

Kaim, Markus; Maull, Hanns W.; Westphal, Kirsten

**Research Report**

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## The Pan-European Order at the Crossroads: Three Principles for a New Beginning

*Markus Kaim, Hanns W. Maull and Kirsten Westphal*

The year 2014 confronted European policy-makers with a qualitatively altered situation. For the first time in many years an interstate conflict in Europe – manifested as an inner-state conflict – is being resolved by military means. Persistent uncertainty and a growing potential for conflict are the new realities the European Union (EU) must face – in its eastern neighborhood as well as in the Mediterranean region. This neighborhood also holds major strategic significance for the supply of energy to Europe. In order to limit the risks, it is necessary to define and construct a new pan-European order – based on existing conditions – that can rein in the potential for conflict, ensure greater predictability and build new trust. Germany should use its OSCE chairmanship in 2016 to initiate negotiations to this effect along the lines of new principles, with a view to establishing a pan-European order with a strong energy component as its core.

By annexing Crimea and destabilizing eastern Ukraine, Russia has violated fundamental principles of the overarching European order: As is becoming apparent, two divergent and in many regards incompatible ideas of order are in competition. And nowhere do the fault-lines converge more clearly and painfully than in Ukraine.

With its approach to international order, the current Russian leadership has laid claim to exclusive political zones of influence and the right to intervene in the domestic affairs of other countries. Russia aims to protect these zones of influence through the Eurasian Economic Union (EEU). Launched on 1 January 2015, the EEU is based on the model of – and con-

ceived as a counterweight to – the European Union. Domestically, this project is driven by “managed democracy”, an authoritarian system rooted in a pan-Russian nationalism that in political and cultural terms follows its own special path between Asia and Europe and claims for itself a leading role in “Eurasia”. Economic policy is increasingly dominated by protectionism; the state regularly interferes in economic processes, and the EEU is being conducted as a Russian integration project.

The Western international order framework is based on the principles of expanding and consolidating the EU and NATO. In this framework, the EU first tried to stabilize its periphery by attempting to export

the constitutional, societal and economic order of Central Europe to the eastern and southern parts of the continent. After the turn of the century, this policy was also conducted via the new member states as part of Europe's neighborhood policy. The (transformation) policy of the EU was focused on a ring of stable, democratizing and economically prospering countries in the eastern and southern neighborhood. The Ukraine crisis is only the most visible sign that the fundamental assumptions on which this policy is based are being called into question, and that the policy is perceived by Russia as a competitive project. Consequently, the dispute between Europe and Russia has an increasingly deleterious effect on pan-European energy relations.

The integration competition between Russia and the EU (as well as NATO) creates not only new fault-lines but also a security vacuum for those countries that lie between the spheres of domination of the two protagonists. An overarching new European order would therefore be desirable to safeguard the security and stability of these countries internationally. But fundamental security and energy considerations also make new efforts to construct a new pan-European order imperative: The remaining weapons stockpiles, growing mistrust, old enemy stereotypes and new nationalism as well as the unpredictability of Russian policy all constitute dangerous risks on the periphery of the European Union. There is an immediate danger of further escalation. Furthermore, security challenges are coupled with energy supply risks in the important transit and producing countries.

In some respects, the challenge of setting up or re-establishing a pan-European order resembles that of the 1950s, when the Soviet Union sought acknowledgement of the territorial status quo and legitimation of its influence in Europe and to this end proposed convoking a pan-European security conference. The strategy of the West that permitted it to embrace this proposal was formulated in NATO's Harmel Report of 1967. The report defined the two central

components of Western strategy during that era: defense through deterrence, and détente. Negotiations between East and West (along with the participation of the neutral countries in Europe) in the framework of the Conference on Security and Cooperation in Europe (CSCE) produced the first codified and institutionally enshrined pan-European order since 1945. This political compromise, non-binding in terms of international law, defined a *modus vivendi* between two diametrically opposed ideas of political order that were in competition with each other. In three baskets, guidelines governing security, economic relations and cultural and human relations were drafted. This approach made it possible to develop relatively balanced economic relations based on Russian raw material exports and the import of Western industrial goods and comestibles, thereby supporting détente efforts economically. Energy relations played the most important role in this system, particularly the export and transit of Russian petroleum and natural gas to Western Europe.

