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Ukraine and European Security: Prospects for the Future

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Cover photo: Maison de la Paix, new headquarters of DCAF

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Preface by Ambassador Thomas Greminger, Head of the Permanent Mission of Switzerland to the OSCE

The crisis in and around Ukraine has not only challenged the founding principles of the international order as embodied in the UN Charter, the Helsinki Final Act and other relevant treaties, but it has also reaffirmed the importance of multilateral diplomacy.

In 2014 the OSCE had a resurgence as a regional security organization serving as both a dialogue platform and an operational actor in crisis management. It has demonstrated its capacity to contribute to de-escalation and stabilization in Ukraine through activities aimed at building bridges and diffusing tensions.

Under the leadership of the Swiss chairmanship, the OSCE has proven that despite, or maybe because of, its inclusive nature and consensus-based decision-making, it is capable of providing assistance in crises situations involving several of its participating States. The launching of the Special Monitoring Mission to Ukraine was a milestone in that regard, being the first OSCE mission to be deployed in over a decade, notably with the consent of both the host country and the Russian Federation. Furthermore, the OSCE undertook activities in the area of mediation and dialogue facilitation in Ukraine, for instance by supporting national unity roundtables.

Such operational mechanisms were complemented by the strong political commitment of Swiss Chairperson-in-Office Didier Burkhalter and support from other Western European capitals, paving the way for the creation of the Trilateral Contact Group, which contributed significantly to the negotiation of the Minsk Protocol and Memorandum.

As was stated during the 2014 OSCE Focus Conference, there are a number of challenges ahead concerning the Ukraine conflict and its implications for wider European security: the ceasefire in eastern Ukraine must be respected, a true national dialogue needs to be established, institutions are to be reinforced or newly created, corruption must be

fought at all levels, and trust among the 57 participating States of the OSCE has to be rebuilt.

When addressing the future of European security, participants at the conference discussed the nexus between security and trade. They stressed the potential for economic co-operation to contribute to stability and security in Europe, and recognized that the second dimension of the OSCE's comprehensive security concept can play an important role in this regard.

Ways to ensure connectivity between the European Union's common market and its Neighbourhood Policy for the post-socialist countries in Central-Eastern Europe on the one hand and the Russian-led project of the Eurasian Economic Union on the other hand need to be further explored, taking into account historical facts and the existing conceptual discrepancies between the two "models".

The Basel Ministerial Council in December 2014 was a success. Notwithstanding the unfavourable political climate, it allowed the adoption of a total of 21 decisions and declarations in all three OSCE dimensions, for instance on the phenomenon of foreign terrorist fighters and on the prevention of corruption. Due to its innovative format, spaces for high-level debates on possible ways to solve the crisis in and around Ukraine were created.

It is important that efforts for a reaffirmation of and recommitment to the "Helsinki Decalogue" continue, in order to achieve comprehensive security in Europe. As far as the OSCE is concerned, the Panel of Eminent Persons on European Security as a Common Project is expected to draw new conclusions in the course of 2015 which are to be fed into relevant political forums and also enrich the ongoing Helsinki +40 process.

As a member of the OSCE Troika, Switzerland remains committed to helping find a peaceful solution for the crisis in and around Ukraine, and jointly reflecting about how the system of collective security in Europe based on generally respected norms and principles can be strengthened.

Thomas Greminger
Ambassador

Head of the Permanent Mission of Switzerland to the OSCE
Vienna, January 2015

Food for Thought Papers

Ukraine and the Role of International Organizations

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Introduction

The crisis in Ukraine has shown us, somewhat paradoxically, both the limitations and the centrality of international organizations when addressing issues of peace and security in today's world. It has also tested the strength of individual organizations and our capacity to work alongside each other, on the basis of complementarities and respective comparative advantages, in a European context. While unfolding in Europe, the Ukraine crisis has already had ramifications beyond European borders; it has challenged the founding principles of the international system, embodied in the UN Charter, and of its European regional partners, including the OSCE, and strained relations among UN member states. At the same time, it has reaffirmed the importance of multilateral action. As the crisis has polarized positions among countries, the consensually driven multilaterals have increasingly become the primary vehicles through which initiatives to achieve de-escalation and promote peace have been agreed. At the same time, the limited political leverage of international organizations has brought the role of certain countries repeatedly to the forefront.

As Ukraine struggles to achieve a sustainable peace, stability and a renewed future, the role of international/regional organizations will remain key. The manner in which the crisis has unfolded has also brought into sharp relief the ongoing challenges for international organizations with respect to contributing effectively to peace and security in the present age. Both these points are explored in more detail below.

Engagement of international and regional organizations in Ukraine

From the earliest moments of the developing crisis in Ukraine in late 2013, European institutions responded in an agile manner to events, with a view to defusing the situation and supporting a resolution of the crisis. In the spirit of Chapter VIII of the UN Charter, the United Nations welcomed this commitment of regional actors and their corresponding actions, and has sought to support these efforts through a number of political, diplomatic and operational initiatives.

At the same time, the organizations involved, including the UN, have faced challenges at various points in identifying the actions needed, mustering the capacity to respond to those needs and/or generating the political will and consensus in their membership to authorize subsequent actions.

The OSCE, led by its 2014 Swiss chair-in-office, reacted quickly to take up the political and diplomatic challenges presented as the crisis deepened. Operationally, the OSCE deployed a much-needed monitoring presence as conflict spread in parts of the country. The Special Monitoring Mission (SMM), established in March 2014, is mandated by the OSCE Permanent Council to observe and report in an impartial and objective way on the situation in Ukraine, and facilitate dialogue among all parties to the crisis. Additionally, in July 2014 the Observer Mission at the Russian Checkpoints Gukovo and Donetsk was deployed to report on the situation at the two checkpoints, as well as on the movements across the border. The OSCE Project Co-ordinator for Ukraine, established in 1999, continued its mandate to plan, implement and monitor projects that help Ukraine enhance its security and develop its legislation, institutions and practices in line with democratic standards. Activities of the Project Co-ordinator range from addressing gender issues in conflict to safety courses for children to avoid accidents with ammunition and unexploded ordinances, and include initiatives in the areas of rule of law and good governance.

Despite the continuing crisis, some progress has been made in recent months towards de-escalation and a lessening of hostilities in parts of eastern Ukraine, and in addressing broader issues associated with the crisis in the country. The OSCE has been a central player in underpinning much of this progress. Not only was the OSCE the first to deploy monitors to eastern Ukraine but it has also played other unexpected roles, with the

SMM being the first to arrive at and facilitate access to the crash site of flight MH17. Because of its contacts with armed rebel groups, the SMM has on various occasions been instrumental in facilitating dialogue between the concerned parties. The OSCE has also been centrally involved in working to quell the hostilities in the east through its participation in the Trilateral Contact Group (TCG).

While the OSCE has risen admirably to the challenges of the Ukraine crisis, one of the most serious it has confronted in its several-decades history, it has had to face hurdles of its own. From a resources perspective the OSCE is stretched, financially through a dependency on voluntary contributions, but also in terms of available human resources. In addition, the security of the OSCE civilian SMM staff in parts of eastern Ukraine remains highly precarious, and access to certain localities is frequently blocked. Politically, the missions have occasionally been contested on the ground as well as in the diplomatic arena – for example, differences among member states have prevented the expansion of the border observation mission to more checkpoints as well as the extension of its mandate beyond short intervals. These realities notwithstanding, the SMM in particular has retained strong support overall from the membership, with unanimous approval by the Permanent Council of a broad mandate and the stated commitment by members to have it reach the full approved complement of 500 observers.

The European Union has also responded politically, diplomatically and economically to this crisis in its eastern neighbourhood, whose trigger was linked to the EU's very efforts to strengthen bonds and trade relations with Ukraine and the wider region. The EU's role in attempting to help resolve the crisis has understandably been conditioned by those particular circumstances as well as by its multilayered relationship with the Russian Federation. This has enhanced its leverage in some ways while also possibly limiting in other ways its role as "mediator" in the conflict.

The EU has played multiple roles, including direct participation in political-diplomatic efforts such as the Geneva high-level meeting of 17 April 2014, as well as a unique role in brokering three-way talks with Ukraine and Russia regarding the implications of Ukraine's economic rapprochement to the EU through the Deep and Comprehensive Free Trade Agreement (DCFTA), and on the gas issue, related to the question of pricing and provision of critical fuel by Russia to Ukraine and further in Europe.

Although the latter points are not explicitly evoked in the various accords and agreements brokered to end the conflict and restore peace, it is understood that they are pivotal issues in the broader context of the conflict over Ukraine. The European Commission has also adopted the Macro-Financial Assistance Programme for Ukraine, envisaged to provide up to €1.61 billion in loans to be dispersed in tranches. Through provision of these funds, which are tied to structural reforms in the areas of public finance management and anti-corruption, trade and taxation, energy and the financial sector, the EU has been helping Ukraine to address its most urgent financial needs while also ensuring that the country follows through on its commitments to economic reform, as stipulated in the DCFTA. In July 2014 the EU also established its Advisory Mission for Ukraine, envisaged to focus firstly on security sector reform (SSR) strategic advisory tasks, and thereafter on support for the implementation of agreed SSR strategies and plans. Given that certain branches of Ukraine's security sector are known to have serious corruption issues, while others are antiquated, the mission has a daunting task before it but also a critical niche to fill.

The Ukraine crisis has tested the EU on various occasions with respect to forging a strong and unified position on actions to be taken. It is a testament to the EU and its leadership that it has, thus far, been able to respond quickly and decisively to the numerous challenges posed by the Ukraine crisis, whose effects are being felt differently across a diverse membership.

Reflecting its multiple roles, the EU will remain instrumental to a solution of the crisis in Ukraine and, more broadly, to the debate on the future of regional security and co-operation. This may entail a reappraisal of the modalities of the EU's own engagement in the region.

An indispensable regional partner of the EU, the Council of Europe (CoE) also made early efforts to contribute to a resolution of the Ukraine crisis, focusing on its key areas of democracy, human rights and rule of law. For example, the Venice Commission of the CoE committed to supporting Ukraine in its important work on constitutional reform, while its International Advisory Panel is overseeing the investigation of human rights violations during the riots in Maidan and the tragedy in Odessa – an initiative that is critical for accountability and combating impunity. Most recently, the Venice Commission provided an interim opinion on Ukraine's law on government cleansing or "lustration", and is preparing to work with

the authorities for a possible amendment to the law that would bring it more fully into line with European and international standards. Its technical/legal expertise and range of activities undertaken to help address the situation in Ukraine notwithstanding, the 47-nation CoE has also weathered political storms within its membership related to developments in the crisis. In April 2014 the Parliamentary Assembly of the CoE voted to suspend the voting rights of the 18-member delegation from the Russian Federation for the remainder of the year, citing as its justification Russian actions in relation to Ukraine.

With respect to the United Nations, from the outset of the crisis the organization has sought to contribute concretely to efforts aiming at facilitating a peaceful solution in Ukraine and alleviating the suffering of the population, which has continued to grow in parts of the country as armed conflict spread in those localities. It has done so through its established mechanisms in fields such as international human rights, humanitarian assistance and making available targeted expertise, as appropriate, to OSCE efforts in areas such as mediation, promotion of dialogue and ceasefire monitoring, among others.

The UN human rights monitoring efforts, conducted by a mission deployed by the Office of the High Commissioner on Human Rights as of March 2014, have helped to establish much-needed facts on the ground about the state of human rights in the country, and in particular the violations being committed in the conflict zones, as well as to lay out specific recommendations for redress and improvement of human rights compliance, directed to the various parties to the crisis. This has included recommendations to the Ukrainian authorities regarding human rights improvements for Ukraine as a whole.

The UN's humanitarian actors have responded to the ever-increasing needs of the conflict-affected population in eastern Ukraine and elsewhere, including the vast and growing numbers of internally displaced persons (IDPs). Collaborating with a range of partners, they have concentrated on alleviating the needs of those most affected, in both conflict and recovered zones. Starting in May 2014, UN agencies increased the number of key humanitarian personnel to facilitate co-ordination and response. The UN, together with its partners, was a leading advocate for the drafting and approval of IDP legislation, a system of formal registration and humanitarian-oriented fast-track customs, tax and visa procedures for

humanitarian organizations – something that was expectedly absent in a middle-income country such as Ukraine. More recently, the UN conducted an advance mission to Donetsk to facilitate access negotiations and evaluate access and security constraints, with the objective of enabling humanitarian assistance to reach the most vulnerable people affected by the crisis in areas controlled by armed groups. A subsequent second technical mission assessed humanitarian partners and logistics.

The role of the World Bank Group and the International Monetary Fund has been pivotal in attempting to assist the country in tackling its deeply troubled economy and finances. As Ukraine's already scant currency reserves, as well as the value of its currency, were diminishing rapidly, coupled with unprecedented defence spending, decreased production, exports and revenues and an absence of new investment, it could be argued that an IMF bailout package, totalling US$17 billion, literally pulled Ukraine back from the brink of default and/or economic collapse. Furthermore, the prerequisites placed on Kiev by the IMF ahead of the release of further tranches have compelled the country to undergo urgently needed reforms that otherwise may have been forgone. The IMF's conditionality has been controversial, however, as witnessed by protests over the national budget. On 29 December 2014 the Ukrainian parliament adopted what was labelled by some as a "draconian" budget for 2015, linked to the IMF financing and consisting of severe austerity measures aimed at reviving the country's economy. Meanwhile, the World Bank Group is providing vital socio-economic support to Ukraine, financing projects in areas such as healthcare, education, transport, energy, water and sanitation. These projects, in areas left largely unaddressed by other organizations, include initiatives focusing on heating energy efficiency, third-party monitoring of public procurement and increasing soil fertility. Given the extremely dire economic and worsening social conditions in the country, the long-term prospects for Ukraine will necessarily hinge on continued support in these fields.

Overall, and despite some difficulties, the main international/regional actors have managed thus far to develop a certain division of labour, as each organization has largely found a niche in operational matters. The UN has been particularly engaged in human rights monitoring and growing humanitarian assistance efforts, while also exploring with the OSCE targeted technical support for the fulfilment of that organization's

various mandates in the country. The OSCE has undertaken a series of monitoring efforts, including in relation to elections, while also engaging in the facilitation of dialogue and in critical ceasefire negotiations. In addition to its prominent role at the forefront of economic, energy and trade deliberations and support, and its participation in several political-diplomatic formats, the EU has been providing assistance to various reform efforts in Ukraine and has set up a mission to lend assistance in the area of much-needed SSR.

That being said, while the needs remain enormous in Ukraine, the field of support actors also became increasingly crowded as the crisis deepened and its prominence in the global consciousness took root. In such a context, international/regional organizations should lead by example in searching for the optimal rationalization of efforts to assist in key areas, and be prepared to co-operate and support the authorities in the country to undertake effective donor/assistance co-ordination. In this regard, the OSCE Secretariat's initiative to promote exchange of experiences and knowledge and sharing of information among various actors interested in supporting Ukraine in the realm of mediation/dialogue is a welcome step forward.

Turning to the diplomatic front, efforts over the past months to resolve the conflict in Ukraine peacefully have culminated in a patchwork of negotiation formats and agreements. While a variety of diplomatic initiatives, in changing/rotating formats and involving different sets of actors both bilaterally and multilaterally, have been pursued, no definitive breakthrough has yet been achieved. Grievances behind the original protests in Maidan and dissatisfaction in the Donbas region have largely remained unaddressed, despite some recent encouraging developments in this direction. And above it all, the prospect of the Ukraine crisis being transformed into Europe's latest protracted conflict, with no foreseeable end in sight, still looms potentially ahead of us.

Although the United Nations has not been formally associated with any of the various formats employed to date to reach a peaceful resolution to the crisis, the organization has been seized of the situation and engaged diplomatically from the earliest moments. It has expressed its support for various regional efforts and has continually advocated for direct dialogue and constructive engagement between Ukraine and the Russian Federation, seen as a lynchpin for a sustainable solution to the conflict. The Secretary-

General has made consistent use of his good offices to advocate for dialogue, de-escalation and the achievement of a sustainable peace. He has exercised his moral authority to exhort world leaders to support a political solution based on full respect for the fundamental norms and principles of the UN Charter as they relate to interstate relations and respect for members' sovereignty and territorial integrity. The member states of the United Nations have also addressed the Ukraine crisis as a matter of priority, at the Security Council as well as in the General Assembly. While the polarized positions among Security Council members on the Ukraine crisis, and notably among the permanent five members, have impeded effective action by that body to contribute to a resolution of the crisis despite almost 30 sessions devoted to Ukraine over the course of 2014, in March 2014 the UN General Assembly convened and adopted Resolution 68/262 on the "Territorial Integrity of Ukraine". That resolution has provided a clear and incontrovertible framework for UN policy *vis-à-vis* key elements of the crisis, including the status of Crimea.

The first of the political agreements that sought to address the Ukraine crisis in its early stages was signed on 21 February 2014 between former President Yanukovych and the then opposition, and brokered by the foreign ministers of France, Poland and Germany, with the participation and support of the Russian Federation. The negotiation and resulting agreement were aimed at resolving what was at the time primarily a political crisis, albeit a crisis that had already deteriorated into episodes of violence, particularly in the capital, and loss of life. Specifically, the agreement called for a return to the 2004 Constitution, with the intention being to rein in the powers of the president and then hold early presidential elections. As the agreement was signed at the height of Maidan, it also called for a return of all illegally occupied buildings, a hand-over of illegal weapons to the Ministry of Interior and an investigation into the violence. While the signing of the agreement was momentous in itself, it was the events of the next day, 22 February 2014, which garnered global attention. In essence, President Yanukovych fled the country, leaving a political vacuum which was quickly filled by members of the opposition. The tumult and rapid change of leadership rendered parts of the 21 February agreement immediately obsolete. Disagreement over the chain of events of 21–22 February 2014 which led to the demise of the accord continues to be a major cause of contention between key parties.

