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*The Ukrainian crisis: stalemate between bear and nightingale*

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## The Ukrainian crisis: stalemate between bear and nightingale

Out of all the various geopolitical tensions and conflicts facing the transatlantic community and the Russian Federation on the world stage, the Ukrainian crisis - even if lately gradually overlooked and side-lined by the international media - continues to represent one of the main conundrums and sources of discord between an ever less cohesive West and an ever more assertive Russia in constant search for a new international balance of power.

The simmering, relatively low-intensity armed conflict in Eastern Ukraine, ignited in 2014 between the Ukrainian armed forces and the pro-Russian separatists, has led to the death of more than 10.000 people and the displacement of over 1,5 million civilians, according to UN figures. As of late, it appeared as though the war in Eastern Europe has been temporarily side-lined, switched off and shelved; however, the conflict had never actually gone away. The crisis has only relatively reduced its military intensity and has become a lesser priority on the international diplomatic agenda, which seems to be on a standby vis-à-vis a constant regional geopolitical uncertainty and a highly volatile situation on the ground.

Indeed, decreasing and deflecting global attention from the Ukrainian crisis was one of the lateral unspoken objectives of Moscow's military intervention in Syria launched in September 2015. Especially after Russia's involvement, the Syrian crisis has become the primary catalyst of the diplomatic, military, and media efforts put forth by the great powers and the international community at large. Moreover, the new geopolitical clout gained by the Russian President Vladimir Putin with his risky foreign military gamble in the Middle East has provided the Kremlin with precious new leverage, which could be used in future negotiations for a possible settlement of the Donbass conflict. The Syrian and the Ukrainian crises are therefore far from being untied in the Russian geopolitical and tactical calculation.

With regards to the issue of the annexation of Crimea by Russia, beyond the standard non-recognition policy of the international community, *rebus sic stantibus*, the question appears to be frozen. This is mainly due to Moscow's ability to escalate tensions at will through its hybrid warfare techniques and its military might deployed right across the Ukrainian-Russian border. The highly anticipated talks held in Helsinki last July between Vladimir Putin and Donald Trump, which will be discussed below, certainly have not reversed the trend of keeping the Ukrainian conflict in a low-profile status, but at the same time this major latent crisis in Eastern Europe cannot be ignored.

Last 8<sup>th</sup> of August marked the tenth anniversary of the Russian-Georgian war of 2008, that in hindsight may well be seen as the gateway to the Ukrainian conflict. This brief five-day long conflict had marked both symbolically and practically the turning point in modern international affairs. The Ukrainian conflict instigated six years later, replicated its Georgian precursor in many aspects, although on a much larger and more destabilizing scale. It is well known how the 2008 Russian-Georgian conflict broke out and how it ended. Within five days the Georgian army was on the run from the Russian troops deep inside Georgian territory. Consequently, this military defeat led to the fall of the government of the then-President of Georgia Mikheil Saak'ashvili, who had subsequently stumbled into another badly-ended political affair in the Ukraine. Mr Saak'ashvili, the former President of Georgia and later ex-Governor of the Odessa region of Ukraine, may be seen as a symbolical *trait d'union* linking the Georgian and Ukrainian crises, their intertwinement and similar dynamics, as well as their non-resolutions.

The year 2019 will mark the fifth anniversary of the Ukrainian conflict. Ahead of this geopolitical anniversary, it is time to take stock and clarify the context concerning the current situation in Ukraine to briefly highlight some historical landmark events of this region's contemporary geopolitical past, which at times appear to be overlooked, forgotten, or in the least misconceived.

Alongside the Russian-Georgian confrontation of 2008, the Ukrainian crisis has constituted the tip of the iceberg of the tensions that emerged between two different (conflicting) geopolitical macro-strategies: on the one hand the decennial seemingly open-ended Euro-Atlantic enlargement process towards East; on the other, the return of Russia's great-power politics aimed at carving out Moscow's former spheres of influence in what's left of its so called *near abroad* (*Blizhniy Vostok*).