### **The House of Europe between Aspiration and Reality**

The end of the division of Germany and Europe presented an opportunity to establish a new pan-European order. The most important document in this context was the Charter of Paris of 1990, which was developed and adopted in the framework of the CSCE. Its main principles were comprehensive economic, political and societal cooperation among all the countries of Europe on the basis of liberal democracy and market economy in a henceforth united, undivided Europe. The security and unfettered sovereignty of the state internally

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and externally, as well as the inviolability of (external) borders, faded into the background. Instead, cooperation in the “shared house of Europe” was henceforth to be built on economic and political development and transformation based on shared values – and thus also on “internal affairs”. Following this new conception of order, the CSCE transformed itself into the OSCE, the Organization for Security and Cooperation in Europe.

In terms of **security policy**, however, this new concept of pan-European order was problematic in a number of ways. First, in the course of the 1990s the area fragmented into solid market-economy democracies on the one hand and fragile transformation countries on the other. Burdened by substantially less favorable conditions, the latter found themselves involved in complex transformation processes. The political, economic and societal transformation paths took diverging routes; in the former Eastern bloc states, but also in the Mediterranean region, the resulting state structures were to some extent inadequate. Second, the assumption that the entire European area stood on a foundation of shared values quickly turned out to be illusory, for the breakup of the Soviet Union sparked the formation of a series of new, independent successor states with predominantly authoritarian regimes. Third, in this context numerous territorial conflicts arose within the formerly existent borders, which were often settled violently. Fourth, important elements of the Cold War order remained intact as a “legacy” that had to be incorporated into the new order. This was true for the “hardware” – the extensive weapons stockpiles of the Cold War and the institutions of the Western defense alliance, NATO – as well as the “software” of traditional attitudes, perceptions and enemy stereotypes.

**Energy and economic relations**, which during the East-West conflict had substantially helped to ease tensions, underwent a very similar development. On the surface, energy relations followed the paradigm of interdependence and growing integration

with the aim of creating a common economic area. But in the 1990s the Western European side was increasingly influenced by the neoliberal economic philosophy of the Reagan-Thatcher era. In addition, the energy markets in that decade were shaped by low oil prices and excess supply. The consumer nations dictated the rules of the market. This was also reflected in the international rules enshrined in the European Energy Charter (1991), particularly in the documents of the Energy Charter Treaty (ECT) (signed 1994, in force since 1998).

Russia, too, propagated a common energy area, but one based on close entrepreneurial alliances throughout the entire supply chain – from the oil well, via the pipelines, to the final consumer. That stood in diametrical opposition to the spirit of competition and decartelization.

After the turn of the century the international market environment changed due to supply shortages and rising energy prices. Increasingly, developments in the energy market began to diverge from the principles of the energy policy system. The first cracks appeared in 2003, when the Yukos Oil Company, owned by politically motivated oligarch Mikhail Khodorkovsky, was broken up and allocated largely to Rosneft, a Russian state-owned company. In response, after having successfully expanded eastward, the EU increasingly resorted to exporting its *acquis communautaire* in order to expand its internal market and assert its principles, thus making the EU’s transformative aspirations in Eastern Europe even more explicit. One of the vehicles for this policy was the European Energy Community, to which the Western Balkan nations and Ukraine acceded.

In 2009, Russia withdrew from the provisional application of the Energy Charter Treaty. As an alternative, then Russian president Dmitry Medvedev proposed an international energy convention, but this proposal was not embraced by the EU. In 2015, the Energy Charter process with Russia is practically at a dead-end. Moreover, by 2009 at latest commercial economic

energy relations between Russia and the EU had also entered rough waters with the adoption of the Third Internal Energy Market Package. Previously, energy relations were based on corresponding economic and political interests, long-term contracts and complementary business models (sometimes resulting in bilateral monopolies). Instead of the long-term gas trade arrangements of the past, the EU shifted to a liberalized, competitive internal market based on spot and short-term transactions. At the same time, the long-term predictability of future gas and oil consumption was undermined by EU's targets in the areas of climate protection, renewable energies and energy efficiency. This increases uncertainty about future needs for natural gas and oil imports.

