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THE RUSSIAN - UKRAINIAN CONFLICT AND  
THE ROLE OF THE EUROPEAN  
ORGANIZATIONS

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## INTRODUCTION

The 24<sup>th</sup> of February 2022 marked the beginning of the Russian aggression against Ukraine.

This event has shaken the whole European Continent, having repercussions in economic, political, security and human rights terms.

The full-scale invasion has been preceded by the declaration made by President Vladimir Putin, in which he authorized a ‘special military operation’ aimed to protect the Russian communities living in the south-east of Ukraine from the alleged violence perpetrated by the central government<sup>1</sup>. The last six months have seen not only the involvement of Russian and Ukrainian military forces, but also the direct or indirect participation of the other European states. So far, the most dramatic result is that there have been more than 13 thousand casualties in the country (around 5 thousand killings and around 7 thousand people were injured)<sup>2</sup> and the displacement of more than 13 million Ukrainian citizens (especially women and children), determining the biggest refugee crisis in Europe since World War II<sup>3</sup>.

The magnitude of this conflict has prompted the fundamental question which lays at the basis of this research: how it was possible to reach such an outcome.

Nonetheless, since the answer to this question could have touch several different issues, the decision has been to geographically limit the scope of the project only to the European context and to its most prominent actors. For this reason, this work aims to analyze the role of the most important European Regional Organizations (namely, the Council of Europe, the Organization for Security and Cooperation in Europe – OSCE, and the European Union) in the relationship between Ukraine and the Russian Federation, and their response to the conflict.

The first chapter is dedicated to the historical evolution of both Ukraine and Russia, having a special attention to the post – Soviet organization.

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<sup>1</sup> OSBORN & NIKOLSKAYA (2022), *Russia's Putin authorises 'special military operation' against Ukraine*, in *Reuter online journal*. Available online.

<sup>2</sup> *Ukraine: civilian casualty update 15 August 2022* (2022), in *Office of the High Commissioner For Human Rights*. Available online.

<sup>3</sup> HAYDA, WESTERMAN, NADWORNY & HERBAGE (2022), *6 key numbers that reveal the staggering impact of Russia's war in Ukraine*, in *NPR*. Available online.

For reasons of brevity, the whole chapter has a strong focus on the European component; indeed, for example, only a paragraph is dedicated to NATO, even if it surely has had a central role in the development of the relations between the two countries<sup>4</sup>. It is also acknowledged that, in certain parts, there are time shifts but, again, these passages are believed to be useful in order to give a clear direction to the whole discourse.

The second chapter presents the first regional organization: the Council of Europe.

Initially there is a short *excursus* on the history of the Council while, afterwards, there is quite a detailed explanation respectively of the Ukrainian and Russian memberships and their role within the Organization. Subsequently, the question of the Crimean Crisis is displayed together with measures taken by the Council. Then, the chapter introduces the role of European Court of Human Rights concerning the matter, as well as the level of compliance of Ukraine and, especially, of Russia with the European Convention of Human Rights' principles. In particular, there is the presentation of the 'Inter-State Application' between Ukraine and Russia, which will be a pivotal instrument used by the Court in its activity both during the Crimean Crisis, and during the current conflict.

At the end of the chapter the Council's response to the Russian aggression is presented, together with reflection upon the legitimacy of the Council's decision to expel the Federation and the consequences of such measure.

The third paragraph presents the Organization for Security and Cooperation in Europe (also known as OSCE). Once again, for sake of clarification, the first part is dedicated to the introduction of the history and internal structure of the Organization, followed by the presentation of the debate concerning its lack of legal personality.

Seemingly to what has been done before, two different parts deal with the Russian Federation and with Ukraine, as dedicated to their relationship and role within the OSCE. Afterwards, the discussion is moved upon the OSCE's role during the Crimean Crisis and, particularly, to what has happened in between the 2014 and the beginning of the Russian aggression. Finally, it is offered a cause for reflection upon which could be the regional and geopolitical role of the OSCE in the next future.

Finally, the fourth chapter is dedicated to the European Union.

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<sup>4</sup> For further information see: HUNTER (2016), *NATO in Context: Geopolitics and the Problem of Russian Power*, in *PRISM*, vol. 6, no. 2, available online; MATTIUZZO (2022), *In or Out: The Complicated History Between NATO and Ukraine*, in *HeinOnline Blog*, available online; HALL (2022), *Ukraine: the history behind Russia's claim that NATO promised not to expand to the east*, in *theConversation*, available online.

This part aims at underlining how the EU has promoted, in the last years, closer relationships with Ukraine, but also a tighter dependence to Russia, especially in terms of trade of natural gas resources.

In this case, in order to achieve a better coherence and clarity, the first part is particularly focused on the historical relationship between the EU and the Russia Federation. Indeed, this topic is not present in the first chapter (which, instead, describes the developments between the EU and Ukraine), but it has been placed in this context since it is believed to create a better framework for what is described later.

Thereafter, the actions taken by the EU during the Crimean Crisis are displayed and special attention is given to what policies have been promoted in the period between the 2014 and the 2022. In this context, an independent section is dedicated to the energy issue. In fact, this theme has been one of the most debated both at national and at Communitarian level and it is currently affecting the EU population gaining a central role in the international scenario.

In the final part, there is an account of all the sections adopted by the EU Council against Russia and an evaluation of the overall performances of the Union *vis-à-vis* the two states. The ultimate willingness is to deliver a comprehensive description and evaluation of what these three Regional Organizations have concretely done, especially in the period covering the Russian annexation of the Crimean Peninsula until the explosion of the conflict in the last February.

This description is not meant to prompt a judgment upon the overall effectiveness and validity of the Organizations as such, but, rather, to understand which have been their difficulties and the failures in fulfilling their respective objectives in the context of relationship between Ukraine and the Russian Federation.

## 1. HISTORICAL BACKGROUND

In order to have a proper understanding of what will be discussed in the next chapters, it is important to set a meaningful historical background related to the development of Ukrainian history and its relationship with both the Russian Federation and the Western Europe.

The relationship between Ukraine and Russia is of high complexity and it is marked by different interpretations coming from both parties. When evaluating its development, it is valuable to keep in mind the strong interconnection between the two populations. Within this work it is not possible to deal with a deep analysis of the common traits between Ukrainians and Russians and to explore the ramifications of such relations, however some information can be mentioned considering two cultural factors: language and religion.

The role of language in shaping identity is both vital and intricate: it is at the basis of the development of a common consciousness and, afterwards, of nationality<sup>5</sup>. A few data can shape the magnitude of language interconnection between Ukraine and Russia. When considering Ukraine, ethnic Russians are the largest national minority group accounting for 17.3% of national population in 2001, and Russian was the native language of 29.6% of the population (including 15% of Ukrainians)<sup>6</sup>. The Russians and Russian-speaking Ukrainians groups are located in the southern and eastern areas with the strongest presence in the Donetsk and Luhansk regions (38-39%)<sup>7</sup>.

Moving to religion, it is undeniable that it has a strong relevance in the political discourse of President Putin both internally and internationally. The most present religion in both Russia and Ukraine is the Orthodox Church which is embraced by 71% of Russians and 78% of Ukrainians<sup>8</sup>. This concept was also underlined by Putin in 2021, by claiming that “Russians, Ukrainians and Belarusians are the same people whose 'common baptismal font’”<sup>9</sup>. The Ukrainians perspective does not deny the common origin between the two States but it sustains that Ukrainians religious background is far more complicated and

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<sup>5</sup> *Russophone identity in Ukraine in the context of the armed conflict in the east of the country* (2017), drafted by the *Ukrainian Center for Independent Political Research* with the assistance of the European Union. Available online.

<sup>6</sup> *Supra*, p. 6.

<sup>7</sup> *Ibid.*

<sup>8</sup> O'BEARA (2022), *Russia's war on Ukraine: The religious dimension*, in *EPRS | European Parliamentary Research Service*, PE 729.355. Available online.

<sup>9</sup> PUTIN (2021), *On the historical unity of Russians and Ukrainians*, in *Official Internet Resources of the President of Russia*. Available online.



diverse. In fact, around 10% of the population belong to the Ukrainian Greek Catholic Church, and other smaller groups remain strong such as the Muslim community (mostly deriving from the Crimean Tatar culture), the Jewish and Protestant Christians<sup>10</sup>.

Once again, even if there are strong shared traits and similarities between the two States' populations, the Ukrainian historical and cultural composition presents its own national characteristics which make it unique. Nonetheless, the coexistence of ethnical Russia and Ukrainians, especially in the eastern region of the country, must be considered of vital importance especially when evaluating human rights protection and the relationship between them.

Moving to the structure of the chapter, this preliminary introduction will display very general information about the origin of the country, the fundamental steps towards its international recognition as an independent state and its composite nature (a factor that will have crucial importance through Ukraine's past years).

After a very brief overview of the early organization of Eastern Europe, this first chapter will focus mainly on the events following the dissolution of the Soviet Union. The choice is to analyze more in depth the events of the last decade, with a special focus on Russia-Ukraine and Ukraine-EU relations and, finally, concluding with the beginning of the current conflict.

### 1.1 From the origins to World War I

The origin of Ukrainian history can be traced around the IX century when a civilization called *Rus'* started to develop around the Dnieper River, establishing as its most important headquarter (and then capital) the city of Kyiv. Within a few years, this community reached a territory that corresponded, with some adjustment, to the contemporary Ukraine, Belarus and the European Russia.

The first formal definition of a Ukrainian people must be identified as a consequence of the Mongol's invasion (mid-13<sup>th</sup> century), which led to the separation of the land in two distinct regions: the "Eastern *Rus'*", which would become the Russian population, and the "Western *Rus'*", which would create the modern Belarus and Ukraine.<sup>11</sup>

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<sup>10</sup> HOUSTON & MANDAVILLE (2022), *The Role of Religion in Russia's War on Ukraine*, in *United States Institute of Peace*. Available online.

<sup>11</sup> VASSALLO (2022), *Breve Storia dell'Ucraina - Dal 1914 All'invasione Di Putin*, Milano Mimesis Edizioni.

A second crucial moment for the formation of Ukraine can be placed between the XIV and XVI centuries, with the creation of the Polish-Lithuanian Commonwealth<sup>12</sup>: an event that, on the one hand, marked the final distinction between Ukraine and Belarus and, on the other hand, it unified all the Ukrainian's lands under a unique sovereign power, the Polish one.

An important moment came in the middle of the XVII century when the Tsardom of Muscovy concluded an agreement with the Dnepr Cossacks (the Agreement of *Pereiaslav*<sup>13</sup>) beginning the gradual integration of a part of Ukraine within the Russian Empire.<sup>14</sup> This Agreement is a good example for underlying the complexity of the relationship between Ukraine and Russia, by considering the different interpretation given by the two parts. Indeed, Ukrainian historians portray the Treaty as the final step granting an alliance between two independent partners falling under the protectorate of Moscow, but they denied the implication of a total incorporation within the Russian Empire. Conversely, Soviet experts held that the Agreement marked the end of the Polish control over eastern Slavs and the reunification of the Russian and Slav population in the name of brotherhood after the deluge of the Kievan state<sup>15</sup>.

Finally, in the XVIII century, the city of *Lviv* was put under control of the Austro-Hungarian Empire<sup>16</sup>. To sum up, on the verge of the First World War, the Russian and Austro-Hungarian Empires, Poland, and Lithuania have all exercised jurisdiction over Ukraine.

Immediately after the fall of the Russian Czar, in 1917, Ukraine proclaimed itself a Republic<sup>17</sup> to be placed within the Russian Federation. The official recognition from the

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<sup>12</sup> The Act of the Union of Lublin (*Akt Unii Lubelskiej*), signed in 1569, constituted one of the legal foundations of the Commonwealth and it represents one of the first instances, during the modern age, of a political and negotiated unification between two states, namely the Kingdom of Poland and the Grand Duchy of Lithuania. With respect of Ukraine, the Union was deeply important, since it defined the precondition for the birth of two different people: the Belarussian one, under Grand Duchy of Lithuania, and the Ukrainian one, under the Kingdom of Poland; and it is another important observation is the one related to the territory of Galicia: this region was already under the Polish sovereignty, and it was unified with the rest of Ukrainian eastern territory. See RZECZYCKI, *The Union of Lublin the Origins of Republican Political Space*, in *Polish History* (available online).

<sup>13</sup> *Pereiaslav Agreement*, signed between the Tsardom of Muscovy and hetman of the Zaporozhian Cossacks on 18 January 1654.

<sup>14</sup> KAPPELER (2013), *The Russian Empire: A Multiethnic History*, New York, p. 61

<sup>15</sup> *Ibid.*

<sup>16</sup> See FELLERER (2017), *Ukrainian in Austria-Hungary (1905-1918) and Interwar Eastern Europe (1918-1939)*, in *Harvard Ukrainian Studies*, vol. 35, pp. 105–124 (available online).

<sup>17</sup> After the February Revolution, on 17 March 1917, the Central Rada (the *Ukrains'ka Central'na Rada*), which can be identified as the Ukrainian equivalent of the Russian *Soviet*, was created in Kyiv and *Mykhailo Hrushevsky* was declared as first President. On 23 June 1917 the Central Rada held its I Universal that contained the proclamation of independence and autonomy. The II Universal (16/7/1917) defined the

central Russian government was proclaimed in 1918, when Vladimir Lenin declared the complete independence of the country.

Even if some sustain that Lenin's role was to "create" the State of Ukraine and to shape its relationship with Russia, many significant historical sources testify that, rather, he laid the foundations for the constitution of the Russian Federation, which, in turn, passed through the recognition of an already existing and independent Ukraine.<sup>18</sup> As a matter of fact, on 30 December 1922, the Union of the Soviet Socialist Republics (U.S.S.R. or SSSR) was founded, comprising the Russian Federation (*Rossíyskaya Sovétskaya Federatívnaya Socialistíčeskaya Respúblíka* - RSFSR), Ukraine (*Ukrainska Sotsialistychna Radianska Respúblíka* - USRR), Belorussia (*Belorusskaja Sovetskaja Socialističeskaja Respublika* - BSSR), and the Transcaucasian Soviet Federated Socialist Republic (*Zakavkázskaja Sovétskaja Federatívnaja Socialistíčeskaja Respúblíka* - ZSFSR).<sup>19</sup>

At the end of World War I, the inclusion within the Soviet Union marked the division between Western and Eastern Ukraine, mainly defining the former as the territories not being included within the Russian political sphere. These territories, indeed, were divided between the Habsburg successor states: Galicia and Volhynia were converted into being part of Poland, Bukovina became part of the Romanian territories and Czechoslovakia took the Transcarpathia. While the Eastern part was characterized by a profound reshape of the economic and social system, as well as victim of the Stalin's threat to dismantle the Ukrainian national culture, Western Ukraine, despite being under control of different states, testified a sensitive and primary growth of national society and cohesion.<sup>20</sup>

During the last years before the beginning of World War II, the forced collectivization of agriculture wanted by the soviet leader Stalin was the origin of a terrible famine between 1931-1934.

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agreement of reciprocal recognition between the Central Rada and Provisional Government. With the III Universal (20/11/1917) the Ukrainian National Republic (*Ukráíns'ka Narodna Respublika* – UNR) was officially created within the Russian Federal Republic. VASSALLO (2022: 36 – 43). See also REMY (2017), *It is unknown where the Little Russians are heading to: The Autonomy Dispute between the Ukrainian Central Rada and the All-Russian Provisional Government in 1917*, in *The Slavonic and East European Review*, vol. 95 no.4, pp. 691–719 (available online).