The Euro-Atlantic enlargement process towards Central and Eastern Europe, flanked by a constant dialogue and partnership with the Russian Federation too (North Atlantic Cooperation Council in 1991, Partnership for Peace programme in 1994, NATO-Russia Founding Act in 1997, NATO-Russia Council in 2002), started right after the collapse of the Soviet Union. Such initiative provided the much-desired opportunity to the countries of the Baltic and Eastern Europe regions, mindful of decades of Soviet authoritarian rule, to choose autonomously their foreign policy and their relative geopolitical location. The choice of integration into the most prestigious political and military alliance in the world, in parallel with the one into the European Union, also meant, more broadly, to embrace a Western system of social, political, juridical and an institutional framework that was evidently the most enthralling and desirable. This complex of values and practices can be more easily exemplified in the triad centred on free market, rule of law and human rights.

On the other hand, this successful story of expansion towards former Soviet bloc-states, led to a gradual collision of visions and strategic objectives between the Euro-Atlantic bloc and the Russian Federation. This confrontation produced a consequent growth in geopolitical frictions, a constant sabre-rattling and at times war. This strategic contrast escalated exponentially under Vladimir Putin's presidency, whose first foreign policy goal was to reaffirm Moscow's presence in certain fragments of the former Soviet and Czarist classical spheres of influence. Such tensions generated the geopolitical anomalies such as the so-called *pseudo* or *de facto* states and *frozen conflicts*: phenomena that have by now turned into geopolitical trademarks of the liquid post-Soviet space. All of the above constitutes a major challenging issue for the disputed regions in Central and Eastern Europe, Ukraine in primis. An issue that for the international community is proving to be quite hard to handle, and even harder to solve.

To this day, the Ukrainian crisis has left serious marks on both the post-Soviet world order and onto the international legal order too. The dynamics of the conflict can be basically read under two different lenses: the historical standpoint and the international law one. As is well known, Moscow claims certain areas around the Black Sea region based on historical and irredentist reasons that involve centuries-old Russia's local presence, especially in Crimea, since the days of Catherine the Great up until Chruščev's controversial decision of 1954 to transfer the Crimean oblast from the Russian Soviet Federative Socialist Republic to the Ukrainian one. However, besides historical motivations, there exists a dimension that in current times appears to be increasingly overlooked, that is the one pertaining to international law. That is, the logics, principles and the conventions that regulate inter-states relations. It goes beyond saying that generally, the erosion of certain of such principles, might as well generate effects that transcend the immediate crisis.

The international law and customary international law domains utilize different categories and logics than history or identity politics: in this dimension as well, the Ukrainian crisis left its marks on the international system. International law to which Russian diplomacy has several times appealed to, often citing as an example and justification for the annexation of Crimea the controversial West-led armed humanitarian intervention in Kosovo. Although the Kosovo case surely did not contribute to the strengthening of international legal order - just as much as West-led unilateral military operations in the Middle East did not, as in the case of Iraq or Libya - the analogy with the Crimean case can only partially be agreed upon. For two substantial reasons.

Firstly, Kosovo was not militarily occupied outside a UN mandate, while Crimea was - although bloodlessly - by masked troops with no insignia; secondly, the outcome of Kosovo's independence did not turn into the annexation by another state entity. Furthermore, always from the international legal

order perspective, it should be reminded that since the Peace of Augusta (1555) and even more so from that of Westphalia (1648) onwards, inter-state relations in the European continent (and subsequently on a global scale) have been articulated on some relatively few conceptual references and concepts. Among these, three international law principles have suffered a serious slant within the dynamics of the Ukrainian crisis: the very same concept of *sovereignty*, which is joined at the hip to the one of *territorial integrity*, and the *pacta sunt servanda* principle. With regards to the latter, the reference goes to the violation of the Helsinki Final Act of 1975 and, more specifically, to the breach of the controversial Memorandum of Budapest in 1994, which should have safeguarded Ukrainian's territorial integrity in exchange for the removal of its nuclear weaponry.

Last but not least, another crucial international law tenet that was eroded during the Ukrainian conflict concerns the *uti possidetis*, namely the intangibility and inviolability of existing borders, which, always according to customary international law, can be redefined exclusively through negotiation and agreement between the parties involved, something that evidently did not occur in this crisis. The borders violation is indeed the one that might have potentially opened a Pandora's box, not only on the European continent - which has a tragic and terrifying history of border related conflicts - but on a global scale too. The Crimean precedent, moreover, has also led to the risk of possible emulations with potential domino effects, that fortunately still have not been triggered. Without considering all of the above, it seems hard to have a clear vision of what occurred in Ukraine since 2014, and of what still goes on to this day.

