on the basis of equality and in a spirit of partnership”. Perhaps a more significant accomplishment of the Istanbul Summit was the adoption of the adapted Conventional Forces in Europe (CFE) Treaty.

EU and NATO enlargement as well as “colour revolutions” in Georgia (2003), Ukraine (2004) and Kyrgyzstan (2005) increased Russia’s concerns about encirclement. Russia was also becoming more assertive. In his speech at the Munich Security Conference in 2007 President Putin criticized double standards, a breakdown of international law, NATO “expansion” and the dangers of a unipolar world. He also warned that some “people are trying to transform the OSCE into a vulgar instrument designed to promote the foreign policy interests of one or a group of countries.”

Russia interpreted the promise of NATO membership for Georgia and Ukraine made at the NATO Bucharest Summit in April 2008 as a “direct threat” to Russian security. Russia’s move into Georgia that August showed how it was willing to use force to protect “its kin” in a neighboring country – an omen of things to come.

Despite the war in Georgia, an effort was made to repair the European security architecture. President Dmitry Medvedev promoted the idea of a new European security order based on a treaty. At its core, Medvedev’s initiative aimed at: 1) universal and legally binding principles; 2) an end to NATO enlargement; 3) a solution to the arms control deadlock in Europe; and 4) a summit of all parties concerned. The ideas were fleshed out in an [address by Foreign Minister Lavrov](#) at an OSCE meeting on 23 June 2009 and, subsequently (on 29 November 2009), the Kremlin published the draft of a legally binding European security treaty on its website.

The Medvedev initiative found little support among OSCE participating States. Nevertheless, the Greek Chair organized a special Ministerial Meeting in June 2009 on the island of Corfu which resulted in a decision to continue informal discussions at the ambassadorial level in Vienna seeking a “more structured dialogue”. This launched the so-called “Corfu process”.

The process focused more on reform of the OSCE than on rebuilding security through cooperation in Europe.

But new momentum was generated when Kazakhstan took on the OSCE Chairmanship in 2010 and managed to achieve consensus on hosting a summit in Astana (now Nursultan) in December 2010. In a declaration OSCE Heads of State and Government recommitted themselves “to the vision of a free, democratic, common and indivisible Euro-Atlantic and Eurasian security community stretching from Vancouver to Vladivostok, rooted in agreed principles, shared commitments and common goals.” They declared that “the time has now come to act, and we must define concrete and tangible goals in addressing these challenges.” Unfortunately, at Astana leaders could not agree on a plan of action. Therefore, there was a vision, but no idea how to realise it.

Discussions on reforming the OSCE and the European security architecture continued in the “Helsinki+40” format hoping for a result by 2015, but this was undermined by the Russian annexation of Crimea in March 2014.

The next attempt to rebuild some degree of trust was made under Germany’s Chairmanship of the OSCE in 2016. In a decision taken at the Hamburg Ministerial Council meeting Ministers welcomed the “launching of a structured dialogue on the current and future challenges and risks to security in the OSCE area to foster a greater understanding on these issues that could serve as a common solid basis for a way forward”. This led to the establishment of the Structured Dialogue process. But despite five years of deliberations it generated few results.

While the crisis in Ukraine dragged on there was little appetite for bold new initiatives to reform the European security architecture while Russia attributed the lack of meaningful dialogue on its security concerns vis-à-vis the West as an impediment to peace in Ukraine.

A new attempt to improve relations came as a result of the summit meeting between Presidents Biden and Putin in Geneva on 16 June 2021. This was followed up by a series of meetings in the framework of a bilateral Strategic Stability Dialogue.

After the on-line summit between Presidents Biden and Putin on 7 December 2021, the Russian foreign ministry came up with an [eight point list of demands](#).

On 17 February 2022, Russia issued a draft text of an “[Agreement on measures to ensure the security of The Russian Federation and member States of the North Atlantic Treaty Organization](#)”.

It also released a draft “[Treaty between The United States of America and the Russian Federation on security guarantees](#)”.

The gist of these documents is that Russia wants security guarantees, an end to NATO enlargement, more dialogue and confidence-building measures, and no deployment of troops or missiles on the territory of neighboring States.