The EU's reasons for proceeding in this manner are completely understandable and legitimate. But its actions ultimately changed the market and the conditions for energy policy cooperation with supplier countries like Russia. The commercial disputes that grew out of the various market models remained unresolved, particularly in the areas of gas trade and transport, because the deterioration of political relations made it difficult to find compromise solutions. In the Mediterranean, Turkey and the Caspian region, regulatory attempts failed, as did large EU infrastructure projects such as the Mediterranean Solar Plan or the Nabucco pipeline. Consequently, in 2015 the region is lacking the regulatory framework necessary to govern and structure energy relations among the most important transit countries – Belarus, Ukraine and Turkey – or with the producer countries, Russia, Azerbaijan and Algeria.

During the East-West system conflict, Europe managed to progress from political division towards a pan-European order that regulated interstate conduct and facilitated cooperation. The decisive preconditions for this transition included a willingness to acknowledge realities; interest in economic cooperation; and the political will to find a *modus vivendi* based on common security

and economic interests. By the same token, the pan-European order of Paris disintegrated because it failed to acknowledge important realities (e.g. it ignored the weakness of national structures in the transformation countries as well as the political orientation of their old elites) and because the willingness to cooperate was insufficiently developed.

### **2015 and a Way out of Escalation: New Principles and Old Baskets**

As was the case during the East-West conflict, today, too, the continent lacks a sufficiently binding pan-European order. This entails great security risks but also untapped potential for economic cooperation, from which all those involved – the EU, Russia, and other members of the EEU and the Eastern European states situated between the two camps – could benefit. At the same time it is obvious that (energy) security on the European continent will be difficult to achieve without – and impossible to achieve against – Moscow. What is needed in all conflicts is a new approach to international order policy based on security and cooperation.

The strategic goal of German foreign policy in the current situation should be to initiate a pan-European negotiation process along the lines of the Harmel Report. This initiative must affirm the regulatory instruments that have been developed, reactivate the existing – but unused – instruments, and finally add new ones (OSCE 2.0).

In light of the way Western policy is perceived in Moscow – as described above – it is illusory to believe that Russia could resume a cooperative stance in its dealings with NATO, the EU, and its member states anytime soon without the West having to pay a political price. Against the backdrop of the violent conflict between Kiev and Moscow – or pro-Russian militias – in eastern Ukraine, the first aim of German foreign policy should be to bring about a peaceful coexistence and “co-evolution” between (in short) Western ideas of domestic political order and those of Russia.

Following this line of reasoning, we propose as the **first principle** for the path to establishing a renewed pan-European order, that the precept of the inviolability of national territory should be broadened to include a political component: the **incontestability of the internal political order**. The model would be the kind of policy which Germany has pursued vis-à-vis other authoritarian regimes such as that of the People's Republic of China – regimes that are criticized for the internal constitution of the states they govern but with whom cooperation is essential due to their status and influence in international affairs.

Moscow evidently believes that the ultimate goal of Western policy is to topple President Putin and transform Russia's political order by means of a "color revolution". On many occasions, both President Putin himself and his Foreign Minister Sergey Lavrov have accused the West of trying to foment regime change in Russia. Russia's new military doctrine, presented by Putin in December 2014, is based on a similar threat analysis.

For Western governments, accepting the existing political orders in Eastern Europe even if they fail to comply with the principles of the Paris Charter would limit their scope of action: They would have to refrain from demanding and actively promoting democratic changes in the political systems of the countries of the post-Soviet region and adjust their conduct accordingly. In practice, this will need to be done with good judgment and in a nuanced way. For example, it was certainly right of the foreign ministers of Poland, France and Germany to assert their influence in Kiev in February 2014 in order to clinch an agreement between the Ukrainian government and the opposition. Earlier visits to the Euromaidan by members of Western governments clearly aimed at supporting the opposition, in contrast, were not compatible with the broadened principle of the inviolability of internal political orders.