<sup>18</sup> PLOKHII (2022), *Casus Belli: Did Lenin Create Modern Ukraine?*, in *Harvard University – Ukrainian Research Institute*. Available online.

<sup>19</sup> VASSALLO (2022: 97 – 99)

<sup>20</sup> HIMKA (1992), *Western Ukraine between the Wars*, in *Canadian Slavonic Papers / Revue Canadienne Des Slavistes*. Vol. 34, no. 4, p. 393. Available online.

Specifically, in Ukraine, the famine was particularly intense in between 1932-1933, and it started to find a relevant role in the national martyrology. The *Holodomor*, as it is called in the State, made, probably, around four million victims and it is officially recognized<sup>21</sup> as “an act of genocide against the Ukrainian people”, becoming one of the most important elements of the birth of a national identity as opposed to the Soviet one.<sup>22</sup>

## 1.2 From World War II to the end of the Soviet Union

The end of World War II marked a permanent redefinition of the Ukraine’s borders, especially in the West: Poland ceded to the Soviet Union its territories (*Galicia* and *Volhynia*), the Northern part of Bukovina



*How Ukraine became Ukraine in 7 maps - Gene Thorp, 2015, Washington Post. Available at: <https://www.washingtonpost.com/news/worldviews/wp/2015/03/09/maps-how-ukraine-became-ukraine/>*

<sup>21</sup> Law of Ukraine, *On the Holodomor of 1932-1933 in Ukraine*, adopted by the Verkhovna Rada on 28 November 2006, no. 376-V (available on the official site of the Verkhovna Rada of Ukraine). The law defined the Holodomor of 1932-1933 as “a genocide of the Ukrainian people” (Article 1) and recognized its public denial “an insult to the memory of millions of victims” and illegal.

<sup>22</sup> KRAVCHENKO (2016), *Fighting Soviet Myths: The Ukrainian Experience*, in *The Future of The Past: New Perspectives on Ukrainian History*, vol. 34, No. 1/4, pp 459-461. In the following years, the discussion about the recognition of the Holodomor as an act of genocide continued as based on the definition of genocide present within the Rome Statute of the International Criminal Court, from 17 July 1998 (Article 6 defines genocide as “(a list of) acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”); and according to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948. In this framework it is interesting the explanation drafted by ZAKHAROV, who uses the interpretation of “national group” as indicating the objective of the crime a part of the Ukrainian people, but also of “ethnic group” regarding the population living in Kuban which was particularly affected by the starvation resulting from the policies enacted by the Soviet Union. The authors also listed a number of actions aimed to destabilize the living condition of the group leading to its whole, or in part, destruction. ZAKHAROV (2013), *Legal classification of Holodomor 1932-1933 in Ukraine and in Kuban as a crime against humanity and genocide*, in Kharkiv Human Rights Protection Group. Moreover, Professor Lemkin, expert in international criminal law particularly important for the coining of the term ‘genocide’ and for the development of the relative doctrine, define the Holodomor as “a classic example of genocide”. SERBYN (2009), *Lemkin on the Ukrainian Genocide*, in *Journal of International Criminal Justice*, vol. 7, pp, 123-130.

was recognized as part of Ukraine<sup>23</sup> and the Czech government transferred to the Soviet Union the Transcarpathia.<sup>24</sup>

Ukraine was, perhaps, the most strategic territory of the Soviet Union, both for its geographical position and, economically, for being the greatest agricultural center and for having one the biggest industrial production system. The importance of the role played by Ukraine within the Soviet Union was also proven during the Yalta Conference in 1945. In this occasion, the US President Roosevelt, the British Prime Minister Churchill, and the Secretary General of the Soviet Union Stalin discussed the post-war international political and economic organization, as well as the arrangement of the future Organization of the United Nations. During the conference, in fact, Molotov (the Russian foreign minister) submitted the request of securing the participation of three Republics at the General Assembly, namely Ukraine, White Russia and Lithuania. In Stalin's view, granting the inclusion of Ukraine within the Assembly as a single country would have the result of strengthening the integrity of the Soviet Union by recognising a certain level of independence, at least in terms of foreign affairs.<sup>25</sup>

The annexation of Western Ukraine, nonetheless, represented a difficult situation for the Soviet central government, since the merge of the Western regions with the Eastern ones, that have been highly subjected to sovietisation campaigns, revived Ukrainian nationalism which had partly dissolved during the war. Moreover, there was the need to cancel the system of private farming, that was present in the Western parts, in favour of the collectivised one<sup>26</sup>. This led to the intensification, especially in 1948, of the collectivisation process, which was almost completed in 1950; even though it was fully accomplished only after the death of Stalin<sup>27</sup>.

The analysis of the development of Ukraine – Russian relationship will now move forward to the last years of the Soviet Union.

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<sup>23</sup> The Paris Peace Treaty, 1947, established that Romania would attain Transylvania but, in turn, it would have to cede Bessarabia (Moldova) and the northern Bukovina to the Soviet Union.

<sup>24</sup> As testified by the "Record of Conversation Between V. M. Molotov and President of Czechoslovakia E. Beneš," March 24, 1945. In this occasion, it was agreed the transfer of Trans-Carpathian territories to the Soviet Union, and, in turn, it was established the Soviet commitment towards the Czechoslovakia's need for economic assistance.

<sup>25</sup> These reports from the Yalta Conference were gathered by Stettinius Edward R. Jr in his work *Roosevelt and the Russians: The Yalta Conference* (1949). Stettinius was Secretary of State during Roosevelt's presidency. STETTINIUS (1950), *Roosevelt and the Russians: The Yalta Conference*, in *The American Historical Review*, vol. 55, no. 4, pp. 942–944.

<sup>26</sup> MCINTOSH (1986), *The Soviet collectivization of Western Ukraine, 1948–1949*, in *Canadian Publications on the Soviet Union and Eastern Europe for 1985*, vol. 28, no. 4, pp. 385–423.

<sup>27</sup> *Ibid.*

In 1985, Mikhail Gorbachev became the (then last) Secretary General of the Communist Party of the Soviet Union. Since the beginning of his government, it appeared clear his willingness to break with the Soviet past and to open a new era: the *perestroika*.

By the end of the 80s, there was a first attempt to build, also in Ukraine, a popular front for the *perestroika* (1988), which did not reach the expected results. Only in the following year, 1989, the first congress of the Popular Movement Ukraine for *Perestroika* (*Rukh*) was held. The *Rukh* was not only the Ukrainian organization supporting the *Perestroika*, but it also promoted the revival of national language and culture, this, in turn, generated an exceptional political awakening and mobilization<sup>28</sup> (even though its social basis was limited).<sup>29</sup>

In March 1990 the elections for the Supreme Council (*Verkhovna Rada*) were held and the parliament nominated Leonid Kravčuk as its President, performing the function of Head of State.

On 1 December 1991<sup>30</sup> the Ukrainians were called to express their vote for the independence (which had been voted by the



*How Ukraine became Ukraine in 7 maps - Gene Thorp, 2015.*  
Washington Post. Available at: <https://www.washingtonpost.com/news/worldviews/wp/2015/03/09/maps-how-ukraine-became-ukraine/>

<sup>28</sup> WOLCZUK (2001), *Chapter three. Independence without a vision: constitution making in 1990–1991*, in *The Moulding of Ukraine*. Budapest: Central European University Press, pp. 59-101.

<sup>29</sup> Indeed, as reported by Vladimir Paniotto: “almost half the delegates (which were present at the congress) came from the Western Ukraine i.e. approximately twice the proportion of Ukrainians living in that region of the republic. Some 35% came from the eight central *oblasti*, which corresponds to their share of the overall population, while only 9% came from the southern regions (which possess 19% of the Ukrainian population). Less than 6% came from the eastern Ukraine (which has 25% of the republic's population)” p. 177. PANIOTTO (1991), *The Ukrainian Movement for Perestroika. ‘Rukh’: A Sociological Survey*, in *Soviet Studies*, vol. 43, no. 1, pp. 177–81. Available online.

<sup>30</sup> It is, perhaps, significant to notice that, at the beginning of the year (21/1/1991) a referendum was held in the *oblast’ Krym* (Crimea) about the recontraction of an autonomous soviet and socialist republic (ARSR) which was positively voted by 93% of the population. Subsequently, the *Verkhovna Rada* adopted a legislation proclaiming the creation of the Autonomous Republic of Crimea within the USSR, which became the *AR Krym* in 1992 as included within the territory of the new proclaimed Ukraine.

*Verkhovna Rada* in August) and to elect the President of the Republic. The verdict of the referendum came as a surprise since the independence was voted by over the 90% of the electors: that result sealed the end of the *Ukrainska Sotsialistychna Radianska Respublika* and the beginning of *Ukraina*. Regarding the Presidential elections, Kravčuk won the Presidency with 61.59% of the votes.<sup>31</sup>

The first years of independence were difficult both politically and economically, primarily because of the state's composite nature in terms of culture, language and because of the need to create an economic system able to establish relationships both with Russian economic and with the Western markets.

### 1.3 First decade of independence and Kučma's Presidency

From the economic perspective, Ukraine had always been an agrarian country, but the forced collectivization and the soviet industrialization have created profound damages within the national system of production. This is the main reason why the state experienced an annual contraction between 9.7% and 22.7% in 1991–1996, being one of the least performing states among the newest Republics.<sup>32</sup>

Economically, Russia and Ukraine were deeply interrelated because of gas supplies: if, on the one hand, the Ukrainian industrial production was solely sustained by Russian gas, on the other hand, the end of the Soviet Union configured a completely new system of gas transportation towards Europe. In fact, there was a single pipeline leading to the West, which was previously entirely controlled by Russia, and, after the dissolution, it was posed under control of several independent states. Among those states, Ukraine was the one with the greatest transit, accounting for 93% (106 bcm per year) of Russian exported gas between 1991 and 2000.<sup>33</sup> Gas supplies and transportation will be essential for the development of the two countries' relations, but also for the relations between Russia and the EU (as will be further explained in the third chapter).

Politically, it can be argued that Russia tried to limit and influence Ukraine's sovereignty using two main tools: Ukraine's participation to the Commonwealth of Independent States and the ownership of the Sevastopol naval base and the Black Sea Fleet.

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<sup>31</sup> POTICHNYJ (1991), *The Referendum and Presidential Elections in Ukraine*, in *Canadian Slavonic Papers / Revue Canadienne Des Slavistes*, vol. 33, no. 2. P. 134.

<sup>32</sup> SUTELA (2012), *The underachiever Ukraine's economy since 1991*, in *The Carnegie Papers*, pp. 8-10.

<sup>33</sup> CHYONG (2014), *The role of Russian gas in Ukraine*, in *European Council of Foreign Relations*, pp. 1-2.

The Commonwealth of Independent States<sup>34</sup> (CIS or *Sodruzhestvo Nezavisimykh Gosudarstv*) was created on 21<sup>st</sup> December 1991 through an association agreement signed by the leaders of Russia, Ukraine, and Belarus. Afterwards, the CIS was joined by the Central Asian and Transcaucasian republics (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, Armenia, Azerbaijan, as well as by Moldova). The CIS main objectives comprehended the coordination of the member states' policies in the field of economy, foreign relations, defence, immigration, environment and law enforcement. In January 1993, during the Heads of State Summit in Minsk, the founding Charter<sup>35</sup> of the CIS was presented, but Ukraine refused to sign it.<sup>36</sup> Following the CIS institution, Ukraine, together with the other member republics, was recognized by the US *de iure* an independent state (nonetheless, in 1992, the US government had already established full diplomatic relations with Ukraine).<sup>37</sup>

Another relevant consequence of the dissolution of the Soviet Union was the new partition of the nuclear arsenal: indeed, in 1991, Ukraine possessed the third largest arsenal of nuclear weapons in the world (only after Russia and the US). This led to the conclusion of an agreement known as the Budapest Memorandum<sup>38</sup>, in 1994, which defined the commitment of Russia, the United Kingdom and the United States to extend their security assurance to Ukraine; in turn the state agreed to cede its nuclear assets to Russia and to enter into the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)<sup>39</sup>

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<sup>34</sup> The *Alma-Ata Declaration*, Agreement on the Establishment of the Commonwealth of Independent States, Minsk 8 December 1991 and *Alma-Ata Protocols*, Alma-Ata, 21 December 1991.

<sup>35</sup> *Charter of the Commonwealth of Independent States* (with declaration and decisions), signed on 22 January 1993 at Minsk, entered into force on 22 January 1994.

<sup>36</sup> OLCOTT (1999), *Getting It Wrong: Regional Cooperation and the Commonwealth of Independent States*. Washington: Carnegie Endowment for International Peace, p.2. the author underlines how it was especially problematic for the Ukrainian authorities the fact that the newly drafted CIS Charter seek to expand the organization's duties to the field of defence policy and border protection. This move was depicted as an attempt to restore Russian dominance in the area.

<sup>37</sup> GARNETT (1996), *U.S.-Ukrainian Relations: Past, Present, and Future*, in *Harvard Ukrainian Studies*, vol. 20, pp. 103–124.

<sup>38</sup> *Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons [Budapest Memorandum]*, Budapest, entered into force on 5 December 1994 by signature, between the Russian Federation, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America. To have further information see YOST (2015), *The Budapest Memorandum and Russia's Intervention in Ukraine*, in *International Affairs* (Royal Institute of International Affairs 1944-), vol. 91, no. 3, pp. 505–38. Available online

<sup>39</sup> *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT), opened for signature at London, Moscow and Washington on 1 July 1968, and entered into force on 5 March 1970. The NPT is a historic international agreement whose main goals are to promote cooperation in the peaceful uses of nuclear energy, prevent the spread of nuclear weapons and weapons technology, and advance the cause of general and complete disarmament. The Treaty is the only multilateral agreement that makes a legally binding commitment to the nuclear-weapon states' disarmament as main objective. For additional information see Willrich, (1968) *The Treaty on Non-Proliferation of Nuclear Weapons: Nuclear Technology Confronts World Politics* in



as a non-nuclear weapon state (NNWS)<sup>40</sup>. A point that needs to be stressed, especially in lights of the events of the last decade, is that the Budapest Memorandum reiterated the commitment (by the US, the United Kingdom and Russia) “to respect Ukraine's independence, sovereignty and existing borders”, “to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine” and “to refrain from economic coercion designed to subordinate the exercise by Ukraine of the rights inherent in its sovereignty”<sup>41</sup>.

In the same year, there were the second presidential elections: the first turn was headed by the outgoing president Kravčuk, followed by Leonid Kučma<sup>42</sup>, a former prime minister (13/10/1992 – 21/9/1993) who belonged to the Inter-regional Bloc for Reforms (MBR)<sup>43</sup>. In the same years of *Kučma's* presidency, Boris Yeltsin became the first President of Russia (1991 - 1999).

Three years later, in 1997, an agreement was reached between Kučma and Yeltsin upon the unresolved question of the Sevastopol naval base and the Black Sea Fleet.

Indeed, in May, the Agreement on the Status and Conditions of the Black Sea Fleet<sup>44</sup> was signed by the Russian Federation and Ukraine: it provided for the division of the armaments and of the fleet between the two countries and assigned for a long-term period the Sevastopol naval base to Russia.<sup>45</sup> A few days later, in support of the agreement, President Kučma and Yeltsin signed in Kiev the “Treaty on Friendship, Cooperation, and

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*The Yale Law Journal*, available online; Tariq & Dhanapala, (2017) *Reflections on the Treaty on the Non-Proliferation of Nuclear Weapons*, in *Review Conference and the future of the NPT*.