The situation in Ukraine deteriorated drastically between late February and early April 2014, transcending a solely political crisis and morphing into a sustained violent conflict in parts of the country. The crisis also decisively acquired a regional and even international dimension. From efforts to de-escalate the violence which had erupted in eastern Ukraine, the Geneva Format was born, comprising Ukraine, Russia, the United States and the European Union. On 17 April the Geneva Format convened at the level of foreign ministers for what was reported to be eight hours of negotiations, the product of which was the 17 April Geneva Statement. This agreement was the first of many subsequent attempts to end the violence and return normality to the Donbas region of Ukraine, with US Secretary of State Kerry describing it as an attempt to avoid "a complete and total implosion [in eastern Ukraine]". Like others which would come after it, the 17 April Geneva agreement comprised elements of disarmament, amnesty and constitutional reform, and stipulated a leading role for the OSCE SMM. The agreement faced criticism from the start, not least because it glaringly left out any mention of Crimea, annexed by Russia just the month before. Almost immediately after it was signed, rebels in the east, reportedly resentful of not having been consulted, rejected its terms. Mere days later, Ukraine and Russia began to trade accusations that the other side had violated the agreement, and as the violence continued to spread and escalate, the 17 April Geneva Statement was quickly overshadowed by events.

On 7 May, in an effort to put in motion the stalled Geneva agreement, Swiss President and OSCE Chairperson-in-Office Didier Burkhalter presented to the four parties of the Geneva Format an "OSCE roadmap" with four key tenets: ceasefire, de-escalation of tensions, dialogue and elections.

On 6 June 2014, a day before being officially sworn in, newly elected President Poroshenko of Ukraine met with his Russian counterpart for the first time in Normandy, France, on the margins of celebrations of the seventieth anniversary of D-Day. Facilitating the exchange were the leaders of France and Germany, with this new quadripartite format appropriately being dubbed the "Normandy Format". Given that the Geneva Format had become synonymous with the static 17 April Geneva accord, and that tensions between the United States/European Union and

Russia were quickly escalating, Germany and France, possibly seen as more palatable interlocutors by Russia, emerged in leading roles aimed at a resolution of the conflict. The Normandy configuration appears to have remained the most viable of formats, with a series of face-to-face meetings and dozens of telephone calls having taken place since 6 June 2014, the latter of which, at certain periods in the conflict, were occurring on an almost daily basis.

On the same day in June, the leaders of the Normandy Format established the Trilateral Contact Group, comprising representatives of Ukraine, Russia and the OSCE, and mandated to be an on-the-ground mechanism for the drafting, and thereafter the implementation, of a peace process for eastern Ukraine. The TCG has remained an invaluable tool, being the only diplomatic vehicle for "consultations" with rebel groups, and adapting its role time and time again to rapidly changing circumstances, such as the crash of flight MH17. Through a number of meetings in Minsk, Belarus, the TCG has negotiated ceasefires, deliberated on the delivery of humanitarian aid to areas under rebel control and paved the way for the exchange of hundreds of prisoners.

On 20 June 2014, less than a month after having been elected, and having promised in his 7 June inaugural address to restore peace and stability quickly to Ukraine in a manner which preserved the country's sovereignty, independence and territorial integrity, President Poroshenko presented the world with his own peace plan, titled "On the Peaceful Settlement of the Situation in Eastern Regions of Ukraine". The document was based on three main pillars – amnesty, the withdrawal of foreign mercenaries and the launch of an inclusive dialogue process – and elaborated 15 points based on these pillars. While various points echoed those in the 17 April Geneva agreement, the president's peace plan also introduced elements of decentralization, early local and parliamentary elections and economic recovery. At the same time, even though the plan was far more detailed than the Geneva agreement, it still lacked sufficient granularity, and once again initially failed to gain much traction, except on the holding of early parliamentary elections.

On 2 July 2014 the foreign ministers of Germany, Russia, Ukraine and France convened in Berlin in the Normandy Format. The occasion saw the signing of the Berlin Declaration, which essentially stipulated the necessity of a sustainable ceasefire. While the declaration was perhaps the

most overlooked of all the agreements, it was the first to introduce the connection between a sustainable ceasefire and the need to secure and control the Russian-Ukrainian border effectively.

The latest in the series of peace agreements was negotiated in Minsk on 5 September 2014 with the support of the TCG and the presence of rebel representatives, the latter of whom had not been included in brokering any previous agreement. A further unique aspect of the accord was that the Minsk Protocol encompassed, or was even a hybrid of, President Poroshenko's own peace plan and the "Action Plan for Eastern Ukraine" which President Putin had put forward on 3 September. As such, buy-in to the protocol, which reiterated many of the points from previous agreements with an added humanitarian element, was stronger from the start on the part of the key parties. The TCG capitalized on this momentum, reconvening in Minsk on 19 September to elaborate point 1 of the protocol on a bilateral ceasefire, resulting in the Minsk Memorandum.

However, as with previous political-diplomatic efforts in the Ukraine context, including Geneva, Berlin, the Swiss roadmap and the president's peace plan, the Minsk Protocol has faltered in implementation and has also already been breached, including the first and to date most serious breach which came in the form of rebel "elections" on 2 November 2014. Following these "elections", held outside of the framework of Ukrainian law, a complicated picture began to emerge, and efforts to uphold and implement the protocol became mired in confusion. Moreover, in response to the November rebel elections, President Poroshenko proposed that both the "special status" law for parts of Donbas under rebel control and the law on amnesty, which had been approved to comply with the provisions of Minsk, be revoked. The parliament has not yet acted on this proposal, whose consummation could well doom the Minsk accords.

At time of writing the fate of the Minsk agreements remains unclear, as the ceasefire continues to be violated and major provisions of the accords remain unimplemented. While the TCG remains indispensable, it is likely to face significant challenges in consolidating the ceasefire and supporting comprehensive implementation of the Minsk Protocol. While more precise in its prescriptions than the previous agreements, the protocol still suffers from the lack of a formally agreed timetable and approved implementation plan. In order to make it a viable instrument for peace, additional detail will be likely be required and need to be agreed,

and most importantly the political commitment of all key stakeholders must be assured for the proper follow-through.

While international/regional organizations acting on the Ukraine crisis have been agile and quite generous in their responses to the operational needs of observing, monitoring, advising and providing various types of technical assistance, material support and expertise, their role in generating the necessary political and diplomatic momentum for an agreement has been more uneven. Their advantage in Ukraine has been solid support from their membership for their engagement, their image of greater impartiality as broad-based, multi-country institutions and the knowledge, accumulated experience and expertise that they can bring to bear in their particular fields of endeavour. Multilaterals also use the strength of their collectively determined mandates and the principled frameworks of their actions, based on agreed and internationally recognized norms and values. Where international/regional organizations have had their main limitation is in their ability to broker and sustain a political-diplomatic solution. For that, the role of a few central bilateral actors would appear to have emerged as fundamental.

Ukraine and international organizations: The way ahead?

Stopping the violence/maintaining the ceasefire and making the peace accords viable

There is no more urgent task before us than to put an end to the violence, which despite the ceasefire continues to claim lives and cause injuries as well as to hamper humanitarian relief efforts. Tellingly, over 1,000 additional lives were lost in the first two months after the ceasefire was agreed.

To be successful, we must redouble our efforts towards achieving the sustainability of the ceasefire by ensuring that the provisions of the Minsk Memorandum are further elaborated, agreed and complied with.

Moreover, the Ukrainian-Russian border by all accounts remains extremely permeable, and control over the border and its monitoring remain essential. A key element for the success of the ceasefire depends on the withdrawal of weaponry and fighters from eastern Ukraine, but also the halting of any continued flow of weaponry and fighters into the zone,

including from the Russian side. Here, while the OSCE has been given the task of monitoring the border, it has been authorized to do so at only two checkpoints, leaving a large stretch of border, some of which lies in the hands of various criminal elements, unmonitored. Attempts to expand the border monitoring mission have not come to fruition, leaving the remainder of the vast border area outside the scope of multilateral scrutiny.

Despite various limitations that it faces, the OSCE's role in monitoring and verifying the ceasefire and in patrolling the secure area is of utmost importance. Every possible support which could be given to ensure that the OSCE is at full capacity to carry out these tasks is critical. Here is where, in addition to the support of experienced and well-equipped individual member states, other international organizations such as the UN and the EU, with extensive peace operations and, particularly, peacekeeping experience, could potentially be of greater assistance.

Not only can a sustainable ceasefire help us to leave the fighting in the past, but it is a bridge to the fulfilment of a political settlement. While the OSCE SMM must continue to play a central role in verifying that the ceasefire holds, this will not be possible without the genuine commitment and initiative of the principal actors involved as well as adequate means for the OSCE mission to carry out this role, including appropriate security provisions.

While reaching and sustaining a true ceasefire remains the critical first step toward achieving lasting peace, much more must be done. The Minsk agreement, much of which has yet to be implemented, remains essential to help resolve the conflict and create conditions for peace and stability. The ceasefire and the rest of the 12 points are mutually reinforcing and should be fulfilled as a matter of priority. In this connection, the OSCE also has an important role to play in supporting the implementation of the accords. Other international/regional organizations could be called upon to contribute by technically supporting the undertaking of various points, such as decentralization and economic recovery in parts of eastern Ukraine. Another necessary element entails promoting compliance by the parties with the political commitments that underpin the agreements, with a view to ensuring implementation through accountability. This is a role for actors that have sufficient leverage to impress upon each of the parties their particular responsibility in making the accords viable, and also the capacity or structure for on-going, consistent follow-up. Throughout the Ukraine

crisis, we have cycled through several well-intentioned accords and plans that have come up short in their implementation. The Minsk agreement should not and cannot suffer the same fate as those which came before; words must be put into action before the situation in the country, and particularly in the east, further deteriorates.

Reinvigorate efforts towards a political/diplomatic solution and address the regional dimension

The understanding of how the crisis in Ukraine began, what aggravated it and, ultimately, what it would take to end it effectively differs widely, including among the membership of international and regional organizations that are working towards supporting its resolution. Internally, Ukraine has also become polarized on these issues. A key conundrum for international organizations has been, therefore, how to help find a mutually acceptable way forward. President Poroshenko's peace plan and the Minsk Protocol largely deal with the urgent matter of pacifying the east and, more broadly, implementing a number of measures that have been identified as critical to restoring stability to the country overall. A key question is whether the current roadmap can deliver a sovereign, intact and stable Ukraine.

At a minimum, this will depend on co-operation among all actors to do their part in genuinely honouring and implementing the existing agreements. The situation will also require more work on rebuilding relations between the US, the European Union, Russia and Ukraine in a manner that will honour Ukraine's sovereignty and allow it to navigate its international relationships in the best interests of the country itself. Central to this question is whether Ukraine can continue to pursue its chosen European orientation successfully while simultaneously restoring constructive economic, political and diplomatic relations with Russia.

In this latter respect, the conflict in Ukraine should be seen in the context of a changing, while still inherently connected, region – politically, economically and societally. It must also be acknowledged that, despite the establishment of various avenues of co-operation since 1989 in the European/Eurasian space, from the Helsinki Final Act to the increased economic and political ties across the continent, the prevailing policies and approaches proved insufficient to avoid the regional tensions surrounding

developments in Ukraine. It will be necessary to address root causes of those tensions and work towards reaffirming a co-operative framework among countries that is grounded in mutual respect, honouring individual countries' autonomy and sovereignty, and the consolidation of modern, multivector interstate relations that are not predicated on zero-sum calculations.

These are sensitive and complex issues that could benefit from the broad, multilateral platforms represented by international organizations, particularly those that include all the main actors within their membership. The challenge will be to find workable avenues and formats for frank appraisals of the current state of affairs and to build up the collective will to fully recommit to a rules- and principles-based system, based on the normative foundations of our major international institutions.

Addressing deep-rooted internal causes of the crisis: Commit to long-term support for reform

While making the Minsk accords stick is clearly the most pressing task before us, the international community must be prepared to commit genuinely to support Ukraine more comprehensively and "over the long haul". In this respect, international/regional organizations are particularly well placed to establish a long-term engagement with a member state such as Ukraine, in need of support in conflict and post-conflict scenarios, through a broad array of assistance initiatives that are often perceived as having less "strings attached" than the assistance provided by bilateral mechanisms of individual countries. The UN, the EU and the OSCE have valuable experience in this respect, through both organizing peace missions and establishing multi-year programmes, and they count on a range of tools to address the multiple issues at hand.

Like the vast majority of crises the world is facing today, the crisis in Ukraine – while sudden in its manifestation – did not come unannounced. It can be traced back to various deep-rooted issues that will need to be addressed in a comprehensive manner if the settlement of the crisis is to be sustainable. The challenges are daunting. The pattern of political and economic governance in Ukraine over the past 23 years has largely been exclusionary. From protests in the Maidan to grievances expressed by citizens in the east – all reflect the frustrations associated with institutions

that were weak and serving only the powerful, a neglect of the periphery by those who governed at the centre, and alienation and exclusion of minorities and other distinct groups, to name but a few. The current leadership and parliament in Kiev have, albeit gradually, taken on some of the main challenges, such as passing sweeping new anti-corruption legislation, including the formation of a new government bureau devoted to tackling the issue, adopting necessary economic austerity measures, initiating the modernization of key government ministries and the modernization and revamping of military and other security sector structures, and reaffirming the prominence of the Russian language for the predominantly Russian-speaking regions and population. But approved legislation will have to be put into effect, and broader constitutional reform efforts as well as an overhaul of the electoral law, among other measures, remain to be tackled. As in many countries, the hardest measures are those the political class will need to take to curb its own privileges and those of the economic actors which support them. It is only the Ukrainians themselves who can take on these issues, but international organizations can assist them with advice, expertise and the sharing of relevant best practices from other contexts.

As the core of our own efforts, we need to continue to encourage and support Kiev to build inclusive, responsive and accountable institutions in the country, which will be a difficult and lengthy endeavour. This is not, however, a new undertaking in Ukraine. The OSCE, the EU, the CoE, the UN and others have all supported various initiatives in this direction over the years. What has changed, and what will remain necessary, is the climate in the country and a certain leadership that appears more genuinely receptive to the building of such institutions. Amid the protests in Maidan, the ravages of the crisis and the ongoing conflict in the east, a window of opportunity has arisen that must be seized. The Ukrainian population, above all, has demanded it. The longer the crisis persists, however, and key issues are not tackled, the more the population will be disillusioned at the prospect of any substantive change for the better. This could lead to the return of a stagnant passivity among the population or, in contrast, another burst of protest that could pull the country further into instability and violence.

In that regard, the singular contribution of international/regional organizations such as the OSCE and the UN in supporting Ukraine at this

complex juncture is their comprehensive approach to security. The UN's core pillars of activity are in the realms of peace and security, development and respect for human rights; these pillars are increasingly interwoven in the UN's response to crisis situations. The organization is furthermore steadily working to expand assistance for good governance, human rights and democratization, as an integral part of its work on conflict prevention and resolution around the world. At the OSCE, its membership has built a concept of security that similarly covers the three key dimensions of political-military, economic and environment, and the human dimension of maintaining peace. The OSCE Office for Democratic Institutions and Human Rights continues to play an important role in promoting and supporting democracy, rule of law, human rights and tolerance in member states. The EU and the CoE have similar comprehensive approaches.

Underlying the political and governance issues in Ukraine are serious economic and social challenges that continue to plague the country, both those that were present before the current conflict and those which have burgeoned as a result of the fighting, such as displacement and destruction of livelihoods and infrastructure. Current projections indicate a US$19 billion deficit in 2015, but even this is premised on an immediate "end of conflict" scenario. Should the fighting continue, the current baseline will once more prove untenable and further massive financing will be required to prevent an economic collapse. Meanwhile, additional military expenditure requires savings elsewhere, and the most likely cuts will come from pensions, household gas subsidies and public servants' salaries – in other words, more social pain ahead for the people of Ukraine. This is where the role of international organizations such as the IMF and World Bank becomes most prominent, not only to provide vital financial support, but to help the country rebuild and address current critical shortages, such as the World Bank's financing of a US$40 million healthcare project in eastern Ukraine. Looking at the bigger picture, such assistance helps to avoid further social tension in an already combustible atmosphere.

Tracing a new future for Ukraine will involve picking up the pieces from the devastating conflict in the east and renewing the faith of the population throughout Ukraine in its institutions. It will require creating the conditions for building a common vision of that future in the country. In such a context, a genuine, inclusive national dialogue in Ukraine could be instrumental, where a vision for the nation can be debated and common

aspirations identified. International/regional organizations, including the UN, have had various successful experiences in assisting with locally led processes such as the one evoked in the president's peace plan. However, such a dialogue should not be understood as a "one-off"; it should also be used to pave the way for a culture of inclusion and dialogue to take root gradually in the country. There is much to be done in encouraging and supporting the Ukrainian authorities and a wide range of local actors to this end.

Role of international organizations in peace and security

International/regional organizations enjoy, by their nature, a unique legitimacy and are less subject to the suspicion that their engagement is driven by selective national interests. As argued above, and illustrated by the case of Ukraine, the strength of international/regional organizations in situations where peace and security are undermined resides in the broad-based support for their engagement, their comprehensive approaches to security, their perceived greater impartiality as multilateral institutions and the knowledge, experience and expertise in peace and security matters that they can apply as new crises arise. At the same time, the Ukraine crisis has also highlighted some of the limitations and challenges for international/regional organizations when responding to politically complex and deeply rooted peace and security issues. In that regard, various political and operational challenges can be identified.

A first set of challenges centre around the political will that exists among member states to work effectively together and uphold shared principles and commitments, with all members abiding by those principles in a consistent manner.

The role of international organizations in peace and security begins and is grounded in the common values and principles articulated and adopted by their members. As a number of the key principles enumerated in the UN Charter – which also comprise the OSCE "Decalogue" and underpin the actions of the EU and the CoE – were seriously challenged or undermined as a result of the crisis in Ukraine, our capacity to reaffirm and find ways to ensure adherence to these principles will remain a barometer of our effectiveness. The challenge for international/regional multilateral institutions is thus not only how to promote a recommitment to basic

principles, but also whether/how to ensure effective action and accountability when those principles are breached or compromised. European regional institutions in particular will need to assess the possibilities and modalities of reshaping and/or reinforcing formats of multilateral co-operation that, in this particular case, were unable to prevent the escalation over Ukraine.

As witnessed by the Ukraine crisis, difficulties in response occur within international and regional institutions when fundamental differences in the interpretation of events or disagreements on a course of action arise among the membership. One of the strongest challenges to the effectiveness of international/regional institutions is therefore the existence of political deadlock among member states on vital issues of the peace and security agenda. When consensus is achieved, multilateral action is unparalleled as a legitimate response to crisis situations and other serious peace and security issues. If, however, states cannot overcome their divides, thus eliminating the possibility of taking swift and meaningful action in a crisis setting (i.e. the Security Council on Syria, Ukraine), this not only undermines an organization's response on a given issue but also, over time, can put in doubt the effectiveness of the institution as a whole on peace and security matters.