Recognizing these orders as *incontestable* (but not as *inalterable*) would be tantamount

to a willingness to tolerate *all* existing regimes in Europe based on the principle of reciprocity. Such recognition would thus apply not only to Russia but also to countries such as Ukraine, Moldova and Georgia, but also Belarus. The broadened principle would imply that state actors would be prohibited from interfering in the domestic affairs of a country against that country's will – though intergovernmental cooperation, even in sensitive areas, would still be possible if consented to by both states. These rules would apply to all countries involved; they would therefore patently also affect any actions undertaken by Russia aimed at subverting Western governments. The recognition of the respective political orders would merely broaden – not replace – the old principle of the inviolability of national borders. Thus, it would not predetermine the settlement of internal territorial conflicts (such as those involving Crimea, Abkhazia and South Ossetia, Nagorno-Karabakh, or Transnistria), the resolution of which, in accordance with the inviolability of borders, would remain on the political agenda.

In dealing with the NATO-Russia Founding Act, the North Atlantic Alliance provided a model for "strategically modifying" an established principle: At their summit meeting in September 2014, the heads of state and government consciously refrained from rescinding the Founding Act, choosing instead to "suspend" it in view of the fact that the basic conditions necessary for its application are currently not given. Similarly, the West should not rescind the obligation to hold free and fair elections, observe the rule of law and promote democracy – obligations that exist for the internal constitution of the countries of the pan-European area. The prospect of cooperation based on universally shared values has to be kept open for the future. In this way, all those involved can later build or rebuild on these principles. Thus, the part of the "Paris consensus" (following the Paris Charter) that governs the interstate conduct of the signatory states would remain intact: The inviolability of the national territories of

European states would not be called into question, and the division of Europe into zones of influence dominated by individual countries would not be accepted. Indeed, there is no need to renounce this status quo.

In keeping with this principle, the entire sanctions regime would have to be reviewed in order to determine to what extent sanctions against countries of the post-Soviet region have been imposed not in order to censure any specific foreign policy conduct but rather to challenge the internal constitution of the country, such as that of Belarus. The EU could send a political signal to this effect by suspending sanctions of this nature, at least partially or for a limited period of time.

In the framework of the **second principle**, Western policy towards the periphery of the EU should concentrate on (re-) **establishing and further developing effective statehood**. Functioning statehood constitutes an essential precondition for successful modernization and common welfare. The acute deficiencies in governmental effectiveness in Ukraine, but also in Russia, have from the outset played an important role in the genesis of the current crisis. Effective statehood can be developed and promoted, for example by fighting corruption, building a functioning health system and competent administration, and providing transport and energy infrastructure. Addressing these and other prominent deficiencies is not only in the interest of each individual country but also in the common interest of all the countries of the Euro-Atlantic region.

One cannot, of course, completely separate the activities of a state from its underlying model of political order; some activities, such as the organization of the media landscape or political parties, are politically highly sensitive and thus not suited to the type of cooperation envisaged here. But given sufficient interest, there should also be many projects and activities beyond that inner circle of the political arena described above that are neutral enough to lend themselves to cooperation. In all cases the goal

should be to work together to increase the effectiveness of state structures.

The **third principle** implies sober **pragmatism in economic relations**, which should serve to stabilize energy relations and facilitate a fair balance of interests between the EU and Russia. A realistic assessment of the respective interests is an essential precondition for this approach. Developments in the energy market must be taken into account. Russia's oil, gas, coal and nuclear fuel deliveries are fundamental for the economic prosperity of Europe as long as the present energy system remains dependent largely on fossil fuels (and nuclear energy). The question of whether to maintain sanctions depends on the course the conflict takes and is therefore to some extent removed from economic rationality. Nevertheless, a policy shift aimed at upgrading long-term trade relations and strengthening stable business and contract models for transport and delivery could help to defuse conflicts and open up new prospects for political cooperation. Similar models are already under discussion for the supplier countries in the Caspian and Mediterranean regions. Russia must not be sidelined. Long-term planning security is also of great importance to the transit countries.

It is clear from this analysis that what is needed is an overarching regulatory framework that adequately takes into account the interests of the EU as well as the transit countries and the energy suppliers and facilitates future cooperation. But the dilemma is that in 2015 these processes have come to a standstill and the communication channels used to maintain dialogue with Russia have been closed. An economic restart in energy relations therefore also requires a political reordering. The goal should be to create a "symmetry of asymmetries", i.e. to confine and balance the respective national dependencies in a manner that keeps the implicit political vulnerabilities within reasonable limits.