<sup>40</sup> The NPT, in Article IX defines as “nuclear-weapon State” as a State “which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967” (Art.10.3), thus all the other States are considered non-nuclear weapon States. For sake of clarification, there five nuclear weapon states: China, France, Russia, the United Kingdom, and the United States.

<sup>41</sup> Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, 1994, artt. 1 -3.

<sup>42</sup> Leonid Kučma was member of the Communist Party from 1960 to its dissolution. He was elected deputy of the *Verkhovna Rada* in 1992 and was nominated prime minister by Kravčuk in the same year. In his private life he was general direction of an important Construction firm (1986-1992) and he became also president of the Ukrainian Union of Industrialists and Entrepreneurs (USPP).

<sup>43</sup> For the presidency elections campaign the centrist parties tried to align themselves building a bloc formation including two main parties: the New Ukraine movement and the Inter-regional Bloc for Reforms. The latter was led by r Reforms, led by *Volodymyr Hryniov* of the P of Democratic Renewal and ex-Premier Leonid Kuchma, leader of the Congress of Industrialists and Entrepreneurs and acquired the most relevant profile during the campaign BOJCUN (1994), *The Ukrainian Parliamentary Elections in March-April 1994*, in *Europe-Asia Studies*, vol. 47, no. 2, p. 236.

<sup>44</sup> *The Partition Treaty on the Status and Conditions of the Black Sea Fleet*, signed on 28 May 1997, it comprises three bilateral treaties between the Russian Federation and Ukraine, giving to the former the power to move its troops between the basis in Ukraine and the ones located within the national territory.

<sup>45</sup> *Supra*

Partnership between Ukraine and the Russian Federation”<sup>46</sup>. The document stipulated the establishment of a strategic partnership and the recognition of the inviolability of common borders between the two countries. The contracting parties agreed on building “mutual relations on the basis of the principles of mutual respect for their sovereign equality, territorial integrity, inviolability of borders, peaceful resolution of disputes, non-use of force or the threat of force”.<sup>47</sup> If Kiev admitted to have a permanent Russian military presence in Sevastopol, in turn, the treaty cost to the Kremlin the official recognition of Ukraine’s full sovereignty on its territory (comprising Crimea) and the cancellation of the greatest part of Ukraine’s debt to Russia (which was especially linked to oil’s provisions)<sup>48</sup>.

In 1999, Leonid Kučma won again the presidential elections, while, in 2000, Vladimir Putin became President of Russia. The newly elected Kremlin’s President initiated his political trend, which was directed towards gaining power domestically, but also strengthening Russia’s influence regionally.

In doing so, the Eurasian Economic Community - EEC (*Evrazes*) was launched<sup>49</sup>, comprising five states (namely, Russia, Belarus, Kyrgyzstan, Kazakhstan and Tajikistan) having Russia as the leading force. In Moscow’s view an active participation of Ukraine within the EEC was fundamental, thus a number of conferences were held during which Russia offered to Kučma both political (such as the presidency of the CIS Council of Heads of State in 2003) and economic support (embodied in important exemptions from trade with Russia amounting to hundreds of millions of dollars.). However, in 2002, despite the important benefits that were offered, Kiev adopted a middle-ground position by signing only an association agreement resulting in some benefits but without a stringent commitment within the EEC. In the same year Ukraine decided not to be part of

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<sup>46</sup> *Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation* signed on 31 May 1997 and entered into force on 1 April 1999. The treaty complemented the ones signed on 28 May 1997. Its draft was already presented in 1995, but Moscow delayed the signature especially because of the difficulty in reaching an agreement on the status of Sevastopol naval base in Crimea.

<sup>47</sup> *Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation*, 31 May 1997, Article 3.

<sup>48</sup> SPECTER (1997) *Setting Past Aside, Russia and Ukraine Sign Friendship Treaty*, in *The New York Times*.

<sup>49</sup> *Treaty on the Establishment of the Eurasian Economic Community* (EurAsEC Treaty), signed on 10 October 2000 and entered into force on 31 May 2001. The Eurasian Economic Community was created to effectively implement the formation of a Single Economic Space (*Agreement on the Customs union and Common economic space*, signed on 26 February 1999) by the Customs Union (*Agreement on the Customs union between the Russian Federation and Republic of Belarus*, signed on 6 January 1995, entered into force on 30 November 1995; *Agreement on the Customs union*, signed on 20 January 1995) member nations and to coordinate their strategies as they integrated into the global economy and the system of international commerce.

the Collective Security Treaty Organization (CSTO)<sup>50</sup>, which was formed by Russia, Belarus, Armenia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.

Since this first attempt to tight Russia – Ukraine relations did not result as expected by the Kremlin, the following year (2003) a second initiative was inaugurated: Common Economic Space (CES)<sup>51</sup>. The CES was designed to be similar to the European Union, especially in terms of integration and structure: it was thought to be a unified economic space disciplined by supranational administrative bodies. The new organization comprised Russia (as leading state), Belarus, Kazakhstan and Ukraine. In this case, Kučma approach was slightly different and more accommodating with respect to the previous experience with the EEC. This was probably dictated by the need to gain support in view of the upcoming presidential elections (scheduled in 2004). A joint declaration, indeed, was reached, leading to the signature of the CES' founding agreement in 2003 and ratified by the Ukrainian parliament in 2004, providing the Ukrainian incorporation within a system of multi-level integration, but with important reservations and autonomy maintained by Kiev.<sup>52</sup>

#### 1.4 From the Orange Revolution to the Crimean Crisis

During the presidential elections of 2004 the two main opponents were Viktor Yanukovich<sup>53</sup>, who was indicated by Kučma, and Viktor Yushchenko, the leader of the oppositions.

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<sup>50</sup> Collective Security Treaty, signed on 15 May 1992 in Tashkent, entered into force on 20 April 1994. The Treaty was originally signed by the leaders of Armenia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan and, in 1993, by the leaders of Azerbaijan, Belarus and Georgia.

<sup>51</sup> Agreement on Common economic space formation, signed by Kazakhstan, Russia, Belarus and Ukraine, on 23 February 2003, Yalta. The CES was founded with the intention of improving the living standards of the citizens and fostering the steady and effective growth of the economies of its member states. The free movement of people, capital, products, and services across the boundaries of the member nations is its main tenet.

<sup>52</sup> DRAGNEVA & WOLCZUK (2016), *Between Dependence and Integration: Ukraine's Relations With Russia*, in *Europe-Asia Studies*, vol. 68, no.4, pp. 684 – 688.

<sup>53</sup> The name of Viktor Yanukovich was presumably appointed by the *Donetsk's* oligarchs' clan, even if, concretely, only three oligarchs actively sustained the candidate: Rinat Akhmetov (the founder and president of System Capital Management, a major financial and industrial holding company, as well as president of the football club *Shakhtar Donetsk*), Viktor Pinčut (the founder and owner of EastOne Group LLC, an international investing, project funding and financial advisory company, as well as of the Interpipe group, which is one of Ukraine's most important pipe, wheel and steel producers) and Viktor Medvedčuk (funder of the law firm BIM, entrepreneur and politician; it has recently become known as one of the closest Putin's friend in Ukraine). COLONNA (2022), *Ucraina Tra Russia E Occidente - Un'identità Contesa*, Milano: Edilibri II ed., p. 106.

The electoral campaign was an early sign of the general mood surrounding the elections: in September, Yushchenko became ill and was taken abroad for treatment, during this period it was made known that he was suffering from dioxin poisoning. Additionally, many activists and university students were arrested or threatened during that period.

In October there was the first turn which resulted in the leadership of Yushchenko, while Yanukovich was in second position. The second turn, surprisingly, resulted in the victory of Yanukovich (49,5%) over Yushchenko (46,6%). It became immediately clear that there had been massive frauds: for example, in the *Donets'k* region the voter turnout rose from 78% to 96.2%, with 97% of the preferences supporting Yanukovich; seemingly, in *Luhans'k* the voter turnout climbed from 80% to 89.5% resulting in 92% of votes for Yanukovich.<sup>54</sup>

Immediately after the results' announcement, a massive number of people start to protest in *Majdan Nezaležnosti* (Kiev) demanding to declare the poll invalid. The Orange Revolution, in fact, took its name from the colour of Yushchenko's supporters and the colour characterizing all his electoral campaign.

A few days later, the national Supreme Court annulled the results because of the occurrence of massive frauds and it convened a new turn to be held on 26/12/2004. During that turn, it was registered the largest contingent of international observers in history (around 300.000 Ukrainian observers and 12.000 international ones). The result saw Yushchenko's victory with 51,99%, he won in the West but also, unexpectedly, in the Centre; while Yanukovich stopped at 44,19% thanks to the voters of the South-East.<sup>55</sup>

### 1.5 Ukraine between Russia and the EU

Considering now the international perspective, since the independence of 1991, the country had adopted a double relationship with the East (Russia) and with the West of Europe. From the election of Yushchenko, however, Kiev intensified its contacts with the EU, but, before explaining their bilateral relations of those years, it is interesting to start from previous events.

The European Community was, in fact, one of the first international entity to formally establish relationship with the newly independent Ukraine back in 1991: through the

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<sup>54</sup> KARATNYCKY (2005), *Ukraine's Orange Revolution*, in *Foreign Affairs*, vol. 84, no. 2, pp. 36-37.

<sup>55</sup> VASSALLO (2022: 281-283).

Declaration of the European Council on Ukraine, the Community recognized *de iure* the state's independence.

In 1993, the *Verkhovna Rada* approved a new Resolution with the purpose of designing a new path towards the establishment of a membership in the European Community.<sup>56</sup>

The next year, after three rounds of negotiations with Ukraine, the Partnership and Cooperation Agreement was reached, (which replaced the previous agreement Cooperation Agreement of 1989) between the European Communities and their States and Ukraine.<sup>57</sup>

Article 1 of the Partnership and Cooperation Agreement between the European Communities and their Member States, (herein PCA), enlisted the main objectives of the partnership as being: the construction of a political dialogue between the Parties and the promotion of close political relations; the promotion of strong economic relations for trading and investments; the pose the basis for mutually advantageous economic, social, financial, civil scientific technological and cultural co-operation; and, finally, to provide support to Ukraine in its democratic consolidation and in the development of a strong market economy<sup>58</sup>.

The Agreement underlined the willingness of both parties to reach a free trade area and fixed, for 1998, the year for the evaluation of Ukraine's progresses in that area.

Moreover, the PCA established the construction of a political dialogue at high level, it provided the initiation of the "most-favoured-nation" (MFN) treatment in relation to the trade of goods and it promoted the progressive liberalization of the cross-border supply of services. Finally, it identified twenty-five areas of future economic cooperation: industrial cooperation, investment promotion and protection, public procurement, standards and conformity assessments, mining and raw materials, science and technology, education and training, agriculture and agro-industrial sector, energy, civil nuclear sector (including cooperation on the consequences of the Chernobyl disaster), environment, transport, space, telecommunications, financial services, money laundering, monetary policy, regional development, social cooperation, tourism, small

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<sup>56</sup> TRAGNIUK (2016), *European Union and Ukraine: Some Issues of Legal Regulation of Relations – From Partnership and Cooperation Agreement to Association Agreement* –, in *Critical Quarterly for Legislation and Law / Revue critique trimestrielle de jurisprudence et de législation*, vol. 99, no. 1, p. 46.

<sup>57</sup> *Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Ukraine, of the other part*, signed on 14 June 1994, entered into force on 1 March 1998. Official Journal. - Series L 049. - P. 0001 - 0002.

<sup>58</sup> Weeks later President Putin confirmed that, among the protesters, there were militants of the Russian Army, the ones that have been called by the international press and media as "little green men".

and medium sized enterprises, information and communication, consumer protection, customs, statistical cooperation, economics and drugs.

However, the PCA was not regarded as being problematic or too much intrusive for the relationship between Russia and Ukraine, since it explicitly defined the maintenance and the development of a privileged cooperation between the States “which have emerged from the dissolution of the Union of Soviet Socialist Republics” as “essential for the future prosperity and stability of the region”<sup>59</sup>. Moreover, the Agreement recognized the “Ukraine’s wish to maintain cooperative relations with other Independent States”, which essentially preserved and recognised the centrality of the relationship between Ukraine and Russia<sup>60</sup>.

Another important step towards the harmonization of Ukraine’s national legislation with the EU law and its standards (*acquis communautaire*) was taken with the adoption of the Resolution of the Cabinet of Minister of Ukraine (entitled On the Concept of Adaptation of Ukraine’s Legislation to the European Union Legislation) of 1998, in which a mechanism of compatibility between national and EU legislation was designed.<sup>61</sup>

The intentions of Ukraine *vis-à-vis* the EU were revealed through the adoption of the “Program of Integration of Ukraine into the European Union” in September 2000. The Program was approved by Presidential Decree, and it was presented as “the main tool of the overall strategy towards Ukraine's accession to the EU in the whole spectrum of cooperation - political, social, financial, economic, trade, scientific, educational, cultural, etc.”.<sup>62</sup> In the First Section, the document presented the willingness to realize the “appropriate reforms” to implement the PCA and to achieve full compliance with the Copenhagen criteria. In the following sections, the program presented the short/medium/and long-term accomplishment to fulfill in different sphere of the national public life, such as the situation of the rule of law, the judicial system, the protection of human rights and of national minorities.<sup>63</sup>

In 2004, the EU experienced the largest enlargement with the inclusion of ten new countries, namely: Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia. The impressive Eastern Enlargement was followed by the

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<sup>59</sup> *Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Ukraine, of the other part*, Article 3 § 1.

<sup>60</sup> *Supra*, Article 3 § 2.

<sup>61</sup> TRAGNIUK (2016: 50).

<sup>62</sup> Preamble of the *Program of Ukraine's integration into the European*, approved by Presidential Decree N. 1072/2000 of 14.09.2000.

<sup>63</sup> *Ibidem*, Section II, III and IV.

initiation of the European Neighbourhood Policy<sup>64</sup> (hereby ENP), which was built on the ideas of conditionality and partnership: the strength of the relationship between the EU and its neighbouring countries was linked to the extent to which several values and principles were shared between them (for example respect for human rights, the rule of law and market economy). Ukraine became a neighbouring country in that period.<sup>65</sup> Within the ENP strategy, the most important instruments were the Actions Plan; in particular the EU-Ukraine Action Plan<sup>66</sup> was approved by the EU-Ukraine Cooperation Council on 21 February 2005. On the one hand, the Action Plan presented incentives directed to prepare the country for entering the WTO<sup>67</sup> (which was a pivotal condition in order to access the free trade area); and, on the other hand, it set a program to organize the actions to be taken within the context of the Partnership and Cooperation Agreement. The accession of Ukraine to the WTO was officialized in May 2008 through the “Protocol on the Accession of Ukraine to the Marrakesh Agreement establishing the World Trade

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<sup>64</sup> The ENP was launched in 2003 and developed throughout 2004, it finds its legal basis in Article 8 of the Treaty on European Union (TEU), Title V of the TEU (The External Action), as well as in Articles 206-207 (trade) and Articles 216-219 (international agreements) of the Treaty on the Functioning of the European Union (TFUE). The ENP was designed with a view of preventing the creation of fresh lines of division between the expanded EU and its neighbours and, instead, enhancing the prosperity, stability, and security of everyone. It is founded on democratic, legal, and respect for human rights principles. For further information see SMITH (2005) *The outsiders: the European neighbourhood policy*, in *International Affairs*, Vol. 81, no. 4, pp. 757–773. Available online; BARBÉ & JOHANSSON-NOGUÉS (2008). *The EU as a Modest “Force for Good”: The European Neighbourhood Policy*, in *International Affairs* (Royal Institute of International Affairs 1944-), Vol. 84, no. 1, pp. 81–96.