A second set of challenges to international/regional organizations is of a more operational nature. Some of the key considerations relate to how to detect and react quickly to acute crises, securing appropriate peace mandates and the means to fulfil those mandates, ensuring long-term engagement to address sustainably the root causes of a conflict, and engaging in effective cooperation alongside other actors involved in a peace process.

On the first point, as the costs and potential for success of intervening in full-blown conflicts have shown, prevention, early warning and early action have emerged as critical peace and security instruments in the international arena. As such, they have also increasingly become measurements of the effectiveness of international organizations in the peace and security realm. Regional players can bring a particularly nuanced and insightful understanding of the specific conflict prevention and resolution needs in their areas of operation. International and regional institutions must be prepared to invest more in developing and deploying preventive capacity and laying the groundwork for effective early action;

they should also be prepared to share information and best practices among themselves more consistently and engage in joint analysis and response, as appropriate. An early joint assessment of needs and an analysis of which institution could provide the most effective tools for particular actions could be especially relevant. In recent years the UN has increasingly engaged with regional organizations in joint training and mutual learning exercises in the fields of prevention, early warning and mediation. This should continue and indeed be strengthened, including with European-based institutions.

Secondly, the members of international and regional organizations need to ensure appropriate mandates for peace operations, balancing needs against realistic and achievable goals, in addition to adequate resources to fulfil such mandates effectively. There is also a need to ensure sufficient resources and political will for long-term engagement that will help affected states to tackle the root causes of crises. As the situation in Ukraine illustrates, the causes of conflict are typically deep-rooted and diverse, and efforts to address them will require a long-term, comprehensive approach. That being said, the necessary expertise and resources that can support countries in addressing these issues are typically found in an array of institutions rather than within the scope of one organization. The long-term commitment of a multitude of actors to support lasting reform efforts within a country is necessary. This commitment will need to be upheld while organizations navigate competing demands for resources and as political attention is drawn away to new crises that are likely to arise elsewhere.

On a broader scale, we need to reflect more on whether our organizations are fully prepared to respond to the ever-complex challenges of the twenty-first century. At the UN we have launched the "Human Rights Up Front" initiative to guide our actions and detect potential crises through a rights-based approach. In the coming period, important reviews of our peacebuilding architecture and the challenges to peace operations will also be undertaken. Current member state discussions on a new post-2015 development agenda provide an opportunity to devise a comprehensive and structural response to the challenges of sustainable development, including through its linkages to peace and good governance. The OSCE's Helsinki +40 process offers a similar opportunity to reflect deeply on the structures, processes and tools that, going forward, will be needed to

address the multiple, transnational and multidimensional threats challenging European and Eurasian security in a comprehensive and sustainable manner.

Lastly, and related to the above, among international organizations we must continue to strive for effective complementarity. In order to achieve this, we need to remain engaged in inter-organizational dialogue at all levels, both at headquarters and in the field, to see where, based on our comparative advantages – such as our respective expertise, experience, membership and leverage – we can complement and even enhance each other's efforts. To align efforts of multiple players strategically in the short and longer terms requires a deep understanding of each other as well as continuous co-ordination and sharing of information and analysis. The UN, together with regional organizations, is exploring ways to operationalize further Chapter VIII of the UN Charter in this respect.

The OSCE: Ukraine and beyond

The crisis in Ukraine has served to bring back into the spotlight the central role of the OSCE on peace and security matters in its region of responsibility. As the OSCE looks to the future, some points that come to mind can be summed up in the following manner.

"If it did not exist, one would have to invent it." The place of the OSCE in the post-Cold War European/Eurasian space is more relevant than ever. Its comprehensive security concept, foundation of fundamental principles and norms, and emphasis on co-operation and rapprochement between a diverse and broad membership will remain vital in working towards a resolution of this crisis and addressing a host of other regional and transnational peace and security issues. As such, the OSCE will have to confront a number of challenges of its own: reinforcing and renewing the organization's collective security concept, reaffirming and upholding the foundational norms and revitalizing co-operation frameworks, among others.

"Trust, but verify." Undoubtedly, the conflict in Ukraine has eroded trust and undermined co-operation among the membership of the organization. At the same time, it is only by working to rebuild trust and collaboration that progress can be made on Ukraine and various other issues that are central to the OSCE agenda. The OSCE, through its Forum for

Security and Co-operation, also plays an important role in peace and security by promoting confidence- and security-building measures through dialogue, exchange of information and experience and collective decision-making. At this delicate juncture, and among other tools, the organization should look to redoubling its efforts to facilitate the implementation of confidence-building measures, but also verification mechanisms and mutual accountability provisions contained in the set of treaties comprising instruments such as the 2011 Vienna Document and the Treaty on Open Skies. Despite increased tensions across the continent, measures such as monitoring visits and observational flights continued to take place in Ukraine and the Russian Federation throughout 2014. While the erosion of mutual trust will not be prevented or reversed by such measures alone, they can contribute to political efforts directed towards such objectives.

"Multilaterals are only as strong as their member states will allow." From the outset of the crisis, the OSCE has acquitted itself admirably by quickly taking on and operationalizing its response to a list of growing mandates in relation to the organization's support for a peaceful and sustainable resolution to the situation in Ukraine. Member states have stepped in repeatedly to provide additional needed resources, equipment, expertise and personnel on a voluntary basis. But the organization's capacity is strained, leaving fewer resources to tackle other important issues still on the multilateral institution's agenda. Moving forward, if the OSCE is to continue to fulfil its mandates effectively, member states will need to review the issue of resources, which had reached a critical point even before the outbreak of the crisis in Ukraine. Furthermore, as the organization reaches the 40-year mark, member states should commit to reform and strengthen the OSCE as a shared resource and a common project, in a manner that will afford it greater opportunities to invest in prevention, engage in early action and tackle effectively the increasingly complex, multidimensional security challenges in the region.

To wrap up: Final questions

In light of the Ukraine crisis, we have to ask ourselves some important questions. What do we do, as international and regional organizations, when fundamental principles are challenged and the membership is

divided? Can we work at mending relations and fostering co-operation while still pursuing accountability as rules-based institutions?

Have we equipped our international organizations to rise to such challenges? How can we best address these issues as part of reform efforts to make our organizations more responsive to the crises and threats of the twenty-first century?

For the European region more specifically, can we avoid yet another protracted conflict in the European sphere? Can we wind back the temptation of playing "zero-sum games" in the region?

Finally, how can international organizations better support each other's work in the context of complex crisis situations? For instance, could the UN's considerable experience in peacekeeping and mediation of conflicts be put to greater use in support of the OSCE's efforts in Ukraine? How can international institutions effectively maintain long-term, complementary engagement?

Ukraine – Possible Solutions to the Crisis: "A Human Rights Approach"

Ivan Šimonović
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As we approach the end of 2014, the situation in Ukraine continues to remain volatile. At this juncture the current, occasionally breached and re-established ceasefire could lead to a resumption of full-scale conflict, a frozen one, or sustainable peace. This paper seeks to outline these three scenarios from a human rights perspective. As only the "moving to sustainable peace" scenario is considered favourable in this perspective, the paper explores measures and activities that can increase the likelihood of achieving this objective.

Where do we stand now?

The stakes are high. As of 12 December 2014 the conflict had already cost over 4,707 lives.[2] While we do not have the precise figures of civilian deaths, it seems that around 25–30 per cent of those killed were civilians.[3] The cost of material damage to the infrastructure in the east, combined with the loss of people's livelihoods and economic opportunities resulting from intensified and sustained fighting, runs into billions of dollars. With

[1] Views expressed in this paper are those of the author. They do not necessarily represent those of the United Nations or the Office of the High Commissioner for Human Rights.[2] This figure includes the 298 people killed on the MH17 flight, but does not include those killed in Maidan and other protests. There are reasons to believe that sources used for reporting have not registered all killings, so the actual number is expected to be considerably higher.

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[3] This figure is based on the number of female deaths recorded: from 5 September to 18 November 2014, 119 female deaths were recorded. This is approximately 12 per cent of all killings during that period. Taking into account that around two-thirds of the IDP and refugee population are female, it is possible to make a calculated assumption that slightly more than double the 12 per cent rate will have been civilians.

protraction of the conflict also comes the threat of a looming humanitarian crisis, including increasing waves of internally displaced persons (IDPs) and refugees from the east, which already amount to over a million. As of 12 December, 542,080 IDPs had been registered in Ukraine and another 567,956 persons had fled to neighbouring countries, mostly to the Russian Federation.[4] However, many displaced persons and refugees have not been registered, so the actual number may be significantly higher.

This conflict has already triggered fears that Ukraine's economy may shrink by 8.2 per cent in 2014.[5] The annual inflation rate for 2014 was estimated at 12 per cent, with a year-end rate of around 23 per cent.[6] Prolonged wage freezes and cuts at a time of high inflation and increasing costs of living are proving unpopular.

At the same time, a two-thirds majority pro-European parliament, reflecting the results of the 26 October 2014 elections and the newly formed coalition government, carries high expectations for reform, both economic and political. In the current context these will constitute a great challenge, as the risk of frustrations is very high. Political and economic reforms were part of the key demands of those who took to the streets in the Maidan protests. The litmus test of this government will thus lie in its ability to deliver on the promises made while avoiding the temptation to disregard the interests and concerns of minorities, including their human rights, which a "constitutional majority" may entail. Reforms, if they are to be sustainable and bring the country closer to the EU, must be carried out in full compliance with human rights standards.

The population living under the control of armed groups in the conflict and post-conflict affected areas, estimated to be around 5.2 million, is exposed to even greater challenges. The rule of the armed groups has brought terror and human rights violations, as well as a breakdown in law and order and the delivery of social services. Human rights violations committed include killings, abductions, torture, ill treatment, sexual violence, forced labour, ransom demands and extortion.

The longer the conflict lasts, the more evident it becomes that these groups are able neither to govern nor successfully to provide for social services in the territory under their control. The government's

[4] OCHA Sitrep No. 13, 26 September 2014.
[5] Economist Intelligence Unit, "Ukraine", 4 December 2014, http://country.eiu.com/Ukraine.
[6] Ibid.

decision to terminate the activities of all social institutions and organizations in the areas controlled by armed groups – including the withdrawal of social, medical and educational institutions, the judiciary, detention facilities, banking services and state enterprises – will aggravate the situation further and may have far-reaching consequences. Most of those employed have not been paid since July 2014, and social payments have not been made systematically since August. But as of 1 December 2014 no allocations from the state budget, including for social benefits, will be paid. Setting a deadline of 31 December for registration to receive social benefits had already triggered a new wave of displacement: at the beginning of November this was about 2,000 people departing daily, and by the end of the month some 5,000 were leaving each day.

The leaders of the armed groups may intensify their already brutal tactics, terrorizing the civilian population to keep people subordinate and under their control. The brutal attack on peaceful protesters in Donetsk in August was a stark reminder of the fate of those who do not obey. Nonetheless, protests continued, and in many places in Donetsk and Luhansk regions local residents – mainly women – continue to rally to demand from the armed groups the promised payment of pensions, child benefits and humanitarian aid. In some cases local residents also protested against theft, abductions and the rule of the armed groups in general.

As the security and humanitarian situation deteriorates further, more people will likely opt to defect and escape to government-controlled areas, or take refuge in the Russian Federation. The fact that as many flee to the Russian Federation as to government-controlled parts of Ukraine clearly indicates that it is not only pro-unity supporters who are leaving, and that they are fleeing a dire situation which is evidently affecting the whole population, regardless of nationality or political affiliation.

Since its deployment in March 2014 the UN Human Rights Monitoring Mission in Ukraine (HRMMU) has been diligently documenting the wide spectrum of human rights violations committed by all sides of this increasingly deadly conflict. It has also documented the fluctuating number of killings in the east since April 2014.

At the beginning of the crisis in the east, from April to July 2014, when armed groups with support from the Russian Federation were taking over power from local authorities confused and demoralized by the Maidan events, its findings reveal a relatively low number of average daily killings –

no more than 11 people. The death tolls rose over the summer, with an average of 36 killed per day from July to August, when the reorganized Ukrainian government forces were on the offensive, retaking some areas from the armed groups. By mid-August Ukrainian forces had gained control over 80 per cent of the territory of Donetsk and Luhansk regions. The balance of power changed in late August due to an influx of fighters and heavy weaponry from the Russian Federation, which the Ukrainian side claimed to be a direct intervention by Russian forces. Along the Azov Sea armed groups crossed the Russian border, advanced to the outskirts of Mariupol and stopped there. The death toll peaked at 42 killed a day in the two weeks immediately preceding the conclusion of the Minsk ceasefire agreement on 5 September. The described dynamic of fighting and victims so far indicates that any increase in the government's military effort to regain control of the area under the control of the armed groups may be matched by increased, but limited, support from the Russian Federation.

While the death toll decreased significantly, sporadic incidents of violence and killings since the signing of the Minsk agreement on 5 September continued, with approximately 13 people killed per day. Against this backdrop, there are three potential scenarios for the future of Ukraine. First, the conflict becomes a frozen one, with sporadic and occasional flare-ups; second, the conflict continues and intensifies; and third, the ceasefire agreement leads to sustainable peace.

So, what are the internal and external contributing factors to the above-mentioned scenarios, and what are the human rights implications thereof?

The conflict becomes frozen

There are a number of internal and external factors that may lead to the conflict becoming a frozen one.

For months, the divisions between the east and the rest of Ukraine have been deepening. As reflected in the parliamentary election results and formation of a coalition government supported by a two-thirds constitutional majority in parliament, the population in the government-controlled areas has clearly become increasingly homogenized in its political preferences. These include Euro-Atlantic integration; decentralization but without federalization of the country; security, justice

and anti-corruption reforms as a priority; and the restoration of Crimea under Ukrainian control.

On the other hand, in violation of the Minsk agreement as well as Ukrainian laws, the armed groups conducted so-called elections in the areas under their control on 2 November 2014, further consolidating their power. Both the "Donetsk People's Republic" and the "Luhansk People's Republic" are steadily setting up parallel governing structures, having formed "executive bodies", and they claim to have enacted a range of laws.

Although the government's frustration and unwillingness to finance "state building of the rebel forces" may be understandable, the withdrawal of state institutions and provision of salaries, pensions and services – introduced by the government as a retaliatory measure – harms the local population and may play in favour of secessionists. The determination that only Ukrainian can be considered the official language of the country, and an unwillingness to discuss federalization within a framework of decentralization options, may further contribute to this effect.

On the other hand, past experience has shown that the Russian Federation is willing to increase military support to armed groups if the Ukrainian side revisits a military option. This would lead to the balance of power and status quo being by and large maintained, but only at the cost of a higher level of victims. It may discourage the Ukrainian side from pursuing this tactic.

Internationally, both the Russian Federation and the EU are affected by the sanctions and may be looking for a face-saving formula to end or at least reduce them, so that they become less harmful to their economies.

The immediate outcome of the described processes may be a protracted and frozen conflict, such as in the cases of Transnistria, South Ossetia and Abkhazia.

A frozen-conflict scenario would entail continued human rights violations, albeit at a lower intensity than during the height of the crisis. With sporadic fighting only, the number of civilian casualties would remain relatively low. Continued human rights violations as well as violations of international humanitarian law by all sides would in all likelihood continue, albeit with reduced intensity and frequency. It could be expected that the human rights abuses committed by the armed groups, including torture, enforced disappearances and other forms of violence and harassment of

the population in the areas under their control, would also continue. As the living conditions in the east further deteriorate, the flow of IDPs, although perhaps reduced, to government-controlled areas and refugees to the Russian Federation can be expected to continue.

In government-controlled areas the continued instability would be harmful to foreign investment and the general economic recovery of the country, as well as the planned and promised reforms that are indeed necessary to address chronic human rights violations and progress towards Euro-Atlantic integrations.

The conflict intensifies

This scenario implies that the ceasefire is broken and fighting intensifies, with possible further internationalization, including on the one hand military support to Ukraine from the West, and on the other hand an influx of heavy weapons and fighters from the Russian Federation.

A number of factors could lead to intensification of the conflict. On the economic side, if the government of Ukraine's attempts to move forward with reforms prove unsuccessful or slow and the standard of living continues to decline, with either little or no progress with Euro-Atlantic integration, there may be more inclination to try to gain legitimacy through intensified military operations in the east. Similarly, the government may be more inclined towards intensified military operations if there are further waves of displacement and a lack of perspective due to the frozen conflict. Finally, the government may also at some stage be seriously threatened by right-wing nationalist political forces, which would encourage it to pursue a nationalistic agenda in the east.

Similarly, the consequences of the West-imposed sanctions in the Russian Federation, which are felt by not only the elite but also ordinary consumers, may encourage the government of Russia to increase its support to the armed groups. The sanctions are significantly affecting the purchasing power of the ordinary citizen, due to higher food prices caused *inter alia* by the retaliatory food ban and an estimated inflation rate of 7.6 per cent in 2014.[7] Thus the sanctions will continue to affect the Russian people, which in turn will justify increased use of nationalistic rhetoric by

[7] Ibid.

the government, based on direct support for the fighting in eastern Ukraine. This strategy has, most importantly, so far proven to be very successful in garnering much-needed popular support for the government.[8]

So far, it seems that the Russian Federation is determined to maintain a balance of power, and has indeed reacted to improved efficiency on the part of the Ukrainian forces by providing additional, but limited, support to the armed groups. The consequences have been that the military balance has been maintained, but at an ever-increasing cost in human lives.

At the same time, an increased level of killings has also led to some protests in Moscow, with tens of thousands of participants. The perception that the Russian Federation may indeed be sensitive to an increase in body bags could be an inciting factor for Ukraine – perhaps after reorganizing and improving the efficiency of its armed forces – to reattempt a military option.

Either way, the human rights situation could become precarious in the east, with an increase in the death toll on all sides and severe effects on the civilian population due to increased indiscriminate shelling and continued human rights abuses. There is also a danger of the conflict becoming increasingly internationalized.

In addition to the direct consequences that sustained and intensified fighting would have on the population in the east, there are a number of secondary human rights consequences that would also likely occur in this scenario.