In the EU, practicing inward solidarity is the ideal way to liberate member states from unreasonable supplier dependence.

The path that has already been taken towards creating an energy union aimed at strengthening the internal market and expanding interstate networks should be pursued vigorously. In order for this project to advance, all member states must implement the existing internal market packages. Furthermore, the stress tests conducted in 2014 clearly demonstrate the added value of cooperation in the EU internal market when it comes to increasing security of supply. In order to be prepared for crisis situations, the durability of the EU energy network should be strengthened and emergency mechanisms better coordinated. On the other hand, the costs and benefits of possible measures should be considered carefully and climate and energy policy alternatives taken into account. In the end, saving energy, strengthening emergency mechanisms and prudently expanding renewable energies yields greater dividends than diversifying supply sources and constructing new transport routes. Not only are the latter costly; in some cases they merely shift geopolitical risks instead of reducing them.

Exporting the *acquis communautaire* beyond the energy community, in contrast, should not be a primary goal. In order to avoid creating new rifts or widening the gap between supplier, transit and buyer countries, maintaining a balance of interests should be the guiding principle. Efforts to achieve such a balance should lead to negotiations over common rules of play to facilitate cross-border trade, access to infrastructure and common energy projects. A mid-term political goal would be to strive for the establishment of international guidelines on investment, trade and transit comparable with those laid down in the Energy Charter Treaty. The problem is that for the time being the Energy Charter process cannot be used for this purpose anymore: as explained above, it now carries too much political baggage. Alternatively, negotiations could be held in the United Nations Economic Commission for Europe (UNECE), which also addresses regulatory

issues. Expanded and strengthened energy cooperation should take place in the framework of the OSCE. The organization has already defined the protection of strategic infrastructure and the construction of sustainable energy systems as areas of activity. In this field, which touches on hard and soft security interests, pan-European cooperation could also be promoted as a contribution to confidence-building. This would also make it possible to reopen communication channels with Russia over time. The second principle addressed above – strengthening effective statehood – also plays an important role in modernizing infrastructure and increasing energy efficiency.

## Conclusions and Policy Recommendations

Based on the elements outlined here, it might be possible to revive a negotiating process towards a reconstituted European order. To do so would require recognition of shared interests, notably with regard to the security risks resulting from present tensions. It would also have to build on a shared commitment to ideological disarmament, acceptance of the political regimes in place, and a willingness to work together in building effective statehood and a new long-term energy system for all of Europe based on a symmetry of asymmetries. The mere initiation of such a process would be an important step forward. In line with the principles explained above and with an eye to the OSCE chairmanship in 2016, German foreign policy should:

- ▶ conduct a self-critical debate (also with Western allies) about what elements of the pan-European order – above all in the area of confidence and security-building measures – have been inadequately put to use or not used at all over the past several years. Not everything has to be reinvented, but many things could be rediscovered.
- ▶ work towards initiating a negotiation process among all the European states with the goal of defining the fundamen-



tals of a revitalized and amended pan-European order and embedding these in a renewed OSCE (OSCE 2.0).

- ▶ within the framework of these negotiations, and in line with the principles, place emphasis on the first two of the three baskets of the CSCE process (i.e., security and economic cooperation); and
- ▶ within the framework of the second basket, strengthen energy cooperation and work towards common long-term and stable parameters in order to facilitate a balance of interests among the countries concerned.

The implementation of these principles within the framework of an OSCE 2.0 is certain to require a realignment of the EU's foreign relations with both its eastern and southern neighbors. Europe would have to substantially reduce its ambitious efforts to export its own political, economic and societal order to its neighborhood. Germany and Europe will undoubtedly find it difficult to pay this high price. But securing a lasting peaceful coexistence in the pan-European region is worth the effort.

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**SWP**  
Stiftung Wissenschaft und Politik  
German Institute for International and Security Affairs

Ludwigkirchplatz 3-4  
10719 Berlin  
Telephone +49 30 880 07-0  
Fax +49 30 880 07-100  
[www.swp-berlin.org](http://www.swp-berlin.org)  
[swp@swp-berlin.org](mailto:swp@swp-berlin.org)

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