<sup>65</sup> The ENP was directed toward both Eastern (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine) and Southern countries (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Occupied Palestinian Territory, Syria, Tunisia). Conversely, between 2003 and 2005, the EU and Russia were developing a new bilateral project leading to the creation of four “Common Spaces”, being an economic space; a freedom, security and justice space; an external security space; and a research, education and culture space. Further information will be given in the fourth chapter.

<sup>66</sup> Communication from the Commission to the Council, *European Neighbourhood Policy*, 12 May 2004, COM(2004) 373 final. Available online. The Action Plans were conceived within the framework of the European Neighborhood Policy (ENP) and they were proposed by the EU Commission as result of deep discussion with the Permanent Representatives Committee and the relevant Council working groups. Specifically, the EU-Ukraine ENP Action Plan was aimed to strengthen the relationship between the EU and Ukraine, promoting a number of activities, among others supporting internal political and economic reforms and helping the State to prepare its membership of the WTO. More information available at EU Commission Press Corner (2005), *EU-Ukraine – Strengthening the Strategic Partnership*, MEMO/05/57. Available online.

<sup>67</sup> *Marrakesh Agreement establishing the World Trade Organization*, signed on 14 May 1996 in Marrakesh and entered into force on 1 January 1995, registration no. 31874.

Organization”<sup>68</sup>, which was subsequently ratified by the *Verkhovna Rada*<sup>69</sup> the following month. From that moment, it started to period of 30 days before the official start of the membership status.<sup>70</sup>

In the meantime, between 2007 and 2011, there were continuous negotiations and contacts between the EU and the state regarding the Association Agreement and the introduction of the Deep and Comprehensive Free Trade Area (DCFTA)<sup>71</sup>, but this process was stopped by the economic crisis of 2009.

In 2009 Ukraine was experiencing a very difficult situation, facing a severe economic crisis (which was affecting in particular the sector of industrial production) and, also, a political crisis characterized by the rivalry between the President Yushchenko and the Prime Minister Timoshenko and the upcoming presidential elections. In that context Putin caught the opportunity to restore, at least partly, his influence in Ukraine as response to the strengthening of the relationships between Kiev and Brussels.<sup>72</sup>

The furniture of gas (to which the Ukrainian industrial production was highly dependent as previously pointed out) became the leverage: by the end of 2008, Russia demanded the repayment of the massive gas debt owned by Kiev; furthermore, Moscow scheduled an increase of gas price starting from January 2009. Since no agreement was reached before January 2009, Russia completely closed gas supply to Ukraine (and to Europe). Several reciprocal accusations began between *Gazprom* (the Russian energy company) the Kiev’s Government. After two weeks of closure (resulting in important damages especially with

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<sup>68</sup> *Protocol on the Accession of Ukraine to the Marrakesh Agreement establishing the World Trade Organization*, signed on 15 May 2009, in Geneva, reference: WLI/100. The process for the accession was already started in 1993, when Ukraine submitted the application regarding the intention to join the GATT. Afterward, formal and informal meetings were organized between the state and the WTO Working Party, arriving to the adoption of the “accession package” for Ukraine (an agenda reporting market access commitment, and a draft of the Accession Protocol).

<sup>69</sup> “On Ratification of the Protocol of Accession of Ukraine to the World Trade Organization”, approved by the Parliament on 10 April 2008, law no. 250-VI. Available at: <https://zakon.rada.gov.ua/laws/show/en/250-17>.

<sup>70</sup> Protocol on the Accession Of Ukraine, approved on 5 February 2008, annexed to the *Report of the Working Party on the Accession of Ukraine to The World Trade Organization*. These documents certify the country’s accession to the WTO Agreement, define the Schedules and outlines final provisions for timing of acceptance of the Protocol and full membership of the WTO.

<sup>71</sup> The Deep and Comprehensive Free Trade Area (DCFTA) is an integral part of the Association Agreement signed by the EU and Ukraine (*Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part*, 26 May 2014 in Brussel and entered into force on 1 September 2017, OJ L 161). The DCFTA calls for the substantial liberalization of bilateral commerce, the removal of tariffs and quotas, and the unification of the legal and regulatory systems. Currently there are three DCFTAs between the EU and Georgia, Moldova and Ukraine respectively.

<sup>72</sup> HAFNER & BIGANO (2009), *Russia-Ukraine-Europe gas crisis of January 2009: causes, lesson learned and strategies for Europe*, in *Policy Brief - Fondazione ENI Enrico Mattei*.



respect of a few Balkan countries), on 19<sup>th</sup> January Putin and Timoshenko signed a new agreement (a transit contract) covering a ten-year period. The contract was also signed by *Gazprom* and *Naftogaz* (the Ukrainian gas company) and it provided that, starting from 2010, the Ukrainian's gas price would have been assimilated to the European one, maintaining a discount for 2009<sup>73</sup>.

At the presidential elections of January 2010, Yanukovich was the leading candidate at the end of the first turn, followed by the former Prime Minister Julija Timoshenko. At the second ballot, Yanukovich won with the 48.95% of the votes, he was particularly sustained by the voters of the East and by the oligarchs of the Donbas<sup>74</sup>.

The election of Yanukovich marked the beginning of the closeness' restoration between Ukraine and Russia, for example demonstrated by the Kharkiv Pact of 2010<sup>75</sup>.

Indeed, in April 2010, Presidents Yanukovich and Medvedev met in Kharkiv and signed an agreement granting a prolongation of the lease on Black Sea fleet from 2017 to 2042. In return, Moscow offered a huge discount on the price of gas (from \$330 for 1.000 cb, to \$100)<sup>76</sup>.

Only three years later, Yanukovich refused to sign the Association Agreement with the EU starting a wave of protests which became known as the Euromaidan Protests. The central demand was the immediate signature of the Association Agreement, but it was denounced also the historical regime of corruption that characterized the whole national administrative apparatus.

The rally started in November, after the U-turn made by the President right before the Vilnius Summit<sup>77</sup> and it gathered thousands of students and protesters all over Kyiv,

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<sup>73</sup> *Supra*, pp. 2-3

<sup>74</sup> VASSALLO (2022: 293).

<sup>75</sup> *The Agreement between Ukraine and Russia on the Black Sea Fleet in Ukraine (Kharkiv Pact)*, signed on 21 April 2010 in Kharkiv, Ukraine, by Ukrainian President Viktor Yanukovich and Russian President Dmitry Medvedev, ratified by the parliaments on 27 April 2010. The Agreement provided the exchange of a long-term discounted contract to supply Ukraine with Russian natural gas with the lease on Russian naval installations in Crimea extended beyond 2017 to 2042 with an additional five-year renewal option. For more information consult CONNOLLY & COPSEY (2011) *The Great Slump of 2008–9 and Ukraine's Integration with the European Union*, in *Journal of Communist Studies and Transition Politics*, vol. 27, no. :3-4, pp. 541-565; SHERR (2010), *The Mortgaging of Ukraine's Independence*, in *International Affairs Journal*, available online.

<sup>76</sup> HARDING (2010), *Ukraine extends lease for Russia's Black Sea fleet*, in *The Guardian*.

<sup>77</sup> The Eastern Partnership Summits (EaP Summit) are held every two years between the EU and the six Eastern European and South Caucasus partner countries: namely, Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine. The Summits are aimed to discuss the progresses and the future roadmap of the Eastern Partnership, and they are always closed with the signature of a Joint Declaration which sum up the results of the meetings and declare the future commitments. The EaP Summit of 2013 was held in Vilnius on 28-29<sup>th</sup> November 2013.

especially at the Independence Square (*Majdan Nezaležnosti*, from which the name Euromaidan).

The most striking fact happened on 30<sup>th</sup> November 2013 when the national special forces used violence in order to disperse the demonstrators, resulting in several seriously wounded people: it was the first time, since the independence, in which the government had resorted to the use of force against protesters. In December the Coordination Centre of National Resistance was created by the leaders of the opposition and several activists, in the meantime, Yanukovich signed a new economic deal with Putin which inflamed the manifestations.<sup>78</sup> Indeed, by the very end of the year, demonstrators reversed on the streets transforming what started as a group of students protesting at Independence Square (Euromaidan), to a real revolutionary movement.<sup>79</sup> It was drafted the so-called 'Manifesto of the Maidan' demanding the freedom for the people arrested, as well as of the political prisoners, the discharge of the minister of interior and the condemn of the corruption affecting president Yanukovich and the oligarch groups controlling the nation. The Euromaidan became a daily gathering place and campsite for thousands of people, while the political opposition with many civil leaders organized the Council of National Resistance enhancing the coordination between the political side and the social one.<sup>80</sup>

Despite the violence culminated in February resulting in considerable casualties, the protests (later called 'the Revolution of Dignity'), led to the end of Yanukovich presidency, since he fled the State on 22 February 2014. The *Verkhovna Rada* considered the act as unconstitutional accusing the President of having abandoned his duties. Consequently, new elections were scheduled for March 2014.<sup>81</sup>

As response to the parliamentary deposition, new protests sparked in the Crimean Peninsula, which were, also, supported by the Russian decision to put its military system on high alert and to organize mass military exercises alongside the border. As result of

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<sup>78</sup> It must be pointed out that, up until the end of 2013 Ukrainian Central Bank continued to use reserves in an effort to maintain parity with both the dollar and the euro; as a result, as these reserves ran out. The bank estimated the necessity of 15 billion dollars to be able to repay the debt by 2014, thus the signature of the Association Agreement was linked to the provision of financial aid by the EU. However, the Union offered 1 billion USD, while, at the same time, Russian authorities issued an offer of 15 billion USD together with an additional discount of gas price. For this reason, in December 2013, presidents Yanukovich and Putin defined the economic agreement between the two States. SPOLTORE (2014), *Ukraine caught between East and West*, in *The Federalist political revue*, Single Issue.

<sup>79</sup> DIUK (2014), *EUROMAIDAN: Ukraine's Self-Organizing Revolution*, in *World Affairs*, vol. 176, no. 6, pp. 12-14.

<sup>80</sup> *Supra*

<sup>81</sup> SHVEDA & PARK (2016) *Ukraine's revolution of dignity: The dynamics of Euromaidan*, in *Journal of Eurasian Studies*, vol. 7.

the rallies, a few of Crimean militants occupied the government offices<sup>82</sup> raising the Russian flag.

On 1<sup>st</sup> May 2014, the Russian Parliament approved Putin's request to send troops as response to the situation threatening the lives of Russian citizens (in Crimea, around 60% of the population is defined as "ethnically Russian"), as application of the Law on Defense.<sup>83</sup> In that moment, the Ukrainian forces did not have the capabilities to face both the Crimean militants and the Russian army, thus almost immediately withdrew, and the Peninsula fell under Russian control<sup>84</sup>. On 11 May 2014, the Crimean Parliament approved the independency declaration, which was confirmed on 16 May after a secession referendum<sup>85</sup> backed by a percentage reaching over 95% of voters.<sup>86</sup>

The next day, the Crimean Parliament proclaimed the independence of the Peninsula and the creation of the sovereign State of Crimea. On 18<sup>th</sup> March, President Putin and other Crimean leaders signed an accession treaty into Russia.<sup>87</sup> A few days later, Putin signed

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<sup>82</sup> Weeks later President Putin confirmed that, among the protesters, there were militants of the Russian Army, the ones that have been called by the international press and media as "little green men".

<sup>83</sup> *Federal Law on Defence* No-61-FZ, approved on 31/05/1996 and amended by *Federal Law of the Russian Federation* no. 252-FZ of 9 November 2009 "Amending the Federal Law "On Defence"". Article 10 of said law introduced the possibility to deploy armed forces beyond the territorial boundaries of the Russian Federation in the following cases: (a) to repel an armed attack on Russian Federation Armed Forces formations, other troops or organs deployed beyond the territorial boundaries of the Russian Federation; (b) to repel or prevent an armed attack on another State which makes a corresponding request to the Russian Federation; (c) to protect Russian Federation citizens beyond the territorial boundaries of the Russian Federation from armed attack; and (d) to combat piracy and ensure the security of shipping. In this case, Putin sustained that Russian citizen living in Crimea could be victims of violence perpetrated by Ukraine.

<sup>84</sup> GRANT (2015), *Annexation of Crimea*, in *American Journal of International Law*, vol. 109, pp. 68–95.

<sup>85</sup> The referendum was based on the Resolution "*On the all-Crimean Referendum*" adopted by the Supreme Rada of the Autonomous Republic of Crimea on 6 March 2014. That resolution was justified based on Constitutional Article 18.1.7 (assigning to the Autonomous Republic the power of "calling and holding of republican (local) referendums upon matters coming under the terms of reference of the Autonomous Republic of Crimea") and Article 26.2.3 (assigning to the Supreme Rada the power of "passing of a resolution upon holding of a republican (local) referendum"). The legal basis of these provisions can be traced in Article 138.2 of the Constitution of Ukraine providing that "organising and conducting local referendums is within the competence of the Autonomous Republic of Crimea". On 21 March 2014, the Venice Commission delivered an opinion about the legitimacy of the referendum (Venice Commission, opinion no. Opinion no. 762 / 2014, "*On whether the decision taken by the Supreme Council of the autonomous republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea's 1992 constitution is compatible with constitutional principles*", adopted by the 98<sup>th</sup> Plenary Session. CDL-AD(2014)002). The Venice Commission held that "the Constitution of Ukraine [...] provides for the indivisibility of the country and does not allow the holding of any local referendum on secession from Ukraine, as remarked by articles 1, 2, 73 and 157. Nonetheless, "the Constitution of Crimea does not allow the Supreme Soviet of Crimea to call such a referendum, but only a consultative referendum on increased autonomy could be permissible under the Ukrainian Constitution".

<sup>86</sup> WALKER (2022), *Ukraine crisis: A timeline (2014 - present)*, in *House of Commons Library*, p. 13.

<sup>87</sup> President Putin notified the Federation Council of the Federal Assembly, the State Duma of the Federal Assembly and the Government of proposals by the State Council of the Republic of Crimea the proposal by the Crimean State Council and the Sevastopol Legislative Assembly Regarding their Admission to the Federation and the Formation of New Constituent Territories, by virtue Article 6 of the *Federal*

a federal law admitting the Republic of Crimea within the Russian Federation<sup>88</sup>: formally, the Peninsula was annexed as two different entities, the Republic of Crimea (*Krym*) and the city of Sevastopol.<sup>89</sup>

After the Crimean crisis, however, the tensions did not stop.