On 24 February 2022, after an unprecedented build-up of its forces around the Ukrainian borders, the Russian Federation invaded Ukraine which Putin labeled a “special military operation”. Within a week, in an emergency special session and acting pursuant to its “Uniting for Peace” resolution 377(V) of 1950, on 2 March 2022 the UN General Assembly adopted resolution ES-11/1 and condemned Russia’s “aggression against Ukraine” by a vote of 141 in

favour, 5 against, and 35 abstentions (along with a dozen absentees). The overwhelming majority of OSCE participating States voted in favour, including many States of the former Soviet Union.

The war in Ukraine brings to the surface long simmering tensions between Russia and the West and makes them worse – at the expense of Ukraine. This crisis is both a necessity and an opportunity to repair the European security architecture.

This paper considers four options:

- Option 1: Separate Euro-Atlantic and Eurasian security spheres
- Option 2: Return to a Conference on Security and Cooperation in Europe
- Option 3: Reform the OSCE
- Option 4: A high-level meeting to restore order in Europe

OPTION 1: SEPARATE EURO-ATLANTIC AND EURASIAN SECURITY SPHERES

Some would argue that countries within the OSCE do not share the same values, and too much damage has been done by President Putin (and President Lukashenko of Belarus) to have Russia as part of a cooperative security arrangement. The only thing that Russia understands is deterrence: this is not the time for détente or dialogue.

Rather than trying to continue to live together in a bad relationship, why not just separate? Instead of a Euro-Atlantic and Eurasian security community, the Euro-Atlantic half should be strengthened through enlarging the EU to include the Western Balkans and Moldova (and Ukraine?), and NATO should be consolidated and strengthen its partnership with neutral countries like Austria, Finland or Sweden. The Eurasian half of the OSCE area can work together through the Eurasian Economic Union, the Collective Security Treaty Organization, and a revamped Conference on Interaction and Confidence-Building Measures in Asia (CICA).

In this worldview, relations between Russia and the West would be limited to NATO-Russia dialogue or EU-Russia engagement. Dividing lines in Europe would be formalized and effectively end the idea of “indivisible security”. The goal would be peaceful co-existence. The OSCE would not necessarily die, but it would drift into irrelevance.

But there are at least four flaws in this idea. Firstly, there is no consensus among all EU countries to enlarge. Secondly, such a division would leave a number of countries outside of either bloc and force them to choose between East or West when they benefit from relations with both. Thirdly, while the two halves of Europe may each aim for “strategic autonomy”, they will remain inter-connected in many ways. Fourthly, if one of the reasons why we got into this mess in the first place was a failure to find a satisfactory place for Russia in the European security architecture, shutting out Russia completely from post-war security institutions could build up problems for the future and push Russia closer to Eurasian security arrangements or complete isolation.

OPTION 2: A COOPERATIVE EUROPEAN SECURITY ARCHITECTURE

An alternative would be to go back to a rather loose conference-like arrangement such as the CSCE. If Western countries do not want to give the OSCE a legal personality (which would make it a fully-fledged international organization), or agree on a legally-binding Charter, and field activities are being progressively closed down, there could be some logic in keeping the OSCE as an inclusive forum for dialogue among non-like-minded countries to maintain channels of communication, work together on issues of common interest, try to (re)build some degree of trust and confidence, and have a common set of guiding principles to enable peaceful co-existence.

One of the main functions of this conference (or “OSCE light”) could be to discuss ways of reforming the OSCE (see option 3) and preparing a high-level summit to restore order in Europe (see option 4). Practically speaking, the OSCE could suspend its current business but hold an open-ended series of informal meetings of both the Permanent Council and the Forum for Security Cooperation (which focuses on politico-military issues), and maintain a skeleton staff in Vienna, predominantly for conference services.

As in the 1980s, such a framework could also be the place to negotiate arms control agreements (like a successor to the Adapted Treaty on Conventional Forces in Europe) and mutual balanced reductions of forces and weapons. And it could be a forum to discuss security guarantees, for example for countries “in-between” Russia and the West (especially those where Russian troops are still stationed), as well as for Russia in relation to NATO (which was one of Russia’s demands).

Furthermore, the Vienna Document on confidence and security-building measures should be modernized, for example to adjust the thresholds for notifications and inspections of military exercises, to limit the deployment of forces and equipment close to borders and reduce the risk of snap exercises. De-confliction measures could also be agreed to prevent incidents and accidents at sea and in the air. And opportunities should be created for military-to-military contacts, for example to discuss military doctrines, force postures, threat perceptions and the impact of new technologies and weapons systems.