First, the longer the fighting continues, the greater will become the divide within Ukrainian society. The popularity of the nationalistic hard-line groups, such as the Right Sector, may increase, which could lead to more incidents and clashes. It could also lead to discriminatory attitudes towards IDPs fleeing the area controlled by the armed groups, due to competition for employment and social services, and suspicions against them for having collaborated with the separatists or not having fought hard enough against

[8] According to survey data published in September 2014 by the Levada Centre, a polling organization, 86 per cent of Russians approve of Mr. Putin's performance. Before the Ukraine crisis erupted, his ratings had been at an all-time low. Patriotic mobilization has lifted support for the government more generally. Throughout 2013 the percentage of Russians who told Levada that the country was moving in the right direction was in the low forties. It then rose from 43 per cent in January 2014 to 60 per cent in March, and stood at 62 per cent in September. Economist Intelligence Unit, note 5 above.

the armed groups. A whole new wave of human rights violations could occur in such a context.

Second, the humanitarian situation of the IDP population could become precarious. More people would leave eastern Ukraine as the situation became increasingly dire. Fighting could expand to previously non-affected areas, further contributing to the displacement. While the new IDP law adopted by the government will go a long way in addressing their basic needs, there remain limitations on the level of absorption of IDPs among the population.

Third, there would also be negative repercussions for the overall human rights situation in Ukraine, as the government would continue to divert many of its limited resources to fighting in the east, at the expense of much-needed institutional reforms and addressing other areas of concern, such as ensuring accountability for past human rights violations, including in the context of the Maidan protests and high-profile cases like the 2 May events in Odessa. Growing public dissatisfaction could further contribute to destabilizing the country and its economy.

The ceasefire leads to sustainable peace

The 5 September ceasefire agreement and the 12-point protocol signed the same day, together with the 19 September memorandum between senior representatives of Ukraine, the Russian Federation, the OSCE chairperson-in-office and political representatives of the armed groups, present the most significant opportunity so far for a peaceful solution to the situation in eastern Ukraine.

Despite breaches, the ceasefire to a certain extent holds. This may mean that all involved are aware of the dire consequences for all parties in the case of a full breach. The Minsk agreement is in jeopardy, but is not yet a dead letter. The crisis could indeed go in either direction at this stage.

If the ceasefire holds, or if a new one is agreed along the same or similar lines, it will allow the government to focus increased attention on reforms to address systemic human rights issues, including strengthening the rule of law, anti-corruption initiatives and legal and judicial reforms, as well as ensuring accountability for past human rights violations and dealing with new human rights challenges that have emerged from the conflict in the east.

An improvement of the security situation would allow for economic recovery and political dialogue. Progress in EU accession, strengthening the justice system and curbing corruption would encourage foreign investment. An improved economic situation could also lead to improvements in the education and health sectors, as well as to recovery of damaged housing and infrastructure, enabling the return of refugees and displaced persons to their homes.

It could create a win-win situation whereby the armed groups, apart from individuals involved in war crimes and crimes against humanity, could be amnestied, and open and free-flowing national dialogue could start on decentralization of the country, autonomy of the east and establishment of minority and language rights. While the immediate dividends of a peaceful solution to the conflict would be an improvement in the human rights situation, a ceasefire can only realistically hold if legitimate grievances of the "pro-federalist" population in eastern Ukraine are sufficiently addressed. This, in concrete terms, means a substantial degree of autonomy and decentralization, and institutional guarantees for minority rights, including respect for language rights.

The Russian Federation could rid itself of the sanctions, which are damaging not only to Russia but also to the EU. It would also strengthen desperately needed international trust and co-operation, which are necessary to address security challenges successfully in other parts of the world.

Towards the desired outcome: A sustainable peaceful solution to the crisis

Obviously, only the third scenario leading to sustainable peace is a desirable outcome from a human rights perspective. So, what can be done to make it happen?

There are a number of immediate and medium-term domestic human rights measures that may contribute to the outcome of sustainable peace. At the same time, it must be recognized that international support is required to assist Ukraine in finding a peaceful solution.

Implementing and building on the 12-point plan in compliance with human rights standards

The 12-point plan, or any similar peace plan that may be introduced at a later stage as substitute or for further elaboration, has its best chances of holding if it is implemented in line with human rights standards.

Almost half of the provisions in the 12-point agreement could in fact have a direct positive bearing on the human rights situation. These include the devolution of powers on "interim self-rule"; the release of hostages and detained persons; the adoption of a law on non-prosecution of persons in connection with events that took place in some parts of Donetsk and Luhansk, except those who committed serious crimes; nationwide dialogue; and finally, measures to improve the humanitarian situation in the Donbas region.

The 16 September draft law offers special status to parts of the Donetsk and Luhansk regions, thereby fulfilling another requirement of the Minsk Protocol aimed at strengthening the ceasefire and advancing peaceful solutions. While both have the potential to play a critical role in reconciliation and creating an environment for sustainable peace, a human-rights-based approach would require that "interim self-rule" be further defined through nationwide dialogue involving on an equal footing representatives of different political factions, as well as minorities, women, victims and other segments of civil society. At this time, however, it appears that the draft law has been shelved in retaliation for holding elections in areas controlled by armed groups, in violation of both Ukrainian laws and the Minsk agreement. Hopefully, inclusive negotiations on self-rule in the east will soon be relaunched.

The provision on the release of hostages and detained persons could be a backbone for discussing broader human rights and humanitarian-centred confidence-building measures. Besides directly helping people, such measures may improve mutual confidence and facilitate a return to the negotiating table by all sides, with a view to agreeing on a sustainable political solution. A step-by-step or incremental approach to concession-making on both sides could be envisaged. Such human rights and humanitarian-focused confidence-building measures could include, for example, the release of detainees, eventually leading to an "all for all" release; exchange of information on missing persons; humanitarian access and delivery of aid; and facilitation of communication between family members, including family visits and family reunification. The current practice of releases within so-called "exchanges" has

contributed to the release of about 1,200 persons, but the number still held by the armed groups is estimated by the non-governmental Centre for Release of Captives at over 650. Furthermore, releases should be internationally monitored to avoid instances of detaining innocent civilians only for exchange purposes or attempts to "exchange" people without their consent, both of which seriously violate human rights.

In line with international human rights standards, the law on non-prosecution of persons in connection with the events that took place in some parts of Donetsk and Luhansk excludes amnesty for crimes, including genocide, terrorism, murder, infliction of serious bodily injuries, sexual crime, hostage-taking and human trafficking. This is to be welcomed, but its practical implementation should be monitored once it is hopefully put into practice. Unfortunately, it appears this law has also been temporarily shelved.

In addressing the humanitarian situation, the particular situation of IDPs must be much more protected by the government side on top of the solidarity that is currently being shown by citizens. The newly adopted law on IDPs, although reaffirming core human rights principles, does not seem to establish an adequate implementation mechanism. In caring for refugees, Ukraine should also benefit from an increase in international financial support, as well as other measures to improve the humanitarian situation in the Donbas region. The donors' conference scheduled for early 2015 will be a concrete test of their commitment.

Addressing systemic human rights violations

Although the cessation of hostilities in the east remains a prerequisite to improving the overall human rights situation in the country, it is also important to continue to look for ways to address the underlying and systemic nature of human rights violations in Ukraine.

While the situation in eastern Ukraine remains deeply alarming, it is important not to lose sight of other pressing human rights issues in the rest of the country. Any durable solution to the crisis must also address the root causes of this conflict.

In Ukraine, so far the promises of democracy remain elusive. The government has inherited a number of unfulfilled promises from the Orange Revolution and further back, from the time of the dissolution of the

Soviet Union. To fulfil popular expectations, the new government will have to address these. Let me mention just some.

Corruption was one of the underlying grievances of those who took to the streets in the Maidan movement. A recent Gallup report[9] found that around a quarter of Ukrainians had paid a bribe in the last year. Corruption therefore remains one of the most serious problems in Ukraine and has the potential to affect all human rights, whether civil, political, economic or social. It has exacerbated inequalities, eroded public trust in state institutions, including the justice system, led to impunity and undermined the rule of law and good governance. It must therefore be tackled as a matter of priority, together with a deep reform of the justice system.

The new anti-corruption legislation and the establishment of the National Anti-Corruption Bureau to deal with corruption of high officials seem promising, but the real challenge will be in implementation. President Poroshenko's initiative to appoint a foreigner to head this bureau reflects broadly shared concerns about the existence of networks of influence between Ukraine's security and justice officials and the political and economic elite.

Mismanagement is also closely related to corruption. Decisions that are based on private rather than national interests reflect negatively on the state administration, public services and the justice system. Of course, corruption cannot be overcome by repression only. As elsewhere, transparency, clear procedures, a merit system in public administration and independence of judges are the best ways both to improve governance and to curb corruption.

Accountability is another issue that will need to be prioritized if the government wishes to retain legitimacy and build trust with the population. It will be crucial to show rapid progress with regard to anti-corruption actions. This will help prevent attempts by impatient citizens to take matters into their own hands, or so-called "people's lustration". Allegedly, corrupt officials still holding positions of power have been thrown into garbage bins or otherwise attacked and harassed by angry mobs all over the country.

The dismissal of public officials under the lustration law has already started. Its implementation should be closely followed. It has wide public

[9] Julie Ray and Neli Espova, "Corruption a major obstacle for Ukraine's next president", http://www.gallup.com/poll/170579/corruption-major-obstacle-ukraine-next-president.aspx.

support because of the general frustration over corruption and abuses, but the law could be applied in a discriminatory manner. For instance, it primarily applies to public officials who held their offices under President Yanukovych's rule, from 2010 to 2014. Public officials may be removed for the sole reason of having occupied a position during that period, without having been proven guilty of any offence. This is exacerbated by the fact that they do not even have the opportunity to appeal their cases. This goes against the presumption of innocence.

Potentially unfair lustration could be perceived as selective justice against political opponents and further fuel tensions within Ukrainian society. From a human rights perspective, lustration must therefore be conducted in line with international human rights standards and respect due-process guarantees.

Moreover, there are serious concerns about some criminal proceedings as well. It is recalled that full accountability for the violence in and around Maidan is yet to be achieved.

Legal proceedings in respect of the 2 May 2014 violence in Odessa between supporters of unity and those supporting the federalization of Ukraine, which resulted in the deaths of 48 people, are also of particular concern. Investigators have found that the involvement of activists from both sides led to some deaths, but the imbalance in the ratio between the victims of the violence (46 pro-federalist and two pro-unity) and the suspects (110 pro-federalist and three pro-unity) and those under arrest (12 pro-federalist and no pro-unity) is highly unusual and may be an indicator of bias. The responsibility of the police and fire brigade for preventing deaths in the trade union buildings is still to be addressed.

Naturally, it is difficult to launch unbiased proceedings in the midst of a conflict, but it is highly important for the government's credibility, peace efforts and reconciliation. Since June 2014 the hostilities have been marked by the broad use of explosive weapons, including cluster munitions and incendiary weapons in populated areas. The ceasefire did not stop indiscriminate shelling, and in November 2014 alone over 100 such cases were reported.

There has so far not been a single occasion when either the government or the armed groups have taken responsibility for civilian deaths. No progress has been reported in the investigations initiated by the Ministry of Internal Affairs, SBU or the Office of the Prosecutor in more

than 300 cases of indiscriminate shelling of residential areas registered to date.

The newly established Office of the Military Prosecutor will have a challenging task in investigating alleged crimes by the Ukrainian forces in the conflict area, such as looting, arbitrary detention and ill treatment by members of certain voluntary battalions. While the importance of motivated volunteers for Ukrainian security operations should not be underestimated, they should be subject to a chain of command and accountability.

It must be made clear that a time of accountability, including individual criminal responsibility, will come for all perpetrators of crimes committed in the context of the crisis in the east, no matter who the victims or the perpetrators. This is important not only for justice, but also for crime prevention and potential reconciliation.

The role of the international community

Undoubtedly, the behaviour of actors in Ukraine will be heavily influenced by outside stakeholders. The Russian Federation, the EU and NATO all have important roles to play in this regard.

It is not only Ukrainians who are losing if the conflict continues and escalates, or becomes frozen. Sanctions and counter-sanctions are seriously affecting the economies of both the Russian Federation and the EU. A deterioration of the security situation will mean an increase in military spending in all NATO states. Finding a sustainable, peaceful solution is vital for Ukraine, but thus also crucial for successful global co-operation in many areas, including the fight against international terrorism.

For the Russian Federation, in addition to the rights of Ukrainians of Russian nationality and other Russian-speaking populations, there seem to be major concerns related to Ukraine's possible NATO membership and its economic and cultural ties with the East. How can they be adequately addressed?

Is a potential consensus that Ukraine will join the EU but not NATO possible? Can trust between NATO and the Russian Federation be rebuilt? Could Ukraine, when and while becoming a member of the EU, serve as a bridge between the EU and the Russian Federation?

Furthermore, can autonomy of eastern Ukraine include the possibility of a special relationship with the Russian Federation? Is a politically acceptable solution for Crimea, based on international law, possible as well? The UN General Assembly assessed the referendum on its integration with the Russian Federation as invalid, but Crimea remains firmly under Russian control. Is it possible for all sides to accept a legitimate and internationally monitored referendum on the future status of Crimea, based on the voters list pre-March 2014? Is it possible to provide guarantees that – no matter the results of the referendum – Crimea would retain close ties with both Ukraine and the Russian Federation, which would ultimately benefit local residents?

If there were goodwill on all sides – inside and outside of Ukraine – to move towards sustainable peace, who could be the mediator and facilitator of this process? Could it be envisaged that the OSCE, which enjoys the confidence of all parties, be formally mandated to run a peacekeeping operation? The UN? Together?

Obviously, there are many questions to which I do not have answers, but in my view the mentioned stakeholders should be openly discussing them with each other to give peace a chance. However, no matter these dilemmas, it seems clear that the EU has a pivotal role to play in supporting the type of reforms cited above that would allow the government to address some of the root causes of the crisis. In the context of Chapter 23 (Judiciary and Fundamental Rights) of the EU negotiation framework, many of the more systemic and underlying human rights violations could be addressed.

In this context, it will be important to ensure that the EU reform agenda builds on the main recommendations from the HRMMU. A five-year human rights strategy, the first such document since Ukraine's independence, to be submitted by the Cabinet of Ministers by 1 January 2015 is a great opportunity in this regard. Also, over 60 legislative and institutional practical reforms, presented by the president in September 2014 and reflected in the post-election agreement of November, will be in 2015 complemented by a national human rights action plan to implement the human rights strategy.

However, all this will require resources. Enormous resources are needed, but presumably far less than would be needed to finance a full-blown or a frozen conflict. The donor conference planned for early 2015 will

present a major opportunity for Ukraine to procure the required external support to address its humanitarian needs as well as necessary reforms. With resources, of course, also come obligations for their efficient use. It will not be easy to raise the necessary resources, taking into account the global competition for these, and it will not be easy to ensure their efficient use, taking into account the tradition of corruption and mismanagement in Ukraine. However, there are grounds for optimism: Ukraine cannot afford not to use resources efficiently, and the international community cannot afford not to provide them. The price of failure would be too high on all sides.

The situation in Ukraine is volatile, and may be shifting from one scenario to another. Even if the situation as it stands now is probably closest to the frozen conflict scenario, initial successes of reforms in the rest of the country may prove to be attractive for the population in the east. The frozen conflict scenario may be gradually transitioning into the sustainable peace scenario. It will not be easy, and an important element of success will be to maintain respect for minority views and minority rights, despite all the challenges and the temptations not to do so.

The HRMMU stands ready to support the government, as well as all Ukrainians – regardless of their nationality or political orientation – in this challenging journey. At all times, the role of the HRMMU in monitoring and providing objective reporting will remain of utmost importance. It can help provide a diagnosis of the problems, while at the same time ensuring that momentum is retained for all stakeholders in this conflict to address existing human rights concerns and jointly look for solutions.

In case of an improved security situation, the continuation of the UN HRMMU's role in 2015 could be refocused, with greater emphasis on technical co-operation and activities aimed at strengthening the national human rights protection system. This would need to be carried out in close co-operation and partnership with national actors (NHRI, NGOs), the UN system and regional organizations such as the Council of Europe and the OSCE.

Conclusion

When I first visited Ukraine, just after the Maidan protests in March 2014, in the east it was only extremists under the influence of propaganda from

outside the country who thought that Ukrainians could not live together after Maidan. However, during my continued visits to the country I saw that with every new victim, every new violation of human rights or humanitarian law, the divide between the two communities is deepening.

Disrespect for human rights led to Maidan, and the lack of clear guarantees for respect for human rights of Russians and Russian speakers contributed to the rebellion in the east, which was instigated and supported from outside the country. On the other hand, as described in this paper, respect for human rights, as well as sovereignty and territorial integrity of Ukraine, is a way to overcome the crisis. This crisis affects everyone, but above all it affects Ukrainians, regardless of their nationality or political orientation.

In concluding, I would like to cite the case of a person I have met in prison in Kharkiv, Ms Nelia Shtepa, as an illustration and symbol of all eastern Ukrainians dragged into, and now increasingly trapped in, this conflict.

Ms Shtepa, the former mayor of Slovyansk, was detained by the armed groups from 17 April to 5 July 2014 and freed at the time of the takeover by government forces, only to be arrested and detained again a week later on 12 July by the Ukrainian side. Detained by the armed groups for her lack of co-operation with them, she was then again detained by the Ukrainian side for her alleged collaboration with the separatists.

I believe that this case illustrates clearly the dangers of this conflict; the danger of Ukrainians in the east being caught in the middle of internal as well as external divisions, and paying a heavy toll.

The next in the toll line are all Ukrainians. But, besides Ukrainians, others are also paying a heavy price. Citizens of both the Russian Federation and the EU are hurt by sanctions. Deepening of the divisions may also negatively reflect on co-operation in maintaining peace and security worldwide.

There must be a better way: human rights based and human rights friendly. In Ukraine, and dealing with Ukraine.

Ukraine and European Security: Mediation

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Any attempt at mediation in Ukraine today has to include the fact that the pursuit of a "national inclusive dialogue" (Minsk Protocol, point 7) is the shortest and least explicit of the 12 "conclusions" registered in that document. Therefore everything remains to be discussed and defined; the useful but limited sessions of May 2014 are already far away, and one should first review the situation we are now in, and then proceed mostly with question marks all along.