In April the clashes between the pro-Russian separatist's movement and the Ukrainian nationalists continued in the *oblasti* (regions) of *Donec 'k* and *Luhans 'k*, which form the industrial area of Donbas (therefore the name Donbas War). Both of the regions presented the greatest Russian-speaking community, after Crimea, and proclaimed themselves independent by creating respectively the People's Republic of *Donec 'k* (*Doneckaja Narodnaja Respublika*, DNR) on 7 April 2014 and the People's Republic of *Luhans 'k* (*Luganskaja Narodnaja Respublika*, LNR) on 27 April 2014.<sup>90</sup> In the following month, a referendum was held in both of the regions, which resulted in favor of the independence from Ukraine, but it was not recognized and not verified by any third party (neither by Russia). The last step was the proclamation of the DNR and LNR fusion into the New Russia Federation (*Novorossija*), which, again, was never recognized. The secession had the effect of inflaming a civil war between the separatist troops and the Ukrainian army which resulted in multiple casualties and atrocities perpetrated by both sides.<sup>91</sup>

According to the OHCHR, on 17 July 2014, the total number of civilians victims of the conflict reached at least 3,404<sup>92</sup> (including the 298 deaths on board Malaysian Airlines flight MH17)<sup>93</sup>.

In September 2014, at Minsk, the Ukrainian and Russian representatives (among them Kučma, who was sent without official capacity), together with the OSCE Ambassador Heidi Tagliavini, signed an agreement built on 12 points and called Minsk I. The

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*Constitutional Law on the Procedure of Admission to the Russian Federation and the Formation Within It of New Constituent Territories.*

<sup>88</sup> On 27 March 2014, the UN General Assembly adopted a Resolution calling on States, international organizations, and specialized agencies not to recognize the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the independence referendum and to refrain from any action which could have been interpreted as recognizing any such altered status. (UN General Assembly Resolution no. 68/262, *Territorial Integrity of Ukraine*, adopted at the 80th plenary meeting, § 6). The Resolution received 11 votes against, from: Armenia, Belarus, Bolivia, Cuba, Democratic People's Republic of Korea, Nicaragua, Russian Federation, Sudan, Syrian Arab Republic, Venezuela, Zimbabwe.

<sup>89</sup> See President of Russia Press Release, *Laws on Admitting Crimea and Sevastopol to the Russian Federation*, on 21 March 2014. Available online.

<sup>90</sup> VASSALLO (2022: 307).

<sup>91</sup> *Supra* (2022: 306-312).

<sup>92</sup> Office of the High Commissioner for Human Rights, *Conflict-related civilian casualties in Ukraine*, p. 3. Available online at: < [https://ukraine.un.org/sites/default/files/2022-02/Conflict-related/20EN\\_0.pdf](https://ukraine.un.org/sites/default/files/2022-02/Conflict-related/20EN_0.pdf)>.

<sup>93</sup> The Malaysia Airlines flight MH17 was travelling from Amsterdam to Kuala Lumpur with 283 passengers and 15 crew members when crashed, on 17 July 2014, because of a Russian Buk missile.

agreement included a ceasefire supervised by the OSCE, the creation of a security area in the border region, the release of hostages and unlawfully detained people and, finally, the opening a diplomatic dialogue.<sup>94</sup>

Unfortunately, the agreement did not endure because of violations coming from both sides.

On 11<sup>th</sup> February 2015 a second meeting was held, in Minsk, at which the German Chancellor Merkel, the France President Hollande, the Russian President Putin and the Ukrainian President Porošenko were present. The result was a 13-points Package of measures for the Implementation of the Minsk agreements (Minsk II)<sup>95</sup> providing: the withdrawal of weapons from both parties which was to be supervised by the OSCE, the distribution of humanitarian assistance, the adoption by Ukrainian government of a special legislation concerning the areas of the *Donec 'k* and *Luhans 'k*, the intensification of the cooperation within the Trilateral Contact Group.<sup>96</sup>

The reactions and the effort taken by the different European regional organizations (namely, the Council of Europe, the OSCE and the EU) will be further discussed in the next chapters.

Moving a little backwards in 2014, after being elected, President Porošenko signed the Association Agreement<sup>97</sup> between the EU and Ukraine (which replaced the previous PCA).

As provided in the first Article, the agreement recognized the common values and privileges links between the two parties, the necessity to provide an appropriate framework to enhance the political dialogue and to strengthen peace and stability in the regional and international dimension; it also aimed to establish condition for the integration of Ukraine within the EU Market through the enhancement of the economic and trade relations, and the approximation of its legislation to that of the Union. Finally,

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<sup>94</sup> *Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan*, between Ukraine, Russia and the OSCE, signed on 5 September 2014 at Minsk.

<sup>95</sup> Package of measures for the Implementation of the Minsk agreements, between Ukraine, Russia and the OSCE with the supervision of France and Germany. Signed in Minsk, on 12 February 2015.

<sup>96</sup> The Trilateral Contact Group (TCG) was formed by senior representatives of Ukraine, the Russian Federation and the OSCE Chairperson-in-Office. It was created in May 2014 after the Ukrainian presidential elections, and it was designed in order to facilitate the diplomatic resolution of the Donbas War. In February 2015 it opened the activities of working groups, which also involved representatives of certain areas of the Donetsk and Luhansk regions. The working groups were established based on the provisions contained in the Protocol Minsk II.

<sup>97</sup> *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part*, published on the Official Journal of the European Union on 29 May 2014, no. L 161/4.

the AA set out the condition for increasing cooperation in the field of justice, freedom and security and for creating the condition to enhance cooperation in areas of mutual interest.<sup>98</sup>

The agreement, thus, can be considered a far-reaching framework, designing the common objective of deepening the mutual political and economic relations, with the medium-term ambition of establishing a Deep and Comprehensive Free Trade Area (DCFTA).

While, in 2015, the Eurasian Economic Union (EAEU) was created by Russia, Belarus and Kazakhstan as a single economic actor, Ukraine saw the Deep and Comprehensive Free Trade Area (DCFTA) with the EU entering into force the next year, 2016. The benefits for Ukraine coming from the DCFTA should have covered different areas: an improved welfare, the duty-free access to the EU Market and an easily access to third-countries markets and a rise of investments. However, the Agreement did not seem to be as favorable to the State as predicted. Trade was the most damaged sector, since, while the Eu's trade with Ukraine did not increase, the one with Russia was substantially cut. Moreover, the substitution of destination market, even in the medium term, was difficult because of the physical and historical proximity between the Ukrainian market and the one of the Eurasian Economic Union: the result was that nothing more than 15% of Ukrainian exports towards the EAEU before 2014 could be redirected towards the EU.<sup>99</sup> Finally, the growth of the technology and industrial sector, which was previously relatively active in terms of exports towards Russia, was definitely ended, since the primary export from the State to the EU was limited to agricultural products, raw material, and semi-finished goods<sup>100</sup>.

### 1.6 Focus on the relationship between Ukraine, Russia and NATO

The dialogue between the newly independent Ukraine and NATO<sup>101</sup> begun in 1991, when

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<sup>98</sup> *Supra*, Article 1.2(a - f).

<sup>99</sup> MOLCHANOV (2016), *Choosing Europe over Russia: what has Ukraine gained?*, in *European Politics and Society*, vol. 17, no. 3, p. 13.

<sup>100</sup> *Supra*, (2016: 9).

<sup>101</sup> *The North Atlantic Treaty* (also known as the Washington Treaty), signed on 4 April 1949, in Washington, entered into force on 24 August 1949. NATO was originally created by the United States, Canada and ten Western States as a peacetime defensive alliance. However, between 1949 and 1950 the Soviet Union tested its first atomic weapon, the Communist Revolution exploded in China, and South Korea was invaded by the North Korean force. All these international changes pushed the Organization into becoming a full functioning defensive structure. MILLER (1989), *A Short History of NATO*, in *The Department of State bulletin*, vol. 2149, p. 2. Today, NATO is a political and military alliance formed by 30 States committed to the peaceful resolution of disputes. The North Atlantic Council is the decision-making bodies, formed by the Foreign Ministers of the Member States (representatives of the Member

the country joined the North Atlantic Cooperation Council<sup>102</sup> (NACC) and, afterwards the Partnership for Peace programme<sup>103</sup> (PfP). In 1994 Ukraine became the first member of the CIS, signaling the pro-Western direction taken by the Kravčuk's presidency which understood NATO as the best alliance in order to guarantee the national security.<sup>104</sup>

However, since the election of Kuchma, in the second half of 1994, the state pursued a more nuanced course of action when it came to foreign policy.<sup>105</sup> The relations between Ukraine and NATO were further deepened in 1997, with the establishment of a Charter of a Distinctive Partnership between the two.<sup>106</sup> The parties affirmed their determination to advance their cooperation and build a distinctive and successful partnership in order to further stability and shared democratic values in Central and Eastern Europe. The Charter provided Ukraine's participation in operation "including peacekeeping operations, on a case-by-case basis, under the authority of the UN Security Council, or the responsibility of the OSCE" and other specific operation if decided by the North Atlantic Council.<sup>107</sup> Finally, the NATO-Ukraine Commission was established as being a forum for assessing and implementing the relationship between the parties, planning future development and suggesting possible improvements.<sup>108</sup>

During the Prague Summit, in 2002, the Heads of state of the Alliance recognized the efforts made by Ukraine to reach "full Euro-Atlantic integration" and encouraged the

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States are also divided into subordinate committees). Moreover, the Military Committee is composed of Member States' Chiefs of Defence (CHOD) and assists the Council (but also the Defence Planning Committee and Nuclear Planning Group) giving assistance on issues related to military policy and strategy. Finally, the Secretary General (who currently is Jens Stoltenberg) coordinates the work of the Organization and organize the activities of the international staff. For further information on NATO see: DAALDER & GOLDGEIER (2006), *Global NATO*, in *Council of Foreign Nations*, Vol. 85, No. 5, pp. 105-113 (available online); WILLIAMS (2000), *From alliance to security community: NATO, Russia, and the power of identity*, in *Millennium Journal of International Studies*, vol. 29, no. 2 (available online).

<sup>102</sup> *North Atlantic Cooperation Council Statement on Dialogue, Partnership and Cooperation*, issued on 20 December 1991, no. M-NACC-1(91) 111. The statement was released after the inaugural meeting of the Council, which marked the beginning of a new collaboration between NATO Members and the representatives of Bulgaria, the Czech and Slovak Federal Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Romania, and the Representative of the Soviet Union.

<sup>103</sup> *Partnership for Peace Programme framework*, launched on 10 January 1994 at the conclusion of the Brussels Summit. the NATO Heads of State issued an invitation to all the NACC partners and to the (former) CSCE states which were willingly to participate. The PfP gave the possibility to each partner to build a bilateral relationship with NATO drafting an agreement with specified priorities and fields of cooperation. See also COLONNA (2022), *La Nato, la Russia e il "laboratorio" dei Balcani (1989-1999)*, in *Ucraina tra Russia e Occidente*, pp. 65-83.

<sup>104</sup> TÜR (2000) *NATO's Relations with Russia and Ukraine*, in *Middle East Technical University*, pp. 27 - 28.

<sup>105</sup> *Supra*.

<sup>106</sup> *Charter on a Distinctive Partnership between the North Atlantic Treaty Organization and Ukraine*, signed on 9 July 1997, during the Madrid Summit.

<sup>107</sup> *Supra*, Part III, Article 5.

<sup>108</sup> *Supra*, Part IV, Article 12.

adoption of the new Action Plan<sup>109</sup> in order to pursue the necessary reforms and make further progresses deepening and enhancing the relationship between the state and NATO.<sup>110</sup>

Finally, Ukraine applied for acquiring NATO membership in 2008, filing the request to receive a Membership Action Plan (MAP)<sup>111</sup>. The willingness to join the Alliance was formally expressed by a joint letter sent by President Yushchenko, Prime Minister Tymoshenko, and Parliament Chairman Arseny Yatsenyuk to NATO Secretary General Jaap de Hoop Scheffer. Among NATO members, the US openly supported Ukraine's accession to the Alliance, as well as Poland, Canada, Lithuania, Latvia, and Romania. However, other states maintained an ambivalent position (among them Germany France, Spain, Italy and Belgium).<sup>112</sup>

Despite the fact that, during the Bucharest Summit, the Heads of NATO member States agreed that Ukraine (and Georgia) would have become members as well in the future<sup>113</sup>, in reality, the MAP was never granted to Ukraine (and neither to Georgia)<sup>114</sup>.

On the other, also the relationship between NATO and the Russian Federation must be briefly analyzed. As mentioned before, in 1991, the inaugural meeting of the North Atlantic Cooperation Council was held. During the meeting, the Soviet ambassador announced the dissolution of the Soviet Union, thus the former Soviet Republic, including Russia, were singularly invited to participate to the NACC<sup>115</sup>.

The willingness to build a new partnership between NATO and Russia was also demonstrated in 1994, when the Federation joined the Partnership for Peace (PfP)

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<sup>109</sup> *NATO-Ukraine Action Plan*, adopted on 22 November 2002, at the end of the Prague Summit. The Action Plan's goals are to clearly define Ukraine's strategic priorities and objectives as it pursues full integration into the Euro-Atlantic security systems and to offer a strategic framework for ongoing and future NATO-Ukraine cooperation.

<sup>110</sup> *Prague Summit Declaration*, issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Prague, Czech Republic on 21 November 2002.

<sup>111</sup> *Membership Action Plan (MAP)*, approved by the Heads of State and Government participating in the Meeting of the North Atlantic Council, signed on 24 April 1999, no. NAC-S(99) 066. The MAP is intended to set in place a programme of activities to help aspirant nations in their preparations for potential future membership, reinforcing that solid commitment to further enlargement.

<sup>112</sup> SUSHKO (2008), Ukraine's NATO Membership Action Plan (MAP) Debates, in *PONARS Eurasia Policy Memo* No. 9, pp. 3-4.

<sup>113</sup> *Bucharest Summit Declaration*, issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest, 3 April 2008, press release no. (2008) 049. Available online.

<sup>114</sup> The fact that NATO declined to sign the MAP for Ukraine and Georgia signalled its incapacity to counterbalance the Russian Federation with respect of the post-Soviet State. To deepen the reflection, see SHELEST (2014), *The relations between NATO and Ukraine*, in SCISO (ed.), *La crisi Ucraina e i problem di sicurezza in Europa*, Rome.

<sup>115</sup> See note 102.



programme<sup>116</sup>. Moreover, in 1997, NATO leaders and President Yeltsin signed the NATO-Russia Founding Act, declaring their willingness of working together “to contribute to the establishment in Europe of common and comprehensive security based on the allegiance to shared values, commitments and norms of behavior in the interests of all states”<sup>117</sup>. With the Act, the parties defined specific areas of mutual interest related to the stability of the Euro-Atlantic space including, among others, conflict prevention, crisis management, joint operations (especially peacekeeping operations), exchange of information on defense policy and strategy, nuclear safety and it was reaffirmed the participation of Russia to the Euro-Atlantic Partnership Council<sup>118</sup> and to the Partnership for Peace programme<sup>119</sup>. Finally, the parties recognized the importance of democracy, the rule of law, respect of human rights and civil liberties and pledged to refrain from the threat or use of force against each other or against any other state<sup>120</sup>.

The development of the relationship between Russia and NATO temporarily stopped in 1999 because of the Kosovo crisis, but they were resumed and further strengthened in 2002 with the signature of the Rome Declaration<sup>121</sup>. With the Declaration, the parties established the NATO-Russia Council which would have provided a mechanism for consultation, consensus-building, cooperation, joint decision, and action improving the security of the Euro-Atlantic region<sup>122</sup>.

The relationship between NATO and Russia faced new difficulties in 2008 during the Georgia crisis<sup>123</sup> but the cooperation was officially re-established in 2010 during the

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<sup>116</sup> See note 103. For further information see also RYNNING (1996), *A Balancing Act: Russia and the Partnership for Peace*, in *SAGE Journals*, Vol. 21, no. 2, pp. 221-234 (available online); BORAWSKI (1995), *Partnership for Peace and beyond*, in *International Affairs* (Royal Institute of International Affairs 1944-), vol. 71, no. 2, pp. 233–246 (available online).