From the last highly anticipated, controversial and almost shrouded in mystery one-on-one meeting between Trump and Putin in Helsinki, triumphantly upbraided by certain media as the meeting in which a 'new world order was created', it emerged - even though no official agenda or communiqué was published after the meeting - that alongside the situation in Syria and the controversy of Russia's meddling in the US 2016 elections, that were the bulk of the talks, the Ukrainian crisis was as well amongst the questions touched, even though peripherally.

Concerning the crisis Putin bluntly stated how there are different visions on Crimea, how on this issue the two leaders *agree to disagree*. He also wished that the Trump administration would accept the outcome of the 2014 referendum on independence held in the peninsula, and that Ukraine should never be a member of NATO.

Trump instead, even though he reaffirmed his aim to get US-Russian relations back on track - in an alleged bid to joint efforts against international terrorism and to craft a new (arduous) Russian-

American alignment versus rising China - has however extended the package of anti-Russian sanctions on the heels of the one initially put forth in 2014 as a response to the annexation of Crimea. Moreover, the two leaders allegedly discussed also about the possibility, proposed and backed by Vladimir Putin himself, of a referendum on the future of the region to be held in the pro-Russian self-proclaimed republics of Donetsk and Lugansk. An idea that has been later rejected by the White House, through the National Security Council spokesman Garrett Marquis, who clarified how the referendum was not included in the talks concerning Ukraine and how a so-called referendum would have no legitimacy.

When it comes to the Ukrainian crisis though, it should be noted that despite the long-standing accusations of a suspected collusion with Moscow since the 2016 election campaign, the Trump administration has maintained and actually increased the political and military support to Kiev. Concretely in two ways. Firstly, the appointment of Kurt Volker as Special Envoy of the White House for the Ukrainian conflict, secondly, the strengthening of Ukrainian defence capabilities through the delivery of the first batch of lethal aid, including Javelin anti-tank missiles. Trump administration's support for Ukraine does not seem to decrease in the upcoming future. Last September in fact, the U.S. Senate has approved the "Defense Appropriations Act, 2019" bill, allocating 250 million dollars for the provision of security assistance to Ukraine, 50 million more than 2018. It is as well worth noting that under the Obama administration, Washington always refrained from providing arms to Kiev, fearing it would increase the probability of a military escalation.

Talking about military escalations in eastern Ukraine, the last action that managed to make some headlines has been the elimination of Alexander Zacharčenko, the prime minister of the self-proclaimed Donetsk People's Republic (DNR), killed by a blast in a cafe nearby his own residence, in the rebel-held town of Donetsk. As usual, afterwards accusations for the responsibility rebounded between Moscow and Kiev - the first branding the assassination as a SBU (Ukraine's Security Service) operation, while the latter deems the murder a result of infighting and power struggles amongst competing separatist parties or, alternatively, a direct operation carried out by the Russian security service in an attempt to replace Zacharčenko with a more reliable figure for the Kremlin and more presentable in the diplomatic world stage. It is worth noting that in recent months, before Zacharčenko's murder, several other local pro-Russian commanders were slain in the Donbass under unclear circumstances.

Military-wise, further worrying developments besides Zakharčenko's death, concern the spread of the confrontation between Kiev and Moscow to the sea. Recently, after ending the construction of the bridge from the Black Sea's Kerch Strait to Crimea, Moscow has indeed increased the presence

of its naval units in the strategic area of the Sea of Azov, that alongside the Donbass, could turn into another hotspot of the broader standoff between Russia and Ukraine. A crisis in this area will entail serious consequences for Ukraine's seaports economy, since due to navigation restrictions imposed by Moscow in the Azov Sea after the completion of the Kerch Bridge, Kiev's seaports will see much of their revenues and cargo flows reduced. Therefore, Kiev too laid out plans of a military build-up in the Sea of Azov through the construction of permanent military defence structures in the port of Berdjans'k - as well as strengthening its naval presence in the ports of Mariupol and Odessa. Even though Russia's naval power in the region is currently much stronger, it remains to be seen if the U.S. and NATO will commit themselves to bring their maritime power weight into the region. Such move could on the one hand alter the balance of power in the Azov Sea area, on the other hand, it could lead to a further conflict escalation.