A crisis which is both recognizable and new

In less than a year this crisis has evolved from a recognizable pattern to an unpredictable one. The Maidan events amplified past positions and connections which had emerged in 2004, but the outburst of violence in February 2014 transformed the crisis through a rapid sequence of important events for the country: a regime change, a new leadership, and surreptitious intervention of Russian special forces followed by an unconstitutional referendum and annexation of Crimea by Russia; separatist *de facto* powers in the Donbas region, with local armed confrontation; an international meeting in Geneva with limited follow-up and attempts at a Ukrainian national dialogue; the presidential elections, the launch of an "anti-terrorist operation", renewed international attempts and the establishment of the Trilateral Contact Group; failure of the unilateral ceasefire, full-fledged military operations with growing Russian presence in Donetsk and Luhansk oblasts, the downing of the Malaysian Airlines plane and a sudden reversal of the military situation on the ground due to Russian forces' influx; renewed meetings in Minsk and, on 5 September 2014, the signature of the Minsk Protocol, complemented by

the Minsk Memorandum agreed on 19 September 2014, but seriously undermined by further military confrontation in limited areas; parliamentary elections, countered by separatist "counter-elections" in Donbas; and renewed efforts to make the ceasefire more effective.

Compared with "protracted conflicts", the Ukrainian crisis represents a quantitative change in terms of population, territory, dimension of operations, number of victims and humanitarian, social and economic consequences, but also a qualitative one, with a "formal" annexation and a new concept of "hybrid war", as illustrated by very unusual actions on the ground.

Furthermore, this conflict seems to pursue a kind of erratic course, if not a vicious circle of "no war – no peace" with many actors, many repeated and unfulfilled commitments, lack of leadership from all sides, ambiguous statements and too many meetings with no real follow-up. For the moment, the only rationale one can identify is a sort of converging aspiration to limit the level of a confrontation that neither side involved nor the neighbours and interested countries really want or at least try to stop. To date no party is ready to make the necessary efforts to start and build a process leading to a general and effective cessation of hostilities, to coordinated humanitarian measures for progressive improvement of the present dire situation of millions of people, and to a political settlement. The longer this gradual conflict continues, the worse the outcome will be for every side, and for the rest of the continent.

For the moment some kind of fatalism seems to prevail, with an unacknowledged but shared preference of all stakeholders to avoid or defer substantial measures like an international conference, or a clearly tasked group leading to a summit meeting and subsequent arrangements for full monitoring and a relief plan. Taking a full-fledged initiative would mean delivering rapidly some tangible improvement in this conflict-torn region, but also specific proposals, such as engagement with all sides, and carrying initially a heavy burden of obstructions and risks, as well as a good measure of costs. This goes beyond the capacities, rules, procedures and remarkable determination of the OSCE, which is almost over-extended, and no major country, group of countries or international organization is ready today to make such a move. Of course, numerous exchanges and programmes take place at different levels and in parallel ways, and this is better than nothing. But after a full year of such encounters, conversations and arrangements, it

is clear that these measures have not prevented a constant worsening of the situation, if one takes into account all the components of the crisis. A kaleidoscopic set of different forces are pulling and drawing in very different directions, and this confusion cannot be "stabilized" as a secondary crisis, nor confined to Donbas itself. The crucial components of the history of Europe – security, sovereignty, independence, borders, identity, way of life, values – are at stake, and must therefore be addressed in one way or another. No quick fix can be found in the misleading formula of a "frozen conflict". At present, the "Ukrainian crisis" has become a loose cannon on a more and more rudderless ship. It is perhaps appropriate to recall the judgement of Christopher Clark in *The Sleepwalkers*: the First World War "did not result from a long deterioration, but from shocks inflicted on a short period to the international system".

Who wants a national dialogue, and when?

In principle, the answer to this question is clear: the signatories of the Minsk Protocol, as part of a wider process. But four months after the signing of the protocol, the situation is different. The value of the aforementioned "seventh conclusion" is much weaker than that of the document itself, if not close to nil, since the protocol has had consequences for other points, but none for the dialogue. One hears regular calls from different sides for an actual start, but nothing moves forward. The electoral campaign for the new Rada and the "counter-elections" in Donbas have caused new delays and posed new difficulties.

In Kiev there are different views within the government on the desirability and feasibility of such a dialogue. Furthermore, the fresh election of the new parliament raised questions on a parallel autonomous exercise: how can one both distinguish and co-ordinate the deliberations of the Rada concerning the present challenges of the country, dominated by separatism and the pursuit of military confrontations, and the exchanges within a specific caucus? This calls for a solid understanding between political forces and between the government and the Rada, but also with different components of the security forces.

In Donbas similar questions arise, in a more simplistic and sometimes stark way. Who could be in charge of this dialogue? On whose behalf? And with what credibility, and for how long?

The first comment one hears presently from both sides on the perspective of a "national inclusive dialogue" is generally about preconditions, at best.

In a way, one can argue that the Trilateral Contact Group has started some kind of national dialogue, by necessity. It is *de facto* a channel which covers many items, some of which should be transferred to an effective national dialogue as soon as it starts. Lessons should be drawn from this first exercise, but its difficult course may not represent a starting base.

One must also take into account the manifold, informal but opaque exchanges that take place between Kiev, Moscow and the Donbas region, during which essential components of such a dialogue are addressed.

In shorthand, one can conclude that some kind of "dialogue on the national dialogue" is already taking place on separate tracks: with renewed movement towards a crisis resolution, this could represent a preparatory step; but in the present stalemate these bits and pieces are rather a substitute, if not a mockery and an obstacle to the real thing.

In terms of timing, one point is at least very clear: if and when a durable ceasefire is formally agreed upon and immediately implemented, a call for a national dialogue with a very short preparatory delay should be formally accepted by all sides and launched.

What kind of national dialogue?

Before trying to address the different components, let us sketch out a format which tries to take the present situation into account: it should be led by a group (council, presidium?) of five Ukrainian "wise persons" (co-chairs?) appointed by agreement between the president, the prime minister and the Rada, coming from the civil society, including from Donbas, still active in their field, with a record of civic engagement and acknowledged moral authority. After two major elections in Ukraine and the growing involvement of Russia, it seems indeed preferable to go beyond the initial May 2014 formula with former Presidents Kravtchuk and Kuchma. This "inclusive" dialogue should also include other regions than

just Donbas, and could even start in places like Kharkiv or Odessa. The need for an in-depth exchange on options for the future of the country cannot be restricted to the Luhansk and Donetsk oblasts. The "wise persons" should therefore be ready to supervise and co-ordinate several regional or thematic working groups (roundtables, workshops?), each led by three co-moderators. They should fix a rather short schedule, between six months and one year, in order to keep a certain degree of political pressure, and conclude with a set of proposals with a timeframe submitted to the president, the prime minister and the Rada. The eventual establishment of a "Truth and Reconciliation Commission" covering the events between November 2013 and the "final" ceasefire should be kept for a second phase. Let us now explore more specific items.

The complex history of Ukraine is a well-known fact. This complexity is or has been the case for many European countries, including the most ancient ones. To what extent should history be part of the national dialogue?

Whatever the initial answer, the reality of exchanges during the meetings will refer to it, if only for qualification of the facts. The sovereign and independent state of Ukraine, as it has existed since December 1991, cannot be detached from the successive modifications of its former borders in 1922, 1945 and 1954.

This is not just an organizational question. Ukraine's history remains deeply related to the present crisis. The confrontation of narratives, past and present, is a substantial part of the problem. Mediation cannot solve it, but cannot bypass it either. In short, one can argue that this opposition is part of the reality but not the whole of it. There has been a long interaction between the different components of Ukraine, which still takes place. To speak of the "double memory" of Ukraine is often a way to characterize the situation, but this is a simplification, to say the least. Manifold debates are part of the life of the country, be it in Kiev or in different regions, and not only Donbas, which combine emotion, memory and sense of identity with a more rational search for a viable society, political order and prosperity. Traditions evoke strong feelings, but we also know that they can be somewhat "invented" or reconstructed.

In practical terms, specific sessions for exchanges of narratives on past and present, with possibly the contribution of respected academics acceptable to all, will be at some point part of any mediation in Ukraine.

The second question mark relates to practical management of the post-conflict situation, especially in the humanitarian field: victims, refugees, housing, basic services, health, food, transportation, etc.; specific needs for winter; and release of prisoners, hostages and missing persons.

It seems obvious that, due to the experience accumulated by the Trilateral Contact Group, these matters should remain within its remit, at least for the time being. At the same time, these questions will be raised also in the context of a national dialogue. A work-sharing pattern will have to be designed and agreed upon.

What kind of mediation? In the present situation of Ukraine, after so many opportunities lost in such a short time, the luxury of a protracted debate on the best formula would be another escape. Practical considerations must prevail: there is an urgent need to start a process. A first attempt was tested in May 2014, but cannot be a reference after so many changes, as mentioned above. For its part, the OSCE has in contrast proven its resilience in a very challenging context and its ability to contribute in a determined manner to the Minsk Protocol. The formula of "facilitation" by a representative of the chairperson-in-office adopted in May 2014 should therefore be maintained.

This crisis is also an international one – beyond the operational work of the Trilateral Contact Group on the ground, high-level international meetings and contacts have taken place to contribute to a solution, especially in Geneva in April 2014, in Normandy on 6 June 2014, and then in Berlin in the same restricted format. The forthcoming meeting in Astana may soon open a new option.

There is no specific precedent which could be transposed, even if it is useful to have in mind, with caution, the quite different formats of the Minsk Group for Nagorno-Karabakh, the Five-plus-Two structure for Transnistria and the Geneva international discussions on the crisis in Georgia. Having been tested in the neighbourhood of Ukraine, they may offer some insights and also some lessons, not only on the organizational

level but also on procedures and working methods; but, at the same time, they offer several illustrations of the kind of "protracted conflict" one should precisely avoid in Ukraine.

In other words, the national dialogue should keep a solid autonomy, but should not avoid some kind of connection with the regional, European and international contexts.

What would be the first steps? The initial gathering should establish a set of rules in an *ad hoc* way, leading to consensus in order to create and stimulate an initial understanding. The question of status, identity and role of the participants will be the first challenge. One can guess that the best way to overcome it will be the "agree to disagree" line, with great informality, to overcome divisive questions of the representatives' status.

The question of location should be resolved soon. Meetings should take place, as a principle, in Ukraine, and a rotation around different parts of the country could be a good symbol; matters of schedules, programmes of work, agenda, supporting staff, etc. will follow. In the present context of the country the budget will be a serious problem, but Ukraine should, as a principle and a sign of ownership, cover most of it.

As suggested above, a joint session with the Trilateral Contact Group should be rapidly organized.

Quite quickly too, the question of working groups or roundtables will be raised.

Themes and proceedings. One can easily identify a list of indispensable subjects, but the first phase should stimulate a sustained sequence of meetings designed to listen to the different parts of the country, including several sessions in Donetsk and Luhansk. The structure of the agenda should be deferred until the end of a first "tournée" by the Group of Wise Persons.

The most sensitive discussions will be connected with the core of the crisis, i.e. the status of Donetsk and Luhansk, the future structure of the country, the resumption of social programmes in Donbas, the implementation of the law on lustration, etc. One can also guess that the interpretation and full implementation of the Minsk Protocol will be at the core of the debates. More "external" subjects, like the specific role of the

OSCE, gas deliveries, and relations with the EU and NATO, will also be discussed.

The subject of Crimea cannot be ignored, but cannot be addressed in the framework of this dialogue, except for some of the practical aspects deriving from the present situation. It may entail procedural difficulties, and options like "empty seats" in the Rada. The only way out will be to set it aside for the moment as a "reserved question".

Which parallel international structure on regional and European security?
The national dialogue should follow its self-sustaining course, with the specific support of OSCE facilitation, which will lead to regular reports to the Permanent Council in Vienna. But the wider dimension and consequences of the crisis cannot be ignored and will have to be considered within an international framework. First steps have been tested in that direction, in Geneva on 17 April 2014 and, in a more restricted way, in Normandy on 6 June 2014. Whatever the option, these attempts have not gained enough impetus up to now. The recent involvement of Belarus and now Kazakhstan adds another dimension. One must also include the tripartite exchanges on gas deliveries to Ukraine as well as on the future of the EU-Ukraine association agreement.

There is a clear need for a full-fledged working structure of negotiation on security beyond the specific case of Ukraine. The final outcome could be an OSCE summit devoted to consolidation of the three tracks connected with this major crisis: full implementation of the Minsk Protocol, completion of the Ukrainian national dialogue with appropriate understandings, and formal reaffirmation in a document of the rules for comprehensive security on the European continent, as established in the Helsinki Final Act 40 years ago and then in the Paris Charter of November 1990.

The collective and dynamic management of a decentralized and inclusive national dialogue, supported by methodical work on the ground and included in a wider framework, could therefore be a viable formula, in order to get out as quickly as possible from a very dangerous crisis.

European Security Architecture

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European security has been fairly structured for decades, due to the fact that it was subordinated to two competing socio-economic systems, two blocs which reflected that divide and two superpowers that ruled it. It was quite dangerous, but very stable. As long as nobody challenged the status quo, there was no real danger to it.

The status quo has been the favourite form of international security system for states for centuries. It does not mean that there were no attempts to change it, and many even succeeded, but it was always a minority of states which wanted to change the status quo while the majority wanted to defend it. And, of course, all this was structured around interests: those who benefited from the existing status quo were set against changing it, while those who were disadvantaged – or simply thought they could adjust things to their benefit – tried everything in their power to change the status quo.

Status quo powers in the nineteenth century – actually until the Second World War – always attempted to create some kind of a security architecture: the Holy Alliance at the beginning of the nineteenth century, the League of Nations after the First World War and even the creation of the United Nations organization after the Second World War were aimed at freezing the status quo.

At the same time, revisionist powers which wanted change did not greatly favour rigid, inflexible, status-quo-oriented security architectures. Even today we can detect this phenomenon here and there: the best – or worst – example is the UN Security Council, where the five permanent members, which *de facto* own the Security Council, were chosen because they won the Second World War – without paying any attention to the fact that this has little relevance for today.

During the Cold War the situation in the transatlantic region was quite stable. Nobody really wanted to challenge it, as everybody was aware of the fact that a serious challenge would mean the danger of World War Three. Deterrence worked. Deterrence is based on the assumption that the opponent – which in this case is a value-neutral definition of the opponent – is not only able to inflict irreparable damage on the one who starts the conflict, but is also willing to do so. Technical capability and determination – or rather the strong conviction that both sides are ready to use their full arsenals in case of conflict – are both indispensable ingredients of deterrence. Technical capability was summarized in the "mutual assured destruction" concept, i.e. that no side is able to carry out a surprise first strike in such a way that the other side would lose its second-strike capability. The intention was demonstrated by many more complicated factors, such as military posture, including capabilities, deployments, reinforcements, exercises, etc.

And the status quo was not really challenged in Europe. There were, however, numerous armed conflicts outside Europe, so-called proxy wars. Proxy wars were not necessarily – actually probably in most cases were not – started by the two main opponents, but began as real local conflicts. However, whenever a local conflict started, one of the two sides saw an opportunity to weaken the other, to challenge the local or even the regional status quo, and therefore decided very quickly to jump in, with arms deliveries and in several cases also active indirect or direct participation But these were essentially local conflicts with the participation of the two major forces, and never threatened to become a worldwide confrontation between the two main opponents.

There were only a few conflicts where the confrontation between the two main enemies was real: Cuba and the Berlin crisis. However, even in these cases deterrence worked: the Soviet Union backed off and the conflict basically disappeared.

These challenges have been well handled, if you agree that the main objective was to maintain stability and the status quo. This is why the Soviets tolerated airlifting hundreds of thousands of tons of material to Berlin, and why the West tolerated the bloody invasion of the Soviet Union in Hungary, the Warsaw Treaty suppression in Czechoslovakia and the Marshall Law in Poland. The most important objective, overruling

principles, values and other interests, was to maintain stability and the status quo.

Given the existing circumstances of that period, this is quite understandable. Disgusting, but understandable. Any serious attempt to change the status quo would have meant the immediate danger of nuclear war – and what can you do with your principles in the aftermath of a nuclear war?[1]

It was a dangerous but simple situation. The consequences of its collapse were dramatic, but unlikely. Deterrence worked, and ultimately did its job: the Warsaw Treaty, the Soviet Union and communism collapsed.

All this created the impression that such a situation is the normal state of affairs. My generation, the ones before, and some after grew up in this system. We knew it, we understood it – not everybody and not entirely, but more or less – and we loved it. We would never admit it, but we did.

In 1989–1991 this system collapsed. We celebrated it as a great success – which it really was – but most of us did not want to live with the consequences. A paradoxical situation emerged, where politicians and many experts hailed the success we achieved as historic, including the collapse of a security system based on the confrontation of the two blocs, but continued to live and behave as if it had not happened.

We maintained the same security institutions, the same principles of security, the same obsession with Russia – replacing the Soviet Union (only in Western minds) with a few changes – and we started to neglect power, especially military power. It was a difficult process to start NATO enlargement, but finally, after ten years of hesitation, we succeeded. But we did it only halfway: the new members never got the same level of security as the old members, and the entire NATO, while repeating and paying lip service to collective defence, started to neglect it – not only in not even thinking seriously about the defence of the new members, but also in neglecting the existing capabilities of the old members. We tried to justify this by repeating every day that the old threats are gone – we even outlawed the word "threat" and replaced it by "challenges", which in military terms makes a huge difference – and concentrated halfheartedly on the new ones. We messed this up, too, but that is another story. But the

[1] This has direct consequences and lessons learnt – or rather not learnt – for the situation in and around Ukraine in the present day. This is discussed below.

challenges proved to be useful to justify the neglect of the old threats and collective defence.

We replaced our Russian policy by dreams, believing that Russia will be a nice, friendly partner and will behave as if it was one of us. We neglected the ever-more-obvious signs that this is not happening, and lived in our dream world of a Europe whole and free.

NATO created the NATO-Russia Council. Its Founding Act stated:

Russia is continuing the building of a democratic society and the realization of its political and economic transformation. It is developing the concept of its national security and revising its military doctrine to ensure that they are fully consistent with new security realities… Proceeding from the principle that the security of all states in the Euro-Atlantic community is indivisible, NATO and Russia will work together to contribute to the establishment in Europe of common and comprehensive security based on the allegiance to shared values, commitments and norms of behaviour in the interests of all states. NATO and Russia will help to strengthen the Organisation for Security and Co-operation in Europe, including developing further its role as a primary instrument in preventive diplomacy, conflict prevention, crisis management, post-conflict rehabilitation and regional security cooperation, as well as in enhancing its operational capabilities to carry out these tasks. The OSCE, as the only pan-European security organisation, has a key role in European peace and stability. In strengthening the OSCE, NATO and Russia will cooperate to prevent any possibility of returning to a Europe of division and confrontation, or the isolation of any state.