<sup>117</sup> *Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation*, signed on 27 May 1997 in Paris, Chapter I, § 1.

<sup>118</sup> The Euro-Atlantic Partnership Council (EAPC) was established in 1997 as replacement of the North Atlantic Cooperation Council (NACC) as provided by the Basi Document of the Euro-Atlantic Partnership Council, approved on 30 May 1997, no. M-NACC-EAPC-1(1997) 066. The EAPC was designed to provide a broader framework for consultation among the members touching different political and security-related issues. Moreover, the Council aimed to improve the relationship with the Partner Countries increasing their involvement in the decision-making process and in the number of activities in which they could participate.

<sup>119</sup> *Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation*, Chapter III.

<sup>120</sup> *Supra*, Chapter I.

<sup>121</sup> Rome Declaration, *NATO-Russia Relations: A New Quality*, issued by Heads of State and Government of NATO Member States and the Russian Federation, on 28 May 2002 in Rome.

<sup>122</sup> *Supra*.

<sup>123</sup> Following Russia’s military activity in Georgia, in 2008 the formal meeting of the NATO-Russia Council were suspended (*Final communiqué of the Meeting of the North Atlantic Council at the level of Foreign Ministers held at NATO Headquarters*, issued on 3 December 2008, Brussels, no 153(2008)). However, in 2009, following the NATO Summit on Strasburg and Kehl, the NATO leaders recognised the disagreement with Russia over Georgia and decided to resume the political cooperation under the NRC

Lisbon Summit, when the collaboration between the parties was recognized as of strategic importance<sup>124</sup>.

Following the annexation of the Crimean Peninsula, NATO Foreign Ministers decided to suspend all practical civilian and military cooperation between the Organization and Russia, including the work of the NRC<sup>125</sup>. Since 2014, the NATO-Russia Council has met 11 times: three meetings took place in 2016, three in 2017, two in 2018, and two in 2019. The last meeting of the NRC took place in January 2022, when Russia demanded to NATO to stop admitting any new members and to withdraw forces from eastern Allies<sup>126</sup>. The Organization underlined the maintenance of the Open-Door policy<sup>127</sup> and reaffirmed the right for each nation to choose its own security arrangements<sup>128</sup>. The meeting was concluded with the commitment shared by both parties to resume the dialogue and to set a new schedule for future meetings<sup>129</sup>.

After the beginning of the war between Russia and Ukraine, the Alliance's Leaders condemned unanimously the Russian aggression as well as the participation of Belarus and affirmed their solidarity with the people and government of Ukraine<sup>130</sup>. Additionally, with the Madrid Summit in June 2022, the Alliance recognized the Russian Federation as "the most significant and direct threat to Allies' security and to peace and stability in the Euro-Atlantic area", nonetheless it was decided to keep open the channels of communication with Moscow to manage and mitigate risks, prevent escalation, and increase transparency<sup>131</sup>.

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(*Strasbourg / Kehl Summit Declaration*, issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Strasbourg / Kehl, on 4 April 2009, no. 044(2009)). For further information see SMITH (2008), *The NATO-Russia Relationship: Defining Moment or Déjà vu?*, in *Politique Étrangère*, vol. 4, pp. 759-773 (available online).

<sup>124</sup> *Lisbon Summit Declaration*, issued by the Heads of State and Government participating in the meeting of the North Atlantic Council on 20 November 2010 in Lisbon, no. 155(2010).

<sup>125</sup> *Statement by NATO Foreign Ministers*, issued on 1 April 2014, Press Release (2014) 062. Available online.

<sup>126</sup> See Press conference by NATO Secretary General Jens Stoltenberg following the meeting of the NATO-Russia Council, 12 January 2022. Available online.

<sup>127</sup> The Open Door Policy is based on Article 10 of the North Atlantic Treaty, which provide that "any other European State in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area" may become member of the Alliance. The process of enlargement as based on such policy is aimed at promoting stability, cooperation and building a more secure and democratic Europe. To have further information see: HENDRICKSON (2000), *NATO's Open Door Policy and the Next Round of Enlargement*, in *Parameters*, vol. 30, no. 4, pp. 53-66 (available online); BRZEZINSKI (1998), *NATO: The Dilemmas of Expansion*, in *The National Interest*, vol. 53, pp. 13-17 (available online).

<sup>128</sup> *Ibid.* note 115.

<sup>129</sup> *Ibid.* note 115.

<sup>130</sup> Press Release, *Statement by NATO Heads of State and Government on Russia's attack on Ukraine*, 25 February 2022, no. (2022) 046. Available online.

<sup>131</sup> *Madrid Summit Declaration*, issued on 29 June 2022 by NATO Heads of State and Government participating in the meeting of the North Atlantic Council in Madrid, no. 095(2022). Available online.

### 1.7 Zelensky's presidency and the Russian aggression

At the end of Porošenko mandate and with the beginning of Volodymyr Oleksandrovyč Zelensky's presidency, there was also an intensification of the relations between Ukraine and NATO<sup>132</sup>. It was enacted, indeed, a reform in the security and defense sector and, in June 2017, the Ukrainian Parliament adopted a new legislation enlisting among the strategic national and foreign security objectives the membership in NATO. Subsequently, in 2019, a corresponding amendment of the Constitution entered into force.<sup>133</sup>

At the end of 2020, President Zelensky approved the new National Security Strategy which included an expanded catalogue of threats to national security which included Russia, this posing as central objective the deepening of the cooperation with the EU and NATO, as well as the requirement of preventing an escalation with Russia.

One pivotal point to consider before explaining the events which happened between the end of 2021 and the present days is the article by President Putin entitled "On the historical unity of Russians and Ukrainians" released on 12<sup>th</sup> July 2021<sup>134</sup>.

In this occasion, Putin expressively denied the rightfulness of Ukraine's independence and its separation from Russia. Throughout the article, the President offered his personal

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<sup>132</sup> The accession process to become a member of NATO is based on Article 10 of the Washington Treaty, which provides that NATO Members can officially invite a European State to join the Alliance (this decision must be taken unanimously), afterwards 7 main steps are required. First, NATO experts and representatives meet with exponents of the state concerned in Brussels in order to discuss the willingness and capability of the state to meet the political, legal and military obligations deriving from NATO membership. Secondly, the authorities of the accessing country must send to the NATO Secretary-General a formal letter accepting the commitments of the membership. Third, NATO drafts the accession protocol which will be added to the Washington Treaty and that will be signed by all the Members. The State Parties ratify the protocol following their own national procedures and, subsequently, issue a notification to the United States (which is the country hosting the Washington Treaty), completing steps four and five. At this point, the NATO Secretary-General formally invites the new member to join the Alliance. Finally, the state, accordingly with its own national procedures, submits its accession documents to the US and become a member. CAM (2022), *NATO membership requires long, multi-step process*, in *Anadolu Agency*.

<sup>133</sup> *On Amendments to the Constitution of Ukraine (Regarding the Strategic Course of the State to Acquire Ukraine's Full Membership in the European Union and the North Atlantic Treaty Organization)* it modified the V paragraph of the preamble adding the words "and reaffirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine"; it also modified Article 85(5) "5) determination of the principles of domestic and foreign policy, implementation of the strategic course of the state for the acquisition of full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization"; Article 102 "The President of Ukraine is the guarantor of the implementation of the strategic course of the state towards full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization"; and Article 116(1) "ensures the implementation of the strategic course of the state for full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization". The amendments were approved by the *Verkhovna Rada* on 7 February 2019 by law no. 2680-VIII.

<sup>134</sup> PUTIN (2021).

explanation supporting the view seeing Russians and Ukrainians as being “a whole” and accusing anti-Russian elites of deteriorating the historically positive relations between the two countries. He completely denied the legitimacy of Ukraine’s territory by defying its borders as a “robbery” from Russia. He, moreover, asserted that, after 1991, all the newly independent nations found themselves divided from their “historical motherland” (which was, obviously, Russia). Towards the end of the article, the President underlined that fact that “Kiev simply did not need Donbas” because it was a region which remained loyal to its Russian roots, whereas the rest of the country was influenced by the Western “anti-Russia project”. Finally, he sustained that the Western influence not only damaged the country, but it also wrongfully re-interpreted history in order to divide the two States, conversely, the “true sovereignty of Ukraine was possible only in partnership with Russia”.<sup>135</sup>

In the autumn of the following year, Russian started to move several troops at the border with Ukraine and in Crimea and, in the following months, a great amount of military equipment, missiles and heavy weaponry was moved as well. By the end of the year more than a hundred thousand Russian troops were present at the Ukrainian border, while Putin requested to the US and to NATO to stop any military activity in Eastern Europe and Central Asia. A demand that was rejected by both the US and NATO. At the beginning of 2022, there was an intensification of the negotiations between the US and Russia, also with a consistent intervention of European powers, especially of French President Emmanuel Macron, since France held the Council of the European Union’s presidency. During the bilateral conference between Putin and Macron<sup>136</sup>, the former explained the Kremlin’s request for legally binding security guarantees from the US and NATO, which should include three main key points: (1) the end of NATO’ expansion in the East; (2) the non-deployment of offensive weapon close to the Russian border; and (3) the return to the system in place in 1997<sup>137</sup>. All of his requests have been rejected by NATO.

On 10<sup>th</sup> February Russian government launched what has been defined as the “largest military exercise since the Cold War”, which was coordinated with Belarus alongside the

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<sup>135</sup> *Supra*

<sup>136</sup> Official Internet Resources of the President of Russia, 8 February 2022, *News conference following Russian-French talks*. Available online.

<sup>137</sup> The third point refers to the restoration of the European bloc’s infrastructure and capabilities to their state in 1997, when the NATO-Russia Founding Act was signed (*Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation signed in Paris, France*, approved by the North Atlantic Council on 16 May 1997 and signed by the Secretary-General and by the President of the Russian Federation on 27 May 1997; Part IV, titled “IV. Political-Military Matters” is especially relevant).

Belarus-Ukraine border. In the following days, the Russian government continued to sustain the partial withdrawal of its troop from the borders, while the US intelligence sustained the increase of armed forces and weaponry.

On 21<sup>st</sup> February was a turning in point of the escalation, since President Putin signed two different Executive Order, respectively “On the Recognition of the *Donets’k* People’s Republic” and “On the Recognition of the *Luhans’k* People’s Republic”<sup>138</sup>. He also signed with Denis Pushilin, Head of the DPR<sup>139</sup>, and with Leonid Pasechnik, Head of the LPR<sup>140</sup>, two Treaties of Friendship, Cooperation and Mutual Assistance.<sup>141</sup>

Only three days after the recognition of the DPR and LPR, on 24 February 2022 Putin launched “a special military operation” in Ukraine, while president Zelensky declared the martial law and the full military mobilization against Russia’s action.<sup>142</sup>

The invasion of Ukraine by Russia started with the launch of about 100 missiles and with ground incursion from three main directions: from north (Belarus) towards Kyiv, from east (Western Russia) towards the city of Kharkiv and from south (Crimea) towards the city of Kherson. The Ukrainian resistance was immediately organized, while every official channel started to be used in order to spread information about the conflict. After a month of war, the Russian Ministry of Defence announced the willingness to complete the liberation of the Donbass region in the eastern part of the state.<sup>143</sup>

As consequence of the massive Ukrainian counteroffensive, the Russian troops withdrew from the city of Kyiv, exposing evidence of what has been called the ‘*Bucha Massacre*’. Indeed, according to the local authorities, mass graves were discovered, containing more than 400 civilians. On the other hand, the Russian Foreign Ministry and President Putin

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<sup>138</sup> Official Internet Resources of the President of Russia, 21 February 2022, *Signing of documents recognising Donetsk and Lugansk People’s Republics*. Available online.

<sup>139</sup> *Federal Law On Ratifying the Treaty of Friendship, Cooperation and Mutual Assistance Between the Russian Federation and the Donetsk People’s Republic*, signed on 21 February 2021 in Moscow, adopted by the State Duma and approved by the Federation Council on 22 February 2022.

<sup>140</sup> *Federal Law On Ratifying the Treaty of Friendship, Cooperation and Mutual Assistance Between the Russian Federation and the Lugansk People’s Republic*, signed on 21 February 2021 in Moscow, adopted by the State Duma and approved by the Federation Council on 22 February 2022.

<sup>141</sup> Official Internet Resources of the President of Russia, 22 February 2022, *President signed Federal Law On Ratifying the Treaty of Friendship, Cooperation and Mutual Assistance Between the Russian Federation and the Lugansk People’s Republic* Available online. The Treaty of Friendship, Cooperation and Mutual Assistance signed between Russia and DPR and between Russia and the LPR, established a system of cooperation political, economic, social, military and humanitarian areas.

<sup>142</sup> WALKER (2022: 34-36).

<sup>143</sup> WATSON (2022).

described the discovery as part of the Ukrainian and international propaganda against Russia.<sup>144</sup>

In May, while the Ukrainian troops successfully launched a counteroffensive in the city of *Kharkiv*, the city of Mariupol mostly fell under Russian control marking the end of the *Azovstal* battle (the end of the battle was decided after long negotiations between the parties especially concerning the liberation of the soldiers and civilians which were trapped within the *Azovstal* Iron and Steel Works plant).<sup>145</sup>

Between June and July, the conflict continued as amerced by the intensification of Russian military attacks: the air strikes were not limited to military target, but, conversely, they also disrupted a theatre used as shelter in the city of Mariupol<sup>146</sup>, as well as civil infrastructures in the post of Odesa<sup>147</sup>.

Overall, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has assessed that, since the beginning of the war, there have been 5,514 civilian victims (among them, 356 were children) and 7,698 injured. Nonetheless, the OHCHR have pointed out that the actual number could be higher due to the difficulties in the receipt of information from locations experiencing intense hostilities.<sup>148</sup>

Moreover, since February, more than



Figure 3: Bloomberg (2022), *Assessed control as of March 24*, in *A visual guide to the Russian invasion of Ukraine*. Available online.

<sup>144</sup> SHUSTER (2022), *A Visit to the Crime Scene Russian Troops Left Behind at a Summer Camp in Bucha*, in *Time*.

<sup>145</sup> WATSON (2022).

<sup>146</sup> *Russia-Ukraine war: List of key events, day 152* (2022), in *Aljazeera*. Available online.

<sup>147</sup> *Russia hits key Odesa port day after landmark grain deal: Ukraine* (2022), in *Aljazeera*. Available online.

<sup>148</sup> *Ukraine: civilian casualty update 15 August 2022* (2022), in *Office of the High Commissioner For Human Rights*. Available online.

10.6 million people have been reported crossing the Ukrainian border towards other countries.<sup>149</sup>

Besides the facts and number already mentioned, the military aggression of Russia violating the border of Ukraine has seeing the involvement of many European Regional Organization whose actions will be analyze in the next chapters of this work.

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<sup>149</sup> *Total number of border crossings from and to Ukraine 2022 (2022)*, in *Statista Research Department*. Available online.

## 2. THE COUNCIL OF EUROPE

In this chapter, the relationships of Russia and Ukraine with the Council of Europe will be presented, particularly analysing how the Organization has responded to the events of the last years. The main objective is to reflect upon the attitude that the CoE has adopted towards the Russian Federation since its entrance, by considering the admission process, together with the consequences of the annexation of Crimea in 2014. A brief paragraph will be also dedicated to the membership and the activities of Ukraine and Russia as State Members. Afterwards the sanctions adopted by the Council, namely the suspension procedure and, later on, the expulsion will be presented with a special reasoning dedicated to the legitimacy of the latter.