Impulses for these negotiations could come from a revived NATO-Russia Council or a bilateral US-Russia format like the strategic stability dialogue in Geneva. Indeed, some issues will have to be negotiated bilaterally like a reduction of land-based intermediate and short-range missiles perhaps in the context of a successor to the Intermediate-Range Nuclear Forces Treaty that was suspended in 2019.

In these talks, a key passage from the 1999 Charter for European Security which was designed to address the “security dilemma” appears salient.

“Each participating State has an equal right to security. We reaffirm the inherent right of each and every participating State to be free to choose or change its security arrangements, including treaties of alliance, as they evolve. Each State also has the right to neutrality. Each participating State will respect the rights of all others in these regards. They will not strengthen their security at the expense of the security of other States. Within the OSCE no State, group of States or organization can have any pre-eminent responsibility for maintaining peace and stability in the OSCE area or can consider any part of the OSCE area as its sphere of influence.”

OPTION 3: REFORM THE OSCE

The current war in Ukraine and the crisis between Russia and the West re-enforce the point that it is hard for the West to live with Russia, but difficult to live without them. Therefore, if option 1 is not to be followed, a security arrangement has to be devised that includes a place for Russia.

One idea would be to dissolve the OSCE and try to create a new pan-European organization. But an advantage of maintaining at least some of the OSCE is that it has a rich collection of commitments that have been agreed by consensus; these would be hard to renegotiate today. Furthermore, the OSCE has an established culture of cooperation and existing negotiating bodies with which all participating States are familiar.

However, the OSCE was in decline before the crisis in Ukraine, and only recovered its relevance due to the deployment of the Special Monitoring Mission to Ukraine. Therefore, this crisis could be an opportunity to reform the Organization.

As the current OSCE Chair-in-Office Foreign Minister Zbigniew Rau of Poland has [suggested](#), OSCE participating States should reflect on the interpretation of fundamental principles for peace and security in Europe: how they understand these principles today and how OSCE principles and commitments can be implemented more effectively.

Other issues that could be considered as part of the reform agenda are a legally binding Charter for the OSCE, reviewing the system of annual rotating Chairmanships, strengthening mechanisms for the pacific settlement of disputes, reforming the human dimension implementation review process, looking at the impact of technology on human rights and the media, and revising the rules of procedure to prevent gridlock caused by consensus. Participating States should also identify issues that require cooperation, like transnational organized crime, terrorism, the impact of climate change on security, cyber security and migration. One of the biggest challenges will, quite simply, be to rebuild a degree of trust.

OPTION 4: A HIGH-LEVEL MEETING TO RESTORE ORDER IN EUROPE

The outcome of the process to create a new cooperative security order should be crowned by a Summit at the highest political level. The last such Summit was in the Kazakh capital in 2010 – and so much has changed since then.

Finland has expressed its interest to chair the OSCE in 2025. It would be fitting to renovate a cooperative security architecture in time for the 50th anniversary of the Helsinki Final Act. Indeed, before the outbreak of war in Ukraine the President of Finland had proposed a “summit on cooperative security” to revive the spirit of Helsinki.

But calling the event Helsinki 2.0 is probably no longer a good idea. The security situation today is not the same as in the early 1970s. Yes, the Soviet Union had recently marched into Czechoslovakia, but not with the same level of aggression and destruction as the Russian attack on Ukraine in 2022. Furthermore, in the early 1970s there was a willingness on all sides to formalize the status quo and a desire, as it says in the preamble of the Helsinki Final Act, to “exert efforts to make détente both a continuing and an increasingly viable and comprehensive process”. That conviction is lacking today.

As a result, some may argue that the OSCE should be reformed without Belarus and the Russian Federation (at least under its current leadership) in the same way that negotiations on the creation of the United Nations in the early 1940s took place without Germany and Japan. This would certainly make it easier to push through some changes. But since decisions in the OSCE are made on the basis of consensus it would be difficult to suspend two participating States.

The key to preparing a summit will be to manage expectations: the process will take time, political will and constructive engagement.

CONCLUSION

There have been efforts and suggestions in the past thirty years to renovate the European security architecture, but these were never taken very seriously. When the war in Ukraine ends, there will be an opportunity and a necessity to rebuild security in Europe. The regime in Russia will have to demonstrate that it is committed to peace, security, cooperation and good-neighbourly relations based on the rule of law. For its part, the West should find a way to construct a new regional security order that has a place for Russia.