However strange it is to read this today, it was meant seriously. There were quite a few strategic thinkers who saw the dangers looming on the horizon and tried to make political decision-makers aware of them. More than 20 of them wrote an open letter to President Obama:

Twenty years after the end of the Cold War, however, we see that Central and Eastern European countries are no longer at the heart of American foreign policy. As the new Obama Administration sets its foreign-policy priorities, our region is one part of the world that Americans have largely stopped worrying about. Indeed, at times we have the impression that U.S. policy was so successful that many American officials have now concluded that our region is fixed once and for all and that they could "check the box" and move on to other more pressing strategic issues. Relations have been so close that many on both sides assume that the region's transatlantic orientation, as well as its stability and prosperity, would last forever.

That view is premature. All is not well either in our region or in the transatlantic relationship. Central and Eastern Europe is at a political crossroads and today there is a growing sense of nervousness in the region. The global economic crisis is impacting on our region and, as elsewhere, runs the risk that our societies will look inward and be less engaged with the outside world. At the same time, storm clouds are starting to gather on the foreign

policy horizon. Like you, we await the results of the EU Commission's investigation on the origins of the Russo-Georgian war. But the political impact of that war on the region has already been felt. Many countries were deeply disturbed to see the Atlantic alliance stand by as Russia violated the core principles of the Helsinki Final Act, the Charter of Paris, and the territorial integrity of a country that was a member of NATO's Partnership for Peace and the Euroatlantic Partnership Council – all in the name of defending a sphere of influence on its borders.

Despite the efforts and significant contribution of the new members, NATO today seems weaker than when we joined. In many of our countries it is perceived as less and less relevant – and we feel it. Although we are full members, people question whether NATO would be willing and able to come to our defense in some future crises. Europe's dependence on Russian energy also creates concern about the cohesion of the Alliance. President Obama's remark at the recent NATO summit on the need to provide credible defense plans for all Alliance members was welcome, but not sufficient to allay fears about the Alliance´s defense readiness. Our ability to continue to sustain public support at home for our contributions to Alliance missions abroad also depends on us being able to show that our own security concerns are being addressed in NATO and close cooperation with the United States.

Those warnings, however, were not heard. On the contrary: we were blamed for being "old Cold War warriors" and "Russia haters" – people who do not understand the voice of reason and the voice of time. The Russian aggression against Georgia went *de facto* unnoticed – without any consequences – and the European Union started to pursue a policy of seeking a "strategic partnership" with Russia (which was a false concept from the very beginning, if only for the reason that the European Union claimed to have a strategic partnership with the United States – how could the relation to Russia and that to the US be the same?). The United States also followed a totally misconceived Russian policy. President Bush went to Ljubljana to meet Putin personally and said: "I looked the man in the eye. I found him to be very straightforward and trustworthy. We had a very good dialogue. I was able to get a sense of his soul; a man deeply committed to his country and the best interests of his country."

President Obama – despite of his "ABB policy" (anything but Bush) – continued this approach and invented the "reset" policy.

This led to a significant distortion of Western policy. We were seeking Russian co-operation everywhere, but received very little. Yes, when Russian direct interests required it, Russia co-operated half-heartedly. But we pretended that co-operation was almost perfect, and also extended to areas and issues where it was less than real, such as Iran (where Russia slowed down the introduction of sanctions and in the meantime supplied

Iran with nuclear reactors and fuel), we tolerated Putin's incredibly brutal war against Chechnya, etc.

Again, some Central and Eastern European experts warned:

And then there is the issue of how to deal with Russia. Our hopes that relations with Russia would improve and that Moscow would finally fully accept our complete sovereignty and independence after joining NATO and the EU have not been fulfilled. Instead, Russia is back as a revisionist power pursuing a 19th-century agenda with 21st-century tactics and methods. At a global level, Russia has become, on most issues, a status-quo power. But at a regional level and vis-à-vis *our nations, it increasingly acts as a revisionist one. It challenges our claims to our own historical experiences. It asserts a privileged position in determining our security choices. It uses overt and covert means of economic warfare, ranging from energy blockades and politically motivated investments to bribery and media manipulation in order to advance its interests and to challenge the transatlantic orientation of Central and Eastern Europe.*

We welcome the "reset" of the American-Russian relations. As the countries living closest to Russia, obviously nobody has a greater interest in the development of the democracy in Russia and better relations between Moscow and the West than we do. But there is also nervousness in our capitals. We want to ensure that too narrow an understanding of Western interests does not lead to the wrong concessions to Russia. Today the concern is, for example, that the United States and the major European powers might embrace the Medvedev plan for a "Concert of Powers" to replace the continent's existing, value-based security structure. The danger is that Russia's creeping intimidation and influence-peddling in the region could over time lead to a de facto *neutralization of the region. There are differing views within the region when it comes to Moscow's new policies. But there is a shared view that the full engagement of the United States is needed.*

In the midst of this, "democratic Europe" increasingly headed down a dangerous slippery slope. It was very clear from the beginning of the millennium that OSCE commitments were being grossly violated by many European countries which are OSCE participating States. It is sufficient to mention the commitments in terms of human rights – as in the aftermath of 9/11 – and minority rights, where minorities have become the cause and not the victim of ethnic conflicts in the thinking and also the policy of several states, including members of the European Union and NATO. Elections became more and more contested, not only in the authoritarian regimes, but also the oppositions defeated in what we thought were free and fair elections. The election monitoring system of the OSCE/ODIHR came under attack, and the response was more appeasement-like than principle.

At the same time, of course, the OSCE became more and more marginalized. It is no surprise: once we have an institution which offers the

most comprehensive set of principles on democracy and human and minority rights, and does this in the form of binding commitments, when these principles are not strictly observed and in many cases violated, and when violation is tolerated without any significant consequences (even the most democratic states cannot be held totally clean in this respect), then there is no other choice for the relevant governments than to marginalize that institution. So it happened that *de facto* nobody raised a voice.

Europe has faced new challenges – or old challenges in new forms and for new reasons. Ethnic discrimination and even hatred, xenophobia, anti-Semitic and anti-Muslim sentiments, and gross discrimination of the Roma population became part of our lives. Traditional political parties – left and right – failed to address these issues, for several reasons. First, they know very well that the solution is very complicated, expensive, takes a long time and – most importantly – does not bring votes in the next election, the one after next and those after that. It was comfortable to pretend that something was being done, while in reality very little happened. Secondly, political correctness does not allow even calling the problems by their names, nor does it allow a real and substantive discussion.

Consequently, as the problems did not disappear as a result of not talking about them, those who dared to talk about them won support and votes. And these are the extremist parties, strong in Central and Eastern Europe, but also gaining ground in the "old democracies". They had the "courage" to make racism, in different forms, their main message, be it anti-Semitism, anti-Muslim hatred, anti-Roma hatred or simply opposition to immigration and immigrants. They "explained" these phenomena using simple words, understandable and tempting for many, and offered simple, understandable and seemingly very practical solutions. Traditional political parties – left or right – did not dare to enter a real discussion with them; but many tried to embrace their rhetoric and even some of their policies.

The OSCE – not the institution itself, but some independent dignitaries – was a lonely voice, perhaps together with the same officials – and not the organization – of the Council of Europe. But its voice was not heard.

There was – or is – another change going on in the world which is even more radical and significant – probably even more dangerous – than the changes in Europe. The end of the Westphalian security system, which

was based on the exclusivity of states in international relations, meant that the fundaments of the international security system began to erode. This is true for the nation-state, which is losing much of its importance and power due to globalization, for the international institutions, which were created and based on the assumption that they have to deal with states and interstate conflicts only, and even for international public law, which is based, too, on the exclusivity of states as actors in international relations.

All that is no longer true. Non-state actors became very important in international relations, even in security. Their influence rivals that of many states and – most importantly – they can barely be handled in the framework and with the instruments that were created to handle states and interstate relations. Many of them do not break the law – as a rule – but their influence goes beyond state borders. Even if they observe the rules, this fact alone weakens the nation-state and undermines the security system based solely on states. And then there are those which who do not (want to) observe the rules, such as international criminal groups and even more modern global terrorism.

States try to fight these new challenges. But the instruments at their disposal are not appropriate and often raise significant problems: the contradiction between security and freedom has probably never been as problematic as it is today. In addition, as international law and international institutions do not offer adequate solutions to many international and national – intrastate – conflicts, states feel obliged to resort to solutions and instruments that are not within the usual interpretation and implementation of international public law. For democratic states, this is an almost unmanageable problem: if you have to choose between the legally correct and the politically/security-wise necessary, and the two contradict each other, there are no good solutions. Not to mention that this raises additional questions. If it is not in accordance with international law, who and on what basis has the authority to do it? How does one respond to questions about double standards in this respect?

We believe that these questions and problems will haunt us for decades, that there will be no one solution to them, and that no new security architecture or security system will emerge in the foreseeable future, but *ad hoc* solutions will have to be found. If this is true, then any – desperate – search for a new international security system is not only futile, but also dangerous: it is doomed to fail, it sucks away energy from the real

issues, and failure will show that we are incapable of solving the problems and the drive to succeed often leads to appeasement and bad compromise. Now, what can be the role of the OSCE in this situation?

Historically, in the early 1990s the CSCE/OSCE became the saviour and embodiment of the "new European security architecture" for less than five years before we dropped it – and most of the blame for that goes to Russia, but the West, especially the European Union, made a nice contribution, too. And by doing all of this, we did not (want to) recognize two facts.

First, the good old European security architecture had collapsed. We pretended it still existed and/or desperately wanted to restore it. We loved European security to death.

And, secondly, we never wanted to recognize that such periods of relative stability are rare. Not since the collapse of the Roman Empire has a security system – architecture, if you want – existed, with two historically short exceptions: the first was the era of the Holy Alliance, and the second exception is the one we know much too well, the Cold War. The rest is history, i.e. anarchy or chaos, where there is no organized and stable security architecture, but coalitions of the willing – and able – rule the world, crisis after crisis emerges, and the only solution at our disposal is to try to manage and eventually solve one crisis and deal with the next. What can be done?

First, there is an urgent need to recognize and admit that the good old days are gone and will never return. This is much more so with regard to the entire world: the start of the collapse of the Westphalian security order and the change of Westphalian/modern state plus the new level of globalization made the world an extremely volatile and dangerous place to live. Europe is still relatively quiet and stable, and thus a secure place – but only relatively. We have now to face the challenge – and the dangers – of the combination of the old threats (in old and new forms), coming in the first instance from Russia, and the new threats posed by aggressive fundamentalism in the name of Islam and all its consequences – and all that made even more dangerous and more difficult to handle by globalization.

We have powerful instruments in our hands to handle this. They will not eliminate these threats overnight, they will probably not even solve all the problems, but they do offer us the tools to manage them and to

survive. We lack only one important ingredient: the political will to use these instruments.

Europe is full of politicians – and now, unfortunately, the United States has joined it in this respect – but no statesmen (stateswomen/ statespersons?). No leadership, no sense of direction, no will to fight – neither politically nor in the real sense. In many respects the situation resembles the last century of the Roman Empire. The empire looked powerful and flourishing. The Romans were wealthy, ruled the world, and enjoyed life, food, wine, sex, philosophy and arts, but the empire was rotten from inside. The Barbarians were *ante portas* and then increasingly inside the empire, but the Romans did not want to see it. And then the empire collapsed almost overnight. This process lasted for a century – but will it last that long in the era of globalization, technological development at lightning speed and the internet?

We don't want to hear the wake-up calls: although Ukraine and ISIS are clearly the ones. But it is easier, cheaper and more politically correct to pretend that these are only small problems – or maybe big, but in no case existential. But they are existential.

Now, after the diagnosis – with which many will not agree – what is the cure? There is no single cure: we have to be prepared to use a variety of different medicines to turn an acute, life-threatening disease into a chronic one and learn to live with it. I will not go into details at this point of what could and should be done worldwide. But there is something I want to emphasize in relation to Europe.

When there is no security system/architecture and you have to rely on bringing together coalitions of the willing and able on the basis of variable geometry, the only thing that can be – and definitely should be – done is to create the procedures that can do this. To be able to do this one must recognize and admit the need for it, and the impossibility of building a stable security architecture that can service everybody's interests and solve all the emerging problems. Secondly, one has to get used to a situation where currently many problems, conflicts and crises cannot be solved – in the best case they can be managed. "Frozen conflict" and "cold war" became four-letter words – but have we ever thought about the alternative of armed conflict and real war? Thirdly, we need to set up an inventory of the tools available, including international organizations, and what they can and what they cannot do. Institutional rivalry – which often deteriorates

into blame games, when it is more important to find the scapegoat than the solution – is deadly.

Now, in this situation you need a platform where all this can be done. And this brings me finally to the OSCE – I know you, dear colleagues, have missed the OSCE and were wondering where in a paper for the OSCE Focus Conference the OSCE will pop up: here you are.

The OSCE has been neglected for two decades. It did perform quite well, but not spectacularly. In today's media world, being spectacular is more important than results – especially for politicians, who are led by public opinion instead of at least trying to influence it. Now it is time to rediscover the OSCE – I know we have said this many times, but now it is even truer. Why? Because there is an urgent need and because what is suggested here refers to the core strengths of the OSCE which everybody recognized and nobody denied: the convening role, the place of and for dialogue. If we decided to use the unique capability of the OSCE for the purposes mentioned here, we would not only revive the OSCE but also do a good service to Europe. Unfortunately, this will not happen, for many reasons of which we are all aware. But we, the peoples in this Focus enterprise, should not give up trying. We have been convinced of the usefulness of the OSCE for decades, when most politicians do even not know what OSCE stands for. So let's try again.

We shall overcome – provided the world and Europe survive.

European Security Architecture: The New Relevance of Trade and Security

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History returns to Europe

The OSCE's "second basket",[1] dealing with co-operation in the fields of economics, science, technology and the environment, has not been in the limelight of the organization's work. But in 2014 the relations between economic co-operation in the OSCE area and security aspects moved to the forefront. This shift of attention occurred as the developments in Ukraine were seen as being related to trade policy choices. Even though trade policy is not at the heart of the conflict, as will be substantiated below the crisis demonstrated that trade policy comes with important political linkages today. It also demonstrates that the relationship between trade and security is a contentious issue in the OSCE area. This opens up the possibility for the OSCE to assume a greater role in the realm of its "second basket".

At its heart, the conflict in Ukraine is a clash over the future of the European order. Trade policy is thus only part of a much bigger picture. This picture is dominated by the question of whether the unusual post-Cold War order will prevail in Europe or whether it will be replaced by a new order, in which spheres of influence and use or threat of use of military (including nuclear) force are again legitimate tools to manage conflicts of interest.

[1] I am thankful to Kateryna Boguslavska for her support regarding the history of the OSCE's second basket.

The end of the Cold War marked the beginning of a stunning new order in Europe: the old system of international relations, based on a balance of power and imperial urge, ceased to exist. It was replaced by a new order, the cornerstones of which were the rejection of the use of military force as an instrument for conflict regulation, as well as security based on openness, transparency and increasing economic interdependence. This was underpinned by the adherence to common values. Primarily, this meant an opening up of Western institutions that were once designed for the Cold War to the nations of Central and Eastern Europe.[2]

Although there soon emerged some signs that Russia was not willing to accept the new order, the EU could for a while still pretend that Russia was on the same track. But Ukraine was only the latest and most decisive sign that the post-Cold War order emerged because Russia was weak, and not because it had accepted the same principles as the rest of Europe. In Ukraine, Russia proved that the old system of international relations was still alive and kicking. There was no linear progress towards a peaceful order accepted by everyone. History came back to haunt Europe.

This paper starts with a conceptual discussion, highlighting the different linkages between trade and security. This conceptualization will show how different ideologies bring about differing perspectives on these linkages. The paper then goes on to analyse how the linkages have played out in the OSCE region over time, including the process leading up to the Helsinki Final Act and subsequent periods. Then it analyses how trade policy became embroiled in the wider political and geopolitical conflict in Ukraine. It finishes with some suggestions for a future OSCE role in the field of trade and security.

Conceptualizing trade and security

[2] See Ivan Krastev and Mark Leonard, "The new European disorder", ECFR Essay No. 117, November 2014, London: European Council on Foreign Relations.

There are several ways in which trade can be related to national security issues. The first distinction is between process-related security implications and social-system-related security implications. The first dimension captures how the process of trade itself can lead to security challenges. The second dimension is much broader, as it focuses on the impact of trade on a given social unit – in this paper the nation-state. These system-related linkages can be direct and indirect. Direct linkages focus on the effect that trade ties as social relations of exchange have on national security. State leaders can adopt differing perspectives on the desirability of the establishment of trade ties. What is more, the termination of trade ties will always come with costs and benefits that may have national security implications. Indirect linkages focus on the benefits of trade for other states that may positively or negatively impact on national security.

Table 1: Classification of trade and security linkages

Dimension	**Category**	**Explanation**
Trade process	Risks to animal, plant or human health	Contamination of goods with dangerous substances, design flaws, spread of species
	Trade and illicit activities	Use of trade activity and infrastructure to traffic humans and illicit goods, or for terrorist activities
Effects on state	Direct linkages	- Trade positive for national wealth - But may kill domestic producers; endanger social stability - Vital trade ties can be strategically exploited by adversary by disrupting or threatening to disrupt - Reliance on single export good increases vulnerability to price shocks
	Indirect linkages	- Trade may increase wealth and thus military power of adversary - Supply of arms and technology may increase military power directly - Trade will reduce the propensity for military conflict

Risks to animal, plant or human health

The goods traded themselves may have a direct impact on domestic security. This fact stems from the lack of national control over the production process of goods. Goods may be contaminated with dangerous substances, or may carry diseases from one country to another. Also, trade is often accompanied by the spread of species to non-native habitats, which may endanger wildlife.

These security risks are mostly dealt with by the enforcement of national rules by customs and other agencies, and by the assessment of conformity of products brought into circulation within a certain market. It may lead to results like a politically motivated blockade of products. To avoid the misuse of such regulations, the so-called non-tariff barriers to trade are subject to rules of international organizations, such as the World Trade Organization.