Consecutively, the focus will be moved on the position taken by the European Court of Human Rights *vis-à-vis* the Russian Federation during the Crimean Crisis and consequently of the aggression of Ukraine.

Finally, a reflection will be made upon the consequences of the expulsion on the effectiveness of the Court's rulings and its influence.

### 2.1 Brief history of the Council of Europe

The Council of Europe is the oldest European organization, it was founded in 1949 and, today, it counts 46 member states (27 of them are members of the EU).

The Statute of the Council of Europe was signed in London<sup>150</sup>, and it contains the main objective of the organization as being the achievement of a “greater unity among its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress”.<sup>151</sup> Moreover, the Statute specifies the centrality of the concepts of rule of law and of protection of human rights and fundamental freedoms, which must be respected by all the Members in order to effectively realize the aim of the Council as previously explained.<sup>152</sup>

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<sup>150</sup> *Statute of the Council of Europe*, signed on 5 May 1949, entered into force on 3 August 1949, ETS no. 001.

<sup>151</sup> *Supra*, Article 1.

<sup>152</sup> *Supra*, Article 3.



Subsequently, the Parliamentary Assembly of the Council welcomed the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>153</sup>, which was signed in 1950. All of the CoE members are parties of the ECHR. The Convention establishes the European Court of Human Rights, under Art. 19, in order to “ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols”.<sup>154</sup> Because of the Convention, the high number of Member States and the Human Rights Court, the Council is widely recognized and the continent’s leading human rights organization.

## 2.2 Ukrainian membership

Ukraine became the 37<sup>th</sup> member of the Council in 1995<sup>155</sup> gaining a representation within all three main bodies of the Council (namely, the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities of Europe), the country obtained, also, the right to elect a person as judge of the European Court of Human Rights.

However, joining the Council, the Ukrainian Government agreed to a number of commitments aimed to fully align the country with the principles of the Organization.<sup>156</sup> In 1999, the Parliamentary Assembly of the Council of Europe (PACE) nominated two special rapporteurs (Mr. *Tunne Kelam* and Mrs. *Hanne Severinsen*) in order to evaluate the progresses made by Kyiv in terms of honoring its obligations and commitments

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<sup>153</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), signed on 4 November 1950, Rome, and entered into force on 3 September 1953. It was the first document to give effect to and make binding several of the rights contained in the Universal Declaration of Human Rights. For further information see: BATES (2011), *The Birth of the European Convention on Human Rights—and the European Court of Human Rights*, in Jonas Christoffersen, and Mikael Rask Madsen (eds), *The European Court of Human Rights between Law and Politics*. Available online; McBRIDE (2021), *The Doctrines and Methodology of Interpretation of The European Convention on Human Rights by The European Court of Human Rights*, in *Council of Europe Policy Brief*. Available online.

<sup>154</sup> *European Convention on Human Rights*, Article 19(1).

<sup>155</sup> Following Articles 4 and 5 of the *Statute of the Council of Europe*, on 14 July 1992, the Ukrainian government sent a letter to the Secretary-General of the Council of Europe declaring the willingness to be invited to become a member of the Council and the readiness to respect the fundamental principles expressed in Article 3 of the Convention. Consequently, the Committee of Ministers asked the Parliamentary Assembly to deliver an opinion by Resolution (92)29 of September 1992. With the Resolution, the Committee also affirmed openness to deepen the dialogue with the Ukrainian authorities and to provide cooperation in order to facilitate the transition of the state becoming a Member of the Council. The Parliamentary Assembly delivered its opinion on 26 September 1995 (Opinion 190 (1995)) declaring its recommendation to the Committee of Ministers to “invite Ukraine to become a member of the Council of Europe” (para. 13).

<sup>156</sup> Opinion no.190(1995), *Application by Ukraine for membership of the Council of Europe*, adopted by the Parliamentary Assembly on 26 September 1995.

undertaken at the moment of accession. The rapporteurs based their observation on two documents previously adopted by the Assembly: Resolution 1179<sup>157</sup> and Recommendation 1395<sup>158</sup>. Specifically, within Resolution 1179, the PACE noted some positive results obtained by the state, but it also expressed a deep concern with regards the delay in the fulfillment of the remaining ones.<sup>159</sup> In this occasion, the Assembly adopted a quite strong attitude, deciding that, if substantial progresses were not made by the opening of the June part-session, it would have proceed to the “to the annulment of the credentials of the Ukrainian parliamentary delegation in accordance with Rule 6 of its Rules of Procedure”, and it would have “recommend that the Committee of Ministers proceed to suspend Ukraine from its right of representation, in conformity with Article 8 of the Statute of the Council of Europe”.<sup>160</sup> Between 2004 and 2005, the Council continued its monitoring activity through the adoption of a number of Resolutions<sup>161</sup> dedicated to the analysis of the advancements made by the state in fulfilling its statutory obligations and to the evaluation of the democratic transformation that happened since the end of 2004<sup>162</sup>.

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<sup>157</sup> Resolution 1179(1999), *Honouring of obligations and commitments by Ukraine*, adopted by the Parliamentary Assembly on 27 January 1999. With the Resolution, the Parliamentary Assembly welcomed the efforts made by Ukraine in fulfilling certain commitments undertaken at the moment of accession (which appear in Opinion no. 190(1995)). However, it also underlined its concerned in relation to the State’s difficulties in accomplishing its remaining commitments: among them, the adoption of only a few legislative texts listed in Opinion no. 190, the delayed ratification of Protocol no. 6 of the ECHR on capital punishment, the failure in reforming the civil and criminal code together with the civil and criminal procedure.

<sup>158</sup> Recommendation 1395(1999), *Honouring of obligations and commitments by Ukraine*, adopted by the Parliamentary Assembly on 27 January 1999. With the Resolution, the Parliamentary Assembly welcomed the efforts made by Ukraine in fulfilling certain commitments undertaken at the moment of accession (which appear in Opinion no. 190(1995)). However, it also underlined its concerned in relation to the State’s difficulties in accomplishing its remaining commitments. It also denounced the failure in enduring the respect of the rule of law and the fight against corruption and criminality. Moreover, it recalls the failure in adopting certain fundamental legislative text as provided by Opinion no. 190(1995), for example concerning the reform of the civil and criminal core, the legislation on local self-government and the legislation regarding capital punishment, torture and ill-treatment.

<sup>159</sup> In particular, the Assembly underlined that “in the transitional phase between a totalitarian and a democratic state, Ukraine has not achieved a clear separation between the judicial, legislative and executive powers” (para. 3) and there had been “very little progress in passing legislation on reform of the judiciary and the Prosecutor’s Office and on local-self-government” in conformity with the European Charter of Local Self-Government. (para. 5 and 7).

<sup>160</sup> Resolution 1179(1999), para 15.

<sup>161</sup> Resolution 1364 (2004), *Political crisis in Ukraine*, adopted by the Parliamentary Assembly on 29 January 2004; Resolution 1412 (2004), *Progress of the Assembly’s monitoring procedure*, adopted by the Parliamentary Assembly on 23 November 2004; Resolution 1466 (2005), *Honouring of obligations and commitments by Ukraine*, adopted by the Parliamentary Assembly on 05 October 2005.

<sup>162</sup> For clarification see Chapter I, para. 1.4

The Committee of Ministers approved in 2005 the Action Plan for cooperation between the Council of Europe and Ukraine<sup>163</sup>, in order to deepen the collaboration between the Council and the State and to achieve a further integration of Ukraine within the European system. For this reason, the Action Plan listed new programs and initiatives, their field of action, and their financial implications.<sup>164</sup>

In 2006, the CoE Office in Ukraine officially opened, founding its legal basis on the Memorandum of Understanding between the Government of Ukraine and the Council<sup>165</sup>. The Office was aimed to facilitate the implementation of the Council's mission in the country in terms of human rights protection, support of the democratic respect of the rule of law, as well as coordinating and implementing projects and programs. Today, the Ukrainian Office is the largest CoE office, having a role in coordinating and implementing the Action Plan, programs and projects dedicated to the state's support and the fulfillment of its obligations rising from its membership status.<sup>166</sup>

Ukraine had the Presidency of the Council in 2011 and utilized the chairmanship as an opportunity to focus on the modernization process of Europe as a whole, with the aim of conquering a significant leading role for the Organization. Ukraine's program focused on three main points: (a) protection of children's rights, (b) human rights and the rule of law in the context of democracy and stability of Europe and (c) strengthening and developing local democracy. Additionally, Chairmanship was centered on the development of strongest relationship not only among the Council bodies, but also between the relevant European organizations: the Council of Europe, the European Union and the Organization for the Security and Cooperation in Europe.<sup>167</sup>

In the decade 2011-2012, the Council adopted three Action Plans for Ukraine<sup>168</sup>. It must be reminded the Action Plan is a strategic programming instrument based on the principle

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<sup>163</sup> *Action Plan for cooperation between the Council of Europe and Ukraine*, signed on 12 May 2005 and approved by the Committee of Ministers on 15 June 2005 (DSP/2005/9).

<sup>164</sup> *Supra*, Introduction.

<sup>165</sup> *Memorandum of understanding between the Government of Ukraine and the Council of Europe regarding the establishment of the Office of the Council of Europe in Ukraine and its legal status*, signed by the Verkhovna Rada on 6 November 2006 and ratified on 4 October 2008 by Law no. 256-VI (256-17). The Memorandum recognizes the progress made by Ukraine in fulfilling its commitments undertaken at the moment of accession (listed in Opinion no. 190(1995)) and the democratic transition initiated in 2004. Also, it affirms the willingness to develop closer cooperation between the State and Council, thus establishing the Office of the Council of Europe for the coordination of the cooperation programs of the Council of Europe, in Kyiv (Article 1).

<sup>166</sup> See <

<sup>167</sup> Available at: < <https://www.coe.int/en/web/kyiv/cooperation-of-ukraine-with-the-council-of-europe>>.

<sup>168</sup> *Action Plan for Co-operation with Ukraine 2011-2014*, (DPA/Inf (2011)17 rev), signed on 6 July 2011 and approved (revised) by the Committee of Ministers on 12 June 2013; *Council of Europe Action Plan for Ukraine 2015 – 2017*, signed on 13 January 2015 and approved by the Committee of Ministers on 21

of cooperation between the State and the Organization, which seeks to strengthen the nation by working with it to bring legislation, institutions, and practices more in line with European standards in the areas of democracy, rule of law, and human rights.<sup>169</sup>

Particularly, the Action Plan for Ukraine 2018-2021 was focused on three main fields of actions: human right protection, strengthening of the rule of law and promotion of democracy. The Plan also contributed to help Ukraine to reach the goals presents within the Ukraine-European Union's Association Agreement, by dedicating to it an overall budget of €29.5 million.<sup>170</sup>

### 2.3 Russian membership

The Russia Federation filed the application for the accession to the Council in May 1992<sup>171</sup>, after having acquired the status of special guest a few months before.

As a consequence, in June of the same year, the Committee of Ministers asked the Parliamentary Assembly to deliver an opinion upon Russia's application.<sup>172</sup> In 1994, the Assembly nominated four rapporteurs to evaluate the country situation in terms of human rights protection, treatment of national minorities, respect of human rights, democratic development, and the respect of Articles 3, 5 and 6 of the European Convention on

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January 2015 (CM/2015/1217); *Council of Europe Action Plan for Ukraine 2018 – 2022*, approved by the Committee of Ministers on 1 July 2020 (DEM/2017/18-final).

<sup>169</sup> All information available at the Office of the Directorate General of Programmes website.

<sup>170</sup> *Council of Europe Action Plan for Ukraine 2018-2021*, Part III, p. 30.

<sup>171</sup> Following Articles 4 and 5 of the *Statute of the Council of Europe*, the Russian Federation filed the application to become member of the Council on 7 May 1992. Consequently, the Committee of Ministers asked the Parliamentary Assembly to deliver an opinion by Resolution (92) 27 of 25 June 1992. However, the negotiations were suspended at the beginning of 1995 because of the conflict in Chechnya (Resolution 1055/1995). The application process was resumed in September with the adoption of Resolution 1065. The Parliamentary Assembly delivered its opinion on 25 January 1996 (Opinion 193/1996) declaring its recommendation to the Committee of Ministers to “invite the Russian Federation to become a member of the Council of Europe” (para. 11).

<sup>172</sup> The opinion of the Parliamentary Assembly was asked by the Committee of Minister under Resolution (92)27 of 25/06/1992 as provided by Statutory Resolution (51)30A: “The Committee decided that, before inviting a State to become a Member or an Associate Member of the Council of Europe, in accordance with the provisions of Articles 4 and 5 of the Statute, or inviting a Member of the Council to withdraw, in accordance with the provisions of Article 8, the Committee would, in conformity with established practice, first consult the Consultative Assembly”.

Human Rights.<sup>173</sup> The rapporteurs<sup>174</sup> recognized to the country the effort of improving its democratic process, however there was the recognition that a number of provisions, which were present within the national constitution, were not concretely applied (especially the ones on human rights and on incorporation of international standards). Moreover, certain requirements of the ECHR were not met, especially the ones under Article 5 concerning the degrading treatments provided by pre-trial detention center. These findings supported the conclusion that the conditions granting to all persons within the state's jurisdiction the enjoyment of human rights and fundamental freedom were not fulfilled<sup>175</sup>.

Nonetheless, the procedure for delivering the opinion on Russia's admission was interrupted in 1995 because of the conflict in Chechnya,<sup>176</sup> but in September the process was resumed since Russia expressed its commitment to find a political solution to the conflict and the willingness to conduct proper investigation upon the alleged human rights violations perpetrated during that period (Resolution 1065).<sup>177</sup> Nonetheless, the Parliamentary Assembly underlined the continuation of the democratization process within the state, the constant effort that the Russia's special guest delegation had conducted in promoting a constructive dialogue with the Assembly and its committees

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<sup>173</sup> Article 3 of the ECHR provides the prohibition of torture: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". Article 5, § 1 provides the right to liberty and security "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the cases and in accordance with a procedure prescribed by law". Article 6, § 1 provides the right to a fair trial: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]".

<sup>174</sup> Their Reports are available within the *Human Rights Law Journal* (1994), vol. 15, no. 7, pp. 250-300.

<sup>175</sup> The Reports are also cited by BOWRING (1997) in the article *Russia's accession to the Council of Europe and human rights: compliance or cross-purposes?* where the author sustains that the failure of the Russian Federation in complying with the human rights standards contained in the ECHR would have had major consequences on the legitimacy of the Council of Europe itself. Indeed, he underlines that the Council simultaneously extended membership to the Russian Federation before the obtainment of sufficient assurances of improvement on some issues, and, in some, instances failed to censure and impose sanctions as soon as non-compliance became evident. Thus, the requirements in order to participate to the Council seemed to become negotiable and this, in turn, would have endangered the integrity and legitimacy of the Organization *vis-à-vis* the States with unpredictable and possibly dangerous consequences.