What consequences in the wake of this turn of event and what possible future for this near-frozen conflict in Ukraine should we expect? It should be affirmed, firstly, that as the death of Zakharčenko underlines, it is premature to classify the situation as one of the various frozen conflicts scattered in the post-soviet Eurasian region. It remains to be seen how Ukraine and its crisis in the Donbass will be impacted by the current constantly changing global strategic context, to which Kiev is evidently held hostage.

A chaotic world stage that is getting less predictable and fuzzier by the day, which features Trump's isolationist and often vague foreign policy and its mixed messages towards NATO, a general weakening of key multilateral international institutions, and an ever-growing fragmentation and weakening of the European Union, its cohesion, its geopolitical vision, and its weight as a global geopolitical power-broker.

Last but not least, Merkel's Germany and Macron's France proposal of a Franco-German driven EU collective defence army could (hardly) signal a new phase of a forthcoming European foreign policy organization, which even though would not be theoretically antagonist to NATO, could be, as Macron explained, even extended to the Russian Federation in a bid to put an end to the conflict in Eastern Ukraine. If and how such defence project would become a reality - Europeans on their own have a quite unsuccessful record in this field - and be possibly implemented also with regards to the Ukrainian context it's all to be seen.

Beyond the effects that the transformation of the international system might have on the conflict in the Donbass, and in the absence of any serious military upsurge, it is essential that beyond the

strategic aspect, Ukraine continues with its crucial commitment to bolster socio-economic reforms and fight against corruption: a domain which for Kiev's future is vital in terms of stability and independence. Indeed, the same could be said about the Russian Federation, which economically, infrastructurally, societally and especially demographically, faces various hardships and weaknesses. Such domestic deficiencies, often overlooked by the Russian government and overshadowed by its foreign military activities, are evidently at variance with the country's military spending and power projection. By the same token, in the medium-long term, such overlooked brittleness could seriously hinder or damage Moscow's long-coveted ambitions to regain a world power status.

Lastly, it still seems remote the solution to the conflict envisaged by the US special envoy Volker, and recently revived and supported by Angela Merkel, which foresees the establishment of a UN peacekeeping mission in the Donbass. The idea of a UN-mandated multinational peacekeeping operation in the Donbass was recently supported also by Ukraine's president Petro Poroshenko at the 73rd session of the UN General Assembly. Such option has always been rejected by the Kremlin, until 2017, when Putin opened about the possible acceptance of a UN interposition force in the war-torn Donbass. This sudden change of view is likely due to two main reasons: to keep the situation calm in Ukraine while channelling its military efforts in the Syrian campaign, and in the hope of halting a further renewal of sanctions. Moscow's timing in opening about a UN peacekeeping solution, could also boost frictions among the political factions within the Ukrainian political arena, in view of the presidential and parliamentary elections scheduled for 2019. Moreover, Putin's plan for a potential UN interposition force, features only a light peace keeping mission to be deployed on the contact line between pro-Russian forces and the rest of Ukraine, something quite different from the robust peace enforcement plan envisaged by Kiev and the West. Nonetheless, this overture by Moscow gives greater hope and increases the chances of the international peacekeeping mission to reach a sustainable peaceful compromise to the conflict. In fact, it goes without saying that no peace solution or political compromise for the crisis in Eastern Ukraine can be achieved unless Russia gives the greenlight. At this stage of the crisis, all possible measures and efforts to make the parties stick to the Minsk process should be convincingly pursued by the great powers, in order to bring this painful, long-standing intra-European and intra-Christian carnage to an end.

In conclusion, despite the grim statement given by Russia's foreign ministry Sergey Lavrov who, after the elimination of Zakharchenko, declared 'impossible' to continue with the Normandy format (the diplomatic group made of representatives of France, Germany, Russia and Ukraine created back

in 2014), it is plausible to believe that the current deadlock in Ukraine will be extended for the foreseeable future. A future settlement of the conflict, as well as the mediation of global players, will have to go in parallel through a delicate although necessary reconstruction and mending of the socio-cultural tissue torn by years of violence. In this regard, the recent news concerning the deepening rift within the Orthodox Church, with the Moscow Patriarchate vowing to cut ties with the Ecumenical Patriarchate of Constantinople does not certainly bode well with regards to a possible national reconciliation process.

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