Trade and illicit activities

The processes of trading goods may also be misused by terrorists or organized crime groups, for example to deliver bombs and explosives, or for the trafficking of humans and the transport of illicit goods. This can be a threat to national security.

The protection of border integrity should be handled by the border police, customs and other state agencies, and is a continuously evolving challenge. Modern practices include non-intrusive inspection methods like large-scale x-ray scanners and risk management to avoid an overload of inspection facilities. As terrorist and other threats have multiplied over the last decade, international organizations like the World Customs Organization have drawn up new standards and best practices on how to deal with these threats while not inhibiting global trade.

Direct linkages

The liberal concept that trade allows specialization and is thus welfare-enhancing for everyone is mostly taken for granted. But its generality allows for substantial disagreements. The liberal perspective emphasizes the absolute welfare gains from trade. It thus attests that openness towards trade will enhance national security because it is the best way to increase aggregate welfare. Other perspectives, like Marxism and economic nationalism, are not as concerned with the welfare gains of international economic co-operation *per se*; rather, they emphasize the distributive effects. While Marxists discard the relevance of a national perspective, they are often critical of trade as it may favour capital over labour. Economic nationalism also emphasizes distribution, but adopts a state-centric perspective: while trade may maximize aggregate welfare, it often results in disruptive effects for domestic manufacturers by enhancing competition. Those disruptions, if not appropriately cushioned, can become a danger for domestic political stability.

Once established, the manipulation and disruption of existing trade ties can also become a threat to domestic stability, rendering trade a foreign policy tool for states. A country can block exports of a crucial good to another country, thereby affecting the livelihood of its people. It can also block existing imports from another country, hoping for a destabilizing effect arising from the economic losses. The key here is asymmetric dependence on trade – if the sender is less dependent on the trade than the target state, its losses will be less noticeable. In addition, countries can have different capacities to absorb losses. This will be a key variable in determining the efficacy of trade as a foreign policy tool. Trade relations can also empower new interest groups in a country that are loyal to the foreign country because of business opportunities, and may curtail the power of political decision-makers. The fact that trade relations can be exploited for political gain has given rise to a broad literature on “economic

statecraft", emphasizing how a state can affect decisions in another state by way of manipulating existing trade and other economic ties.[3]

Another direct link between trade and national security is present if a country relies on a certain export good for economic prosperity and budgetary revenue. In that case, national security can be compromised by price shocks in global markets. This threat can be mitigated by the diversification of budget revenues and exports. Another way to mitigate it is to try to get control over the specific market by way of organizing a cartel, but this is very difficult for many goods and often depends on the choices made by other market participants.

In terms of practical policies, one can distinguish between the ideal types of liberal policies, a developmental state, and mercantilism. Liberal policies focus on welfare. They try to be as open to trade as possible and deal with its domestic security challenges with the help of a welfare state. The problem of economic statecraft is acknowledged, but liberal states try to integrate others into a dense web of international institutions designed to limit their discretionary behaviour and hence the risk that economic statecraft is being used. In short, liberal states like to draw others into co-operative arrangements since this furthers their interests in maximizing economic welfare.[4] A developmental state is also focused on welfare maximization, but assesses that the productivity structure of the global economy is too disruptive to its domestic economy. It aims to improve domestic productivity by selectively integrating with the global economy and erecting trade barriers where necessary. The goal is the eventual abolishment of those barriers after productivity has been enhanced.[5] A

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[3] See e.g. Albert O. Hirschman, *National Power and the Structure of Foreign Trade*, Berkeley, CA: University of California Press, 1945; David A. Baldwin, "Interdependence and power: A conceptual analysis", *International Organization* 34(4): 471–506, 1980; David A. Baldwin, *Economic Statecraft*, Princeton, NJ: Princeton University Press, 1985; Daniel Drezner, "The hidden hand of economic coercion", *International Organization* 57(3): 643–659, 2003.

[4] Richard Rosecrance, *Der neue Handelsstaat: Herausforderungen für Politik und Wirtschaft*, Frankfurt/Main: Campus, 1987.

[5] Chalmers Johnson, *Japan: Who Governs? The Rise of the Developmental State*, New York: Norton, 1995; Ziya Önis, "The logic of the developmental state", *Comparative Politics* 24(1):

mercantilist state focuses on trade through the perspective of national power. Its policies are conflicting, as trade may be beneficial to wealth creation, which is in turn necessary to enhance military power, but trade is also seen as a national security threat. Ultimately, a mercantilist state wants to change the global rules and hence is against strong integration into existing co-operative arrangements.[6]

Indirect linkages

Indirect linkages between trade and security are contested. Political economists with a realist perspective claim that trade may increase conflict, as states get more resources to arm themselves.[7] In contrast, liberal authors are of the opinion that trade will make the use of these military resources less likely, as trade will become more profitable than military conquest.

The first indirect linkage between trade and national security is related to the positive impact of trade on wealth in other states, which may enhance the stability of a regime and its capability to invest in the military. This is a desired effect when it concerns a political ally, but undesirable when an adversary is concerned.

Trade may also have a more direct effect on the defence capabilities of other states. This is the case when goods are traded that directly or indirectly increase the capability of another state to arm itself. As a result, arms trade is often specifically regulated by a state, as is the sale of sensitive technologies.

109–126, 1991; Peter B. Evans, *Embedded Autonomy: States and Industrial Transformation*, Princeton, NJ: Princeton University Press, 1995; Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective*, London: Anthem, 2002.

[6] Jacob Viner, *The Long View and the Short: Studies in Economic Theory and Policy*, New York: Free Press, 1958; Björn Hettne, "The concept of neomercantilism", in Lars Magnusson (ed.), *Mercantilist Economics*, Boston, MA: Kluwer, 1993, pp. 235–255; Robert Gilpin, *The Political Economy of International Relations*, Princeton, NJ: Princeton University Press, 1987.

[7] See e.g. Hirschman, note 3 above.

The indirect effect of trade on national security has often led to a fusion of political alliances with greater trade integration and arms and technology export policy.[8] Conversely, adversaries have at times not traded with each other or even tried to block each other's trade. This is also sensible in considering the direct effects of trade, since states in political alliances will be less likely to engage in economic statecraft, while the disruptive effects of trade may be mitigated by policy co-ordination (e.g. co-ordinated labour and welfare policies).

The second, liberal, perspective on indirect linkages of trade to security is more positive about the role of trade with regard to security. It asserts that more trade is better for interstate peace than less trade. The fundamental assumption is that state leaders will act economically rationally, which is a shaky proposition. On this basis, three assumptions are advanced: firstly, territory is no longer important in today's world as states can profit more from trading than from military expansion; secondly, if trading nations go to war, they will experience opportunity costs from the destruction of their economic relations, which might be prohibitive; and thirdly, global financial markets will immediately penalize those nations that go to war. A fourth argument is of a constructivist nature: trading nations will have more interpersonal contact than those that do not trade with each other, and hence will develop knowledge about and respect for each other.[9]

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[8] See David Vogel, "Global trade linkages: National security and human security", in Vinod Aggarwal and Kristi Govella (eds), *Linking Trade and Security: Evolving Institutions and Strategies in Asia, Europe, and the United States*, New York: Springer, 2013, pp. 23–48.

[9] See Solomon William Polachek, "Conflict and trade", *Journal of Conflict Resolution* 24(1): 55–78, 1980; Erik Gartzke and Quan Li, "Measure for measure: Concept operationalization and the trade interdependence-conflict debate", *Journal of Peace Research* 40(5): 553–571, 2003; Erik Gartzke, Quan Li and Charles Boehmer, "Investing in the peace: Economic interdependence and international conflict", *International Organization* 55(2): 391–438, 2001; Jon C. Pevehouse, "Interdependence theory and the measurement of international conflict", *Journal of Politics* 66(1): 247–266, 2004; Edward D. Mansfield and Brian M. Pollins, "The study of interdependence and conflict: Recent advances, open questions, and directions for future research", *Journal of Conflict Resolution* 45(6): 834–859, 2001.

Trade and security in the OSCE area

In the OSCE area trade has long been linked to membership in security alliances. But the liberal perspective on trade can also look back at a long tradition, partly due to the fact that such a perspective was useful in reaping economic benefits across the Iron Curtain. This was reinforced by the liberal idea that increased trade may foster peace.

The post-war phase: Security policy in the lead

After the Second World War the main institutions dealing with trade were the General Agreement on Tariffs and Trade (GATT) and the Council for Mutual Economic Assistance (COMECON), although the latter organization was probably less important than Soviet military presence and the Warsaw Pact, and the economic order of socialist communism these helped enforce in the COMECON states. Communism led to the abolishment of free trade and the channelling of all trade through a state-owned monopoly.[10]

Based on the Atlantic Charter, and against the background of the perception that the Great Depression had helped to spur the war, the United States aimed at establishing an open and competitive, yet regulated, international economic architecture – what has later been termed "embedded liberalism".[11] The International Trade Organization (ITO) should have been one of its cornerstones. The goal was to liberalize trade as far as possible and limit destructive protectionism, while at the same time excluding distortive practices such as exploitation of the labour force. It also foresaw rules against international monopolies that would distort global competition. However, the ITO eventually faltered since the US Congress

[10] Rolf C. Ribi, "Das COMECON: Eine Untersuchung über die Problematik der wirtschaftlichen Integration sozialistischer Länder", dissertation, Hochschule St Gallen, Zürich: Polygraphischer Verlag, 1969.

[11] John Gerard Ruggie, "International regimes, transactions, and change: Embedded liberalism in the postwar economic order", *International Organization* 36(2): 379–415, 1982.

refused to ratify the treaty out of fears of interference with domestic politics and global capital.[12]

What remained in 1947 was GATT, which was focused mainly on reducing trade barriers. Although GATT was in principle open to all states, it was soon taken hostage by the emerging Cold War. Due to their foreign trade monopolies, socialist countries were seen with suspicion in GATT and never granted full trade privileges. In contrast, the US brought in its new allies, such as Japan, against considerable protectionist resistance due to security considerations. Although GATT was kept open for new states to join, it soon became part of the larger Cold War and assumed the role of sparking a positive dynamic in the Western alliance by mutually reinforcing the economies of the Western world in the systemic race against communism.[13] GATT was accompanied by the Coordinating Committee for Multilateral Export Controls (CoCom), tasked with co-ordinating Western technology export policy to the socialist bloc.[14]

Whereas GATT had a mainly positive character, in that it built upon existing economic links and strengthened them, COMECON's task was to break Eastern European economies away from Western Europe while strengthening their mutual integration with the Soviet Union.[15] This can clearly be seen in historic trade figures (Table 2), which show a large and immediate effect of post-war Soviet domination in Eastern Europe. Again, and in a much more obvious way, trade policy was subjected to security policy.

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[12] See Vogel, note 8 above, pp. 24–25.
[13] See Vogel, note 8 above; Francine McKenzie, "GATT and the Cold War", *Journal of Cold War Studies* 10(3): 78–109, 2008.
[14] See Michael Mastanduno, *Economic Containment: CoCom and the Politics of East-West Trade*, Ithaca, NY: Cornell University Press, 1992.
[15] See Franklyn D. Holzman, "Comecon: A "trade-destroying" customs union?", *Journal of Comparative Economics* 9: 410–423, 1985.

Table 2: Pre- and post-Second World War trade in the OSCE area, percentage of total trade, selected dyads

Trade dyads	**1913 %**	**1928 %**	**1938 %**	**1948 %**	**1953 %**	**1959 %**
Eastern Europe to continental Western Europe	81.0	60.3	54.8	33.1	10.4	12.8
Continental Western Europe to Eastern Europe	1.2	7.5	6.6	3.9	2.1	2.4
Eastern Europe to USSR/Russia	0.7	1.5	0.8	25.4	40.3	39.6
USSR/Russia to Eastern Europe	1.4	12.8	4.4	46.3	53.4	54.2
Continental Western Europe to continental Western Europe	52.6	43.6	45.9	43.0	45.4	49.5
UK to continental Western Europe	29.6	23.5	22.9	22.4	25.4	25.3
Continental Western Europe to US	5.8	6.8	4.9	6.3	8.2	9.5
US to continental Western Europe	33.2	25.3	20.3	27.6	12.8	18.4
Continental Western Europe to USSR/Russia	4.2	1.4	1.4	0.9	0.8	1.1

Source: Statistical Office of the United Nations, "International trade statistics 1900–1960", 1962, http://unstats.un.org/unsd/trade/data/tables.asp. Eastern Europe comprises Albania, Bulgaria, Czechoslovakia, Hungary, Poland and Romania, plus East Germany beginning in 1948.

Détente and commerce in the 1960s and 1970s

By the mid-1950s two economic blocs had become well entrenched in the OSCE area. But starting in 1957, when the Soviet Union was showing its power by using a new rocket both to test its first nuclear intercontinental ballistic missile and to launch the world's first satellite, Sputnik, calls for a liberal perspective on trade grew louder in the West. Enhanced East-West trade was now seen as a means of détente, provided the Western alliance was acting in unison. Italy and the Soviet Union signed their first substantial multiannual trade agreements in the same year, and Soviet oil would soon become a sought-after good. This was reinforced by the 1960 Soviet-Italian oil-for-pipelines deal, linking the delivery of large-diameter pipelines to

Soviet oil deliveries. During the 1960s the US successfully blocked the sale of further pipelines from Germany to the Soviet Union, but the Western front had already begun to crumble. The decisive change came with the German chancellorship of Willy Brandt in 1969: he pressed ahead with his Ostpolitik concept. This adopted a liberal perspective on trade, believing in the transformative power of trade ties on the Soviet Union. By 1973 the first Soviet gas would flow to Germany.[16]

In the run-up to the negotiations on the Helsinki Final Act, liberal thinking about economic relations was thus already gaining in prominence and practical significance. On the side of the US, this resulted in some worries about the coherence of the alliance, as trade with the Soviets would empower interest groups and weaken commitment to the Western alliance. Also, increasing energy ties brought concerns about the security implications for Western Europe. These concerns grew stronger as US economic power began to wane at the end of the 1960s and Western Europe positioned itself as a competitor to the US. But by the mid-1970s the renouncing of the gold standard had strengthened the US economically, while the oil crisis had weakened Western Europe to the point where there was no more questioning of the hierarchy in the Western alliance.[17]

As a result, the "second basket" of the CSCE Final Act was the least politicized and could be finalized well in advance. While the original impulse to establish this link between economy and security in the Helsinki Final Act came from the Soviet Union and its Central European allies, which feared for domestic stability in view of a sustained slowing of their growth rates, the basket was not uninteresting for Western European states.[18] They were eager to open up new markets in the East, and the CSCE gave them official

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[16] Per Högselius, *Red Gas: Russia and the Origins of European Energy Dependence*, New York: Palgrave, 2013; Werner D. Lippert, *The Economic Diplomacy of Ostpolitik: Origins of NATO's Energy Dilemma*, New York: Berghahn Books, 2011.

[17] Duccio Basosi, "Helsinki and Rambouillet: US attitudes towards trade and security during the early CSCE process, 1972–75", in Andreas Wenger, Vojtech Mastny and Christian Nünlist (eds), *Origins of the European Security System: The Helsinki Process Revisited, 1965–75*, Abingdon: Routledge, 2008, pp. 222–236.

[18] Jeffry Edwards, "The Madrid follow-up to the Conference on Security and Co-operation in Europe", *International Relations* 8: 49–72, 1984.

approval to do so. The perspective adopted in the second basket is a liberal one, seeing trade as conducive to peace and security. Although a national security perspective is applied, for example when introducing the concept of market disruption, the Final Act nonetheless invokes the observance of international rules and the interests of other parties. In addition to trade, it deals with harmonization of standards and technical regulations, industrial co-operation, science and technological co-operation, and finally with addressing environmental pollution.

While politically important in a climate of rivalry, the provisions of the Helsinki Final Act were not very important in driving economic co-operation forward. This was rather done by separate large-scale deals, for example the next big gas-for-pipes deal in 1980. In addition, economic co-operation stalled during the 1970s because of economic difficulties in the Eastern European states, which had to pay higher prices for energy deliveries to the Soviet Union, while their non-convertible currencies did not allow for a negative trade balance or large external loans. Hence, exports to the Soviet Union had to be prioritized. Thus the rigid political alliance system in the East did not allow for an expansion of economic co-operation.[19] In addition, the Soviet invasion of Afghanistan led to a general setback of the détente policy in the first half of the 1980s. Again, security considerations trumped trade interests in the OSCE area, at least for a short period.[20]

Triumph and crisis of liberalism

After the collapse of the Soviet Union and its empire, the liberal concept of trade and security seemed to be on the winning side. The GATT Uruguay Round ended in the foundation of the World Trade Organization at the

[19] Joachim Jahnke, "Feasibility and limits of economic, scientific and technological cooperation in Europe", *Peace and the Sciences* 1(79): 36–39, 1979.
[20] Arie Bloed, "The CSCE process from Helsinki to Vienna", in Arie Bloed (ed.), *From Helsinki to Vienna: Basic Documents of the Helsinki Process*, Dordrecht: Kluwer, 1990, pp. 1–26.

1994 Marrakesh meeting, ushering in a promising new phase of liberal international trade. The states of Central and Eastern Europe wanted to retake their historic position in the middle of Europe rather than on the periphery of the Soviet empire, and strived to join NATO and the EU. Market economy and parliamentary democracy became the cornerstones of the European system. The perceived superior performance of the market was also reflected in the final document of the CSCE's Bonn conference in April 1990, the first time that a dedicated conference on the second dimension was held. The final document expresses the common hope of "democratic institutions and economic freedom" that would foster economic and social progress. It also called for "economic reform and structural adjustment", with "reliance on market forces".[21]

Nevertheless, the new situation did not lead to a greater role for what was soon to become the OSCE in the second basket. This reflects the fact that the new liberal era was in fact the extension of traditionally Western institutions to Eastern Europe. They would assume the tasks of transformation to the market and liberalizing trade, while the OSCE did not control any of the resources needed to effect change beyond the reach of the Western institutions.

Hence the OSCE's second basket was tasked with working on small-scale technical issues. As of today, activities in the second basket cover anti-money laundering, transport security, migration and developing more efficient border and customs policies. The focus in the environmental sphere is on water management, controlling dangerous waste, climate change, sustainable energy and involving the public in decisions affecting the environment.[22] Questions of developing free market economies, as well as economic co-operation, are almost left without attention. In general, the topics taken for discussion were quite narrow, politically and ideologically absolutely neutral, but very practically applicable. Trade-related topics

[21] "Conference on Economic Co-operation in Europe in Bonn", www.osce.org/eea/14081
[22] "Economic and Environmental Activities", www.osce.org/secretariat/eea

were discussed mainly at the level of cross-border co-operation and facilitating cross-border trade.

At the same time as the OSCE was busy with small-scale issues, it emerged that not everyone had the will or strength to align with the liberal project. While the reform efforts of Central and Eastern European states were largely successful, Southeastern Europe is still struggling to break political and economic monopolies to deliver a better life to its citizens. Eastern Europe, meanwhile, has so far adopted a non-committal approach – profiting from integration into global markets while at the same time renewing a centrally controlled economic model rather than a market-driven economy.

This has been most articulate in Russia, which lacked the symbolic and material stimuli to align fully with the liberal vision. First, Russia had always been an imperial power and never a modern nation-state. Second, as the imperial centre it could not symbolically distance itself from its own past as easily as could its former socialist dominions and Soviet republics. Third, Russia had natural resources which acted as both a rapidly increasing source of income and a brake to reforms. The growing price of natural resources throughout the 2000s, in particular oil and gas, made Russia less interested in adopting market-based reforms, as these resources are easily tradable and scarce, so there is not much competition. In addition, EU nations became more and more eager in their search for new markets, as domestic sources of growth stagnated and China emerged as an industrial powerhouse. The intensified search for new markets meant that the pressure on Russia to reform economically and adopt Western standards was reduced – investments kept coming anyway. This fostered the idea that Russia does not really have to transform and align itself with somebody else's economic model, but can simply "pick and choose" its own limited way to global economic integration.

Today, due to the 2008 financial crisis, the failure to restore growth and the increasing rift between rich and poor, the belief in the market economy and increased openness and exchange across borders – values for

which the EU stands – has also been tainted in the West. In Western Europe and the US debts are weighing heavily on many states, and the tax base erodes while the demand for social redistribution, government investments and limitation of market forces looms large. The result is a profound mistrust between society and elites.[23] This fuels anti-systemic movements that aim at de-Europeanization and de-globalization, driving leaders to adopt more populist policies.

Hence, the OSCE region today is marked by a profound insecurity of leaders, due to both political and ideological factors. In the EU, old recipes no longer seem to deliver growth and Keynesian spending is not on the agenda, as large public debt overhangs do not mix well with a shrinking population. In Russia the economic model is skewed towards oil and gas and lacks a development aspect, which adds to the insecurity of the regime. This very insecurity inhibits co-operation, as it presses leaders to act even more strongly to preserve and advance their respective models.

Trade and conflict in the Ukrainian crisis

In the run-up to the current conflict, trade policy played a role as both sides tried to use it as a lever for wider political choices. Linking economic and political integration has been the key mechanism of the EC and later the EU. The key goal was a greater political unification of Europe, and the means to achieve this was economic integration, as this area was less sensitive than integration of national defence. Thus the EU believes in the liberal vision of a perpetuating effect of economic integration on political integration processes, although it should have been obvious that the key rationale for economic integration was a political one. Later, the EU reversed this thinking and tried to use trade policy, namely access to a large, affluent market, as a carrot to entice other states to align their legislation and respect the EU's values. This "instrument" was used in the 1990s, when

[23] Ivan Krastev, *In Mistrust We Trust: Can Democracy Survive When We Don't Trust Our Leaders?*, New York: TED Conferences, 2013.

association agreements were signed with Central European states. Also, the partnership and co-operation agreements (PCAs) signed in the 1990s with Russia and other post-Soviet states were made conditional on adherence to democratic values and the rule of law.

But, yet again, a political decision for economic integration was more important than conditionality and economic benefit. The ideology of domestic elites and their strategy to make the EC a symbol for their distancing from the communist past and "reuniting" with Europe were more important than the pull of the EU's incentive schemes. Thus the political decision to join the community was far more important than any of the EC's economic incentives. What is more, the EC itself was reluctant to enlarge at the outset, but the desire of the Central Europeans pushed it towards a more positive outlook on enlargement. Subsequently, the decision to open or postpone accession negotiations was the most important carrot that the EU had at its disposal – not because of economic benefits, but because the EC could decide whether the political goal formulated by the national elites in accession states could or could not be reached.[24] This may also help explain why the EU failed to achieve any successes *vis-à-vis* Russia, despite its conditional approach in the PCA.

In spite of its questionable track record, the trade policy carrot was perceived as influential by the EU. When "enlargement fatigue" set in, a debate ensued about conditionality towards the Eastern European states that would not be offered a membership perspective. The idea was that the removal of existing barriers to the EU's common market and the movement of persons should trigger reforms and adherence to common values.[25] But this was putting the integration cart before the horse.

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[24] See Tim Haughton, "When does the EU make a difference? Conditionality and the accession process in Central and Eastern Europe", *Political Studies Review* 5: 233–246, 2007.
[25] See Judith Kelley, "New wine in old wineskins: Promoting political reforms through the new European Neighbourhood Policy", *Journal of Common Market Studies* 44(1): 29–55, 2006.

In this vein, the EU began to draft new association agreements with the states of the Eastern neighbourhood policy – what is now called the Eastern Partnership. The logic of these agreements was similar to those of the 1990s, yet the new documents are far more specific. Whereas the agreement with Poland was a manageable 171 pages and included a broad-brush provision to approximate Polish law to the EU *acquis* while excluding certain "sensitive sectors" such as agriculture from trade liberalization,[26] the EU-Ukraine agreement has almost 4,000 pages and is very specific on the laws to be implemented.[27] Its core is a "deep and comprehensive" free trade agreement that aims to remove not only tariffs but also non-tariff barriers to trade. This means that Ukraine is required to take on EU rules in crucial areas such as technical, sanitary and phytosanitary standards and conformity assessment procedures. Also, a wide-ranging liberalization of services is on the cards. The free trade agreement is again wrapped into a political and institutional agreement, covering areas from judicial reform to foreign policy co-ordination. In keeping with the conditionality approach, the EU made signature of the agreement contingent on domestic reforms in Ukraine.

Whereas the EU was still acting as if the international environment was the same as in the 1990s, Russia had formulated its own approach to linking trade policy and political orientation. It was more coherent than the approach it had taken before, where individual concessions like a lower gas price were linked to the sale of assets to Russia, and free trade and free movement of labour with Russia were benefits granted to all CIS states. In formulating its new approach, Russia could draw on an important Soviet structural legacy: close *de facto* integration of economic and societal processes between itself and the former Soviet states, first and foremost Ukraine, Belarus and Kazakhstan.

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[26] "Europe agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part", *Official Journal of the European Communities* L 348/2, 31 December 1993.

[27] "Association agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part", *Official Journal of the European Union* L 161/3, 29 May 2014.

To streamline integration processes in the post-Soviet space, Russia formed the Customs Union with Belarus and Kazakhstan in 2010. The Customs Union has its own, if limited, supranational commission to administer the customs code and further agreements. Similar to the association agreements, the union abolishes internal tariff and non-tariff trade barriers by harmonization of standards and regulations. But it goes further than that: the goal is to have a common market without internal borders and with a common external trade policy with relatively high tariffs. This means that countries lose their autonomy over trade policy to the Eurasian Economic Commission in Moscow, while existing trade ties with non-members of the union are being disrupted by higher import tariffs.

In contrast to the EU's conditional approach, Moscow is not demanding ambitious political reforms in exchange for accession. Instead, it holds out material benefits if countries agree to join its union. The Customs Union streamlined its external trade policy: access to the Russian market for goods and labour is now granted mostly in exchange for membership of the Customs Union. In addition, economic subsidies such as lower gas prices are a powerful incentive to agree on membership.

Moscow's new consolidated offer turned the tables on the EU, as it mimicked its approach based on common institutions.[28] At the same time, the crucial dimension of rules-based political integration is missing. Rather, the frequent reference to "national interests" stands in stark contrast to the political will of the EC's founding fathers to relinquish national sovereignty against the background of the Second World War. Also, the lack of autonomy of the institution's organs, where every decision can be overturned by the Council of Presidents, bespeaks a lack of will for rules-based integration. In fact, this results in the disproportionate power of Russia in the organization, as the size of its economy is about 90 per cent of the union's total. Rules and the political will to relinquish sovereignty in the

[28] Rilka Dragneva and Kataryna Wolczuk, "Russia, the Eurasian Customs Union and the EU: Cooperation, stagnation or rivalry?", Chatham House Briefing Paper REP BP 2012/01, August 2012.

name of the common good, the core elements of the EU's approach, are thus missing.

Thus, whereas the EU's association agreements come with a transformative agenda, in the sense that rule of law has to be strengthened by judicial reform and oversight of the application of laws by the European Court of Justice, the Customs Union does not demand such a general strengthening of institutions. While it strives for a streamlining of legislation and practice, particularly regarding customs, it does not seek to establish strong institutions. In effect, before 2014 two normative systems were in direct competition in the common neighbourhood between the EU and Russia: one based on rights, rules and private investment, and the other on the subordination of law to power and clientelism, as well as state-driven investment.[29]

As a result of Russia's new policy, Ukraine had to choose between either joining the Russian club or signing an association agreement with the EU. In a decision framework in which Ukraine's sovereignty would not be compromised with military tools, opting for Moscow's offer would bring Ukraine tangible economic benefits, such as lower gas prices and better access to Russia's market, while not subjecting the elites to painful reforms. On the downside, it would not strengthen judicial powers and thus be a threat to the wealth accumulated by economic elites. Signing the EU agreement, in contrast, would mean the destruction of these same markets, as Russia had made clear by several blockades of Ukrainian goods in 2013. It would at the same time necessitate substantial reforms, although the EU would not have the tools really to force these. On the upside, it would protect existing assets and presumably give additional political support against Russian pressure. Similar to the 1990s, the EU option was also seen by parts of the population as a symbolic break with the past and a way towards a better future. Thus trade policy choices were again enmeshed with wider political and geopolitical choices.

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[29] James Sherr, "Ukraine and Europe: Final decision?", *Russia and Eurasia 2013/05*, Chatham House, July 2013, p. 5.

When Russia compelled Ukraine's then president, Viktor Yanukovych, to make a choice, he opted in November 2013 for economic integration with Russia and against an agreement with the EU. Significant parts of the population protested against this move, as they equated the EU agreement with a chance to speed up a longed-for modernization of the state and economy. Mismanagement of the protests led to their radicalization and eventually to Yanukovych abandoning his office. But when the opposition took power, Russia did not resort to trade policy instruments and economic pressure alone. Instead, it annexed Crimea and Sevastopol and helped to fan and sustain a war in the Luhansk and Donetsk regions of Ukraine. The association agreement was subsequently signed and ratified by the new Kiev authorities. Yet implementation of the deep and comprehensive free trade agreement has been postponed until the end of 2015, as Russia threatened to cancel the existing free trade agreement with Ukraine. Meanwhile, the EU unilaterally opened its market for Ukrainian goods.

Whereas this competition seemingly was one of political values and economic benefit until 2013, Russia thereafter reminded the EU and Ukraine that it also had a range of military tools and was ready to use them. Russia's forcible violation of several international agreements was a game-changer. The EU was caught wrong-footed and its instruments were blunted. As a result, the economic dimension has lost its relevance until the military ghost has been put back into the bottle.

Another direct result of the increased geopolitical competition is that the EU's purported link between trade policy benefits and domestic reform has broken down totally. At its Vilnius summit in November 2013 the EU offered to sign the association agreement although not all conditions had been met.[30] After Russia's aggression, it unilaterally opened up its market to Ukrainian goods in 2014 without demanding further initial reforms. At the same time, the events in Ukraine reconfirmed the attractiveness of the EU as a political community – which once again has

[30] See Sherr, ibid.

caught the EU empty-handed, since it did not want to offer enlargement. In conclusion, we can state that the political and geopolitical dimensions have been primary drivers in this crisis, with trade policy being taken hostage by the existing linkages established by the main actors between trade policy and political transformation.

A future for the OSCE's second basket

The trade-security link has become a relevant topic again, as geopolitical rivalries persist in Europe. The liberal perspective on trade, which is embodied in the Helsinki Final Act, has again been superseded by strategic considerations. This has caught the current economic institutions on the wrong foot. They do not have the necessary means to deal with the geopolitical rivalries in the neighbourhood between the EU and Russia: the EU is used to dealing in a secure environment and with smaller partners willing to transform. It fails to have an impact on larger states such as Russia or Turkey that demand tailor-made solutions differing from the EU's model. And the EU's strategy to link trade policy and institutional alignment in Russia's vicinity led to trade policy becoming part of the wider political conflict about the future of Europe. Russia then took the conflict to a military stage.

It is now obvious that both the EU and Russia miscalculated. Russia took its economic strength for granted and underestimated the West's economic response to annexation and military incursion. It also underestimated the resolve of the Ukrainian population and the forces of national consciousness. Hence Russia will need a different Ukraine and a more submissive West to succeed in bringing Ukraine into its Customs Union and preserving control over Kiev. Yet this might be achievable over time, albeit with high costs. The EU miscalculated, because even if Russia backs off from military solutions, the EU will struggle to stabilize Ukraine economically and transform the country, given the internal economic

problems. Hence to succeed it will need a different Russia with a more liberal and co-operative outlook.

So how to get from A to B? And what could a role for the OSCE look like? As long as one of the sides expects gains from keeping the conflict alive, it will be difficult to carve out a role for the OSCE in the second basket. Currently, both the West and Russia are still waiting for the fallout, trying to improve their respective positions. In addition, admitting mistakes and getting to the table will not be easy, and even more so when leaders are insecure. It is much easier for democracies than for countries like Russia, as leaders change more frequently and their downfall does not mean a complete change of the order.

There is thus every chance that the OSCE will be side-lined by the broader strategic developments, as in the past. But once the dust has settled down and a new equilibrium has been reached, the OSCE may become the key forum to engage in discussions about the future principles that should drive economic co-operation across the OSCE area. Already, proposals are on the table for direct talks between the EU Commission and the Eurasian Economic Union. These contacts should be of a purely technical nature, and therefore should be accompanied by a broader political dialogue on economic integration in the OSCE. As greater economic integration presupposes a joint political vision to begin with, the discussion needs to be focused on the guiding principles of economic integration. What economic ideas do the participants want to follow, and why? What is the role of trade and economic integration in this? What connections do they draw between trade and security, and are they aligned? Those are the questions that need to be addressed if greater economic integration is to go forward.

For the dialogue to be constructive it will be vital to supply the discussion with economic data and analysis at all times, in order to establish a rational base for the talks. To this effect it will be crucial to strengthen the second basket institutionally, for example with a separate think-tank capacity.

Such a think-tank could also support small-scale practical problems on the ground that could be alleviated by greater OSCE involvement. The OSCE is already involved in improving border management with its Border Management Staff College in Dushanbe, Tajikistan. Further developing this capacity with regard to economic confidence-building measures would make the OSCE better positioned to deal with the effects of the evolving conflicts.

Success in these initiatives presupposes a certain willingness of actors not to engage in self-isolation, but to listen to each other and revise existing positions. There is much at stake for both the EU and Russia, as both actors fear for the integrity of their respective systems. But one element of the changed context – the considerable economic integration – may yet prove to be the decisive factor. If alternative strategies fail on both sides, due to a falling oil price and a stagnating economy in the EU, the time might soon be ripe for a more constructive dialogue. The OSCE should be ready when this time arrives.

Annex I

OSCE FOCUS PROGRAMME 2014

Ukraine and European Security: Prospects for the Future
10–11 October 2014
WMO, Geneva

Time	Friday 10 October 2014
09:00 – 09:15	**Session 1: Welcome and introductions** Daniel Warner Theodor Winkler Raphael Nägeli
09:15 – 10:30	**Session 1: Ukraine and the Role of International Organizations** Chair: Daniel Warner Speaker: Elizabeth Spehar Discussant: Catherine Kelleher
10:30 – 10:45	Coffee break
10:45 – 12:00	**Session 2: Ukraine – Possible Solutions to the Crisis** Chair: Dejan Sahović Speaker: Ivan Šimonović Discussant: Oleksiy Melnyk
12:00 – 14:00	Lunch
14:00 – 15:15	**Session 3: Mediation** Chair: Rüdiger Lüdeking Speaker: Pierre Morel Discussant: Andrey Kelin
15:15 – 15:30	Coffee break
15:30 – 16:30	Session 4: Western Balkans Chair: Raphael Nägeli Speaker: Gérard Stoudmann Discussant: Vuk Zugić
19:00	Dinner at La Perle du Lac, with keynote address by Lamberto Zannier, Secretary-General

Time	Saturday 11 October 2012
09:00 – 10:15	**Session 5: European Security Architecture** Chair: Pal Dunay Speaker: Istvan Gyarmati Discussants: Andrei Zagorski
10:15 – 10:30	Coffee break
10:15 – 12:00	**Session 6: European Security Architecture – Trade and Security** Chair: Wolfgang Zellner Speaker: Jonas Grätz Discussant: Thierry Béchet
12:00 – 12:30	**Conclusions** Chair: Daniel Warner Speakers: Istvan Gyarmati, Thomas Greminger, Lamberto Zannier
12:30 – 13:30	Lunch at WMO
14:00	Departure of participants

Annex 2: LIST OF PARTICIPANTS

Lydia Amberg	Project Assistant, DCAF
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Thierry Béchet	Ambassador, EU Permanent Representative to the OSCE
Rachael Doherty	Political Officer, Embassy of the United States, Switzerland
Roger Dubach	Chief Policy Adviser, FDFA, OSCE Chairmanship Task Force
Pal Dunay	Director, OSCE Academy, Bishkek
Jonas Grätz	Researcher, Centre for Security Studies (CSS), ETH Zurich
Thomas Greminger	Ambassador, Permanent Representative of Switzerland, OSCE
Istvan Gyarmati	President, International Centre for Democratic Transition (ICDT), Hungary
Anna Hess Sargsyan	Mediation Support Project, Centre for Security Studies (CSS) ETH Zurich
Andrey Kelin	Ambassador, Permanent Representative of the Russian Federation, OSCE
Catherine Kelleher	Professor, University of Maryland
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