<sup>176</sup> Resolution 1055(1995), *Russia's request for membership in the light of the situation in Chechnya*, adopted by the Assembly on 2 February 1995 (7th Sitting). With this resolution the Assembly decided "to suspend the procedure concerning its statutory opinion on Russia's request for membership. The Assembly, in plenary session, will decide at a later date when to resume its examination of this request for membership". The decision was motivated by the "indiscriminate and disproportionate use of force by the Russian military, against the civilian population" (as violation of the Geneva Convention and of the OSCE Code of Conduct on Politico-Military Aspects of Security) and the "grave violations of the most elementary human rights principles".

<sup>177</sup> Resolution 1065(1995), *Procedure for an opinion on Russia's request for membership of the Council of Europe*, text adopted by the Assembly on 26 September 1995 (27th Sitting).

and, finally, the radical transition moving forward a more certain legal protection of human rights.<sup>178</sup>

Finally, the PACE officially invited Russia to become member of the Council on 25 January 1996. In this occasion, the country was recognized the be “willing and able in the near future to fulfil the provisions for membership of the Council of Europe as set forth in Article 3”: it had taken part of various activities within the CoE, it had established a constructive political dialogue with the Committee of Ministers and it had pledged to improve the condition of detainees, to promote the conduct of proper investigations and fair trials. Moreover, the Assembly noted Russia confirmed its intention to adhere to the European Convention on Human Rights at the moment of accession and to sign and ratify the Protocol No. 6<sup>179</sup> (on the abolition of death penalty) together with other relevant human rights conventions promoted under the Council umbrella.<sup>180</sup>

To summarize, the Russian accession was granted following two main lines of thought: first, the confidence that supporting Russian entrance would have strengthen the Council’s position in Europe. This evaluation was combined with the recognition of the necessity to involve Russia in the geopolitical and diplomatic life of the continent. Second, the country should have been admitted in the light of the positive results in terms of democratic progress achieved after the dissolution of the Soviet Union.<sup>181</sup>

In 2006, ten years after, the Russia Federation reached the Chairmanship of the Council’s Committee of Ministers.

In that moment, however, the country’s performances in fulfilling the commitments taken before its admission were considered unsatisfactory by some of the most important international NGOs. The Bertelsmann Transformation Index<sup>182</sup> 2006, indeed, observed that with regards to the democratic transformation “no substantive progress was achieved during the period examined”, mainly because of the adoption of certain presidential measures which did not reflect the proper democratic standards (such as marginalization

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<sup>178</sup> *Ibidem*, para. 5, 7, 8, 9.

<sup>179</sup> The Russia Federation has signed the Protocol, but it has never ratified it. In 1999 the Duma passed a *moratorium* on both sentences and executions, but the capital punishment remains part of the national criminal code.

<sup>180</sup> Opinion 193(1996), *Russia's request for membership of the Council of Europe*, text adopted by the Assembly on 25 January 1996 (7th Sitting).

<sup>181</sup> MASSIAS (2007), *Russia And The Council Of Europe: Ten Years Wasted?* in *Russie.Nei.Visions* No. 15., pp. 5-7.

<sup>182</sup> The Bertelsmann Transformation Index is an instrument to evaluate the transformation processes toward democracy and market economy using international comparison and defining successful strategies. The Report is the result of around 300 local and regional exports coming from important universities and think thank worldwide. All information is available *online*.

of political actors, asserting control over national mass media or trying to limit the freedom of relevant NGOs). In addition, the report sustained that the national democratic development was hindered by the “massive human rights violations and restrictions on freedom of movement and freedom of the press, all of which have been associated with the second Chechen war since 1999”.<sup>183</sup> Despite that, the Russia’s leadership was sustained by the former President of the Parliamentary Assembly *van der Linden*, who described the chairmanship as an opportunity for the Member State to prove itself as an “integral part of a democratic Europe and a chance for the Council to prove pan-European character”.<sup>184</sup>

Officially, the main effort made by Moscow during its six-months mandate was the continuation of the Council’s traditional approach in terms human rights’ defense but moving the focus on less delicate matters (such as education, culture and transnational criminality).<sup>185</sup> The same attitude is traceable analyzing the activities promoted by Russia during its mandate: 30 events were held (including high-level meetings, working sessions, conferences and workshops) covering, in theory, the issues of democracy, terrorism, civil societies, human rights and cooperation in the field of justice. However, practically, the majority of them was focus on the development of dialogue and cooperation in the field of sport, education, culture, youth and science.<sup>186</sup>

According to the Russian Foreign Minister *Sergei Lavrov*, it was important to extend the traditional agenda of the Council to new areas, namely terrorism, drug trafficking, organized crime, and the proliferation of weapons of mass destruction.<sup>187</sup> On the other hand, *Lavrov* stressed that the new chairmanship would have been dedicated to the fight against the “Western double standards” applied to Russia as well as to the other former Soviet Republics.<sup>188</sup>

The fact that Russia reached the Chairmanship despite the lack of fulfillment of its own obligations and the Minister *Lavrov*’s declarations can be intended as the demonstration of the difficult (and, sometimes, perhaps imbalanced) relationship between the Council and the Russia Federation, in which the former never assumed a pivotal attitude.

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<sup>183</sup> Bertelsmann Transformation Index – Russia (2006: 1, 19).

<sup>184</sup> PACE President van der Linden’s declaration on 19 Mat 2006, available *online*.

<sup>185</sup> MASSIAS (2007: 15-17).

<sup>186</sup> MELZER (2006), *Poor Record. The Russian Chairmanship Of The Council Of Europe 2006*, in *Russian Analytical Digest*, p.3.

<sup>187</sup> WHITMORE (2006), *Concerns Raised About Moscow Chairing Rights Committee*, in *Radio Free Europe*.

<sup>188</sup> The declarations of the Russian Foreign Minister Lavrov are presented by the Radio Channel Free Europe, available *online*.

## 2.4 The Crimean Crisis and the suspension procedure

The legal power to suspend<sup>189</sup> a member is clearly present within the Statute of the Council of Europe: Art. 8 provides that “Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation”<sup>190</sup>. However, the decision to suspend a party member has always been controversial, since it limits the ability of the organization to put pressure upon the state taken into consideration and to influence its actions. These are some of the reasons why there are very low number of examples of suspension (and even lower about expulsion) from international organizations, especially the ones dedicated to peace and human rights protection. According to the Statute, the aim of the CoE is to achieve “greater unity between its members”, thus the fundamental requirement is reaching an ever-increasing level of cooperation between states, which, in turn, makes suspension one of the measures of last resort.<sup>191</sup>

Russia’s lack of willingness to concretely engage and cooperate with the Council and its members reached the highest point, for the first time, with the annexation of Crimea. A clear example was the Parliamentary Assembly Resolution of 2015 in which there was the open condemnation of the use of military force in Ukraine by the Russia Federation and the definition of this fact as a “clear violation of international law”.<sup>192</sup> With the Resolution, the PACE underlined the illegality of the Crimea annexation and called on Russia to withdraw its troops from the peninsula, but it was not followed by any action

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<sup>189</sup> *Statute of the Council of Europe*, Article 8. The Parliamentary Assembly used in the past Article 8 in order to suspend: Greece (1967) as a consequence of the beginning of the Colonels’ military dictatorship (the country withdrew from the Council before the official vote on the suspension); Turkey (1980) following the military coup; Russia was suspended in 2000 – 2001 following the restrictive policies imposed in the region of Chechnya.

<sup>190</sup> The suspension procedure is further disciplined by the Rules of Procedure of the Committee of Ministers, which, in Article 26, provides that: “the suspension of a Member must begin by a proposal for suspension put forward by at least one representative. The proposal must have been included in the agenda of the session at which it is discussed. The Member concerned shall receive through the Secretary General a notification of the decision reached in its case. This notification shall set out the legal and financial consequences of the decision”. To have further information on the concept of suspension from an international organization see: HARDT & BRENT (2014) *When States Break the Rules: Membership Suspension in International Organizations*, in *APSA 2014 Annual Meeting Paper*, Available online; MAGLIVERAS (1999), *Exclusion from Participation in International Organisations*. Leiden.

<sup>191</sup> DZEHTSIAROU & COFFEY (2019), *Suspension and expulsion of Members of the Council of Europe: difficult decisions in troubled times*, in *International and Comparative Law Quarterly*, vol. 68 no. 2, pp. 446-448.

<sup>192</sup> Resolution 1988(2014), *Recent developments in Ukraine: threats to the functioning of democratic institutions*, adopted by the Assembly on 9 April 2014 (15th Sitting).



taken by Moscow, demonstrating the state's reluctance in cooperating with the Organization.

As a consequence of the annexation, the Russia Federation was found in breach of its obligation under Article 3 of the Statute by the PACE Monitoring Committee, as provided by the document redacted by the rapporteur *Stefan Schennach*. Within the document, *Schennach* declared that the military occupation of the Ukrainian territory, the threat of the use of military force and the annexation of Crimea not only constituted a violation of the international law, but they also were in contradiction with the Preamble of the Statute, as well as with the commitments undertaken by the country at the moment of the accession.<sup>193</sup>

On 10<sup>th</sup> April 2014, the Parliamentary Assembly passed a resolution<sup>194</sup> (which was adopted by 145 votes to 21, with 22 abstentions) suspending the voting rights of the Russian delegation<sup>195</sup>. Within this Resolution, the PACE found Moscow's actions "in contradiction with the Statute of the Council of Europe, with the obligations stemming from Article 3 and with the commitments undertaken by the Russian Federation upon accession".<sup>196</sup> Additionally, the Assembly underlined the continuous rejection by the Russian Government of any kind of diplomatic effort aimed at deescalating the situation made by the international community and the systemic refusal of any kind of proposal for a mediation denying the initiation of a constructive dialogue with the Ukrainian authorities both directly and through the mediation of the Council. Consequently, the

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<sup>193</sup> *Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe*, Doc. 13484(2014). Within the report, Mr Schennach recommended the PACE to take measures in order to mark a condemnation and disapproval of the Russia Federation actions, in particular the proposal is to confirm the ratification of the credentials of the national delegation whilst suspending the voting rights.

<sup>194</sup> Resolution 1990 (2014), *Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation*, adopted by the Assembly on 10 April 2014 (16th Sitting).

<sup>195</sup> As provided by Article 25 of the Statute of the Council "The Consultative Assembly shall consist of representatives of each member, elected by its parliament from among the members thereof, or appointed from among the members of that parliament". The discipline about State's representatives is contained into the Rules of Procedure of the Assembly (See Rule 6 of the Rules of Procedure of the Assembly). According to Rule 9 of the Rules of Procedure "the Assembly may reconsider ratified credentials of a national delegation as a whole" when the Monitoring Committee submits a recommendations about the reconsideration of the credentials (Rule 9 § 1.b) or when there are serious violations of the basic principles of the Council as mentioned in Article 3 of the Statute, the Preamble of the Statue (Rule 8 § 2) or when there is "persistent failure to honor obligations and commitments and lack of co-operation in the Assembly's monitoring procedure" (Rule 8 §2.b). In this case the Assembly decided not to annul the credentials of the Russian delegation but to suspend certain rights of the delegation, in order to keep open the possibility of building a dialogue between the Federation and the Council. For more information about suspension and other techniques see KLABBERS (2015), *Advanced introduction to the Law of International Organizations*, Cheltenham (UK).

<sup>196</sup> Resolution 1990 (2014), para. 4.

Assembly suspended the following rights of the delegation: (a) voting rights<sup>197</sup>; (b) right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee; (c) right to participate in election observation missions.<sup>198</sup> The reaction of the Russian delegation was to condemn the decision as “political extremism” and the end of the “Europe-wide parliamentary dialogue”.<sup>199</sup>

The following year, the Parliamentary Assembly voted a new resolution considering the annexation of Crimea and other relative activities carried out by the Russia Federation before the annexation as a grave violation of international law, of the Statute of the Council and of the State’s commitments undertaken at the moment of accession.<sup>200</sup> However, the Assembly recognized that despite the State *Duma*’s first rejection of the Assembly’s offer for opening a discussion with Resolution 1990 (2014), there have been definite indications that the Duma was ready to initiate to such dialogue with the Assembly. Thus, to promote such dialogue with the Federation, the Assembly resolved to ratify the credentials of the Russian delegation but, with the view of condemning the violation continuing in Ukraine, the PACE suspended the following rights of the delegation: (a) right to be appointed rapporteur; (b) rights to be a member of an *ad hoc* committee on observation of elections; (c) the right to represent the Assembly in Council of Europe bodies as well as external institutions and organizations, both institutionally and on an occasional basis.<sup>201</sup>

The Russian reaction was to suspend all the official contacts between the State and the Parliamentary Assembly until the end of 2015 and to condemn the PACE’s decision sustaining that it was damaging the inter-parliamentary dialogue by excluding a fundamental state.<sup>202</sup>

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<sup>197</sup> The voting rights of the Russia PACE delegation had been already suspended in April 2000 as consequence of the major human rights violations committed by the Russian military forces during the Chechnya war. See Recommendation 1456(200) where, in paragraph 24(2) the PACE recommends the Committee of Ministers to initiate the procedure for the suspension of the Russia Federation from its rights of representation within the Council. In this context it is interesting to mention PALMISANO (2018) *La verifica delle credenziali nell’Assemblea parlamentare del Consiglio d’Europa e la crisi delle sanzioni alla delegazione russa*, in *Rivista di diritto internazionale*, p. 780 ss. The author examines the legitimacy of the decisions taken by the Parliamentary Assembly to suspend the voting right of the Russian delegation, and he sustains that, in that case, the function of verifying the credentials was forced in order to target a Member States through its parliamentary delegation.

<sup>198</sup> Resolution 1990(2014), para. 3, 5, 15(1)(2)(3).

<sup>199</sup> *Declaration of the head of the Russian Delegation Alexei Pushkov reported by the article Council of Europe assembly suspends Russia’s voting rights*, in *Euroactiv*. Available online.

<sup>200</sup> Resolution 2034 (2015), *Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation*, approved on 28 January 2015.

<sup>201</sup> Resolution 2034 (2015), para. 13, 14(1)(2)(3)

<sup>202</sup> *Russia suspends its participation in PACE until end of year - Russian delegation head* (2015), in *TASS – Russian New Agency*. Available online.

It must be recalled that, with Resolution 2034 (2015), the Assembly provided the annulment of Russian delegation's credential if, by June 2015 part-session, no progress was achieved regarding the implementation of the Minsk Agreements and of the Assembly's recommendations.<sup>203</sup> With Resolution 2063 (2015), the PACE recognized the Federation's lack of compliance with Resolution 2034 (2015) and the rejection of the offer to build a dialogue expressed by the decision of suspending the contacts between the delegation and the Assembly.<sup>204</sup> Nonetheless, the Assembly underlined the important of establishing a discussion between the PACE and the Russian delegation in order to find a peaceful and long-lasting solution to the situation in eastern Ukraine and to the annexation of Crimea. For this reason, it welcomed the return of the delegation to the work of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and allow this committee's rapporteurs for the Federation to go to the country. Moreover, in expressing the willingness to start a profitable dialogue based on good faith, the Assembly decided not to annul the ratified credential of the Russian delegation.<sup>205</sup>

Certainly, a much stronger position was adopted by the country in 2017 when it deferred the remainder of its budgetary contribution to the Council (and maintained it also in 2018) as a response to the measure taken by the PACE. As pointed out from some observers, the suspension of the payment would have had disastrous repercussions on the Council itself, marking an historical deficiency in the Council's finances, a cutback of the support for the European Court of Human Rights (as well as its monitoring bodies) and the conclusion of many programs.<sup>206</sup> These conditions, together with the signals of a possible withdraw from the Council, led to the opening of new private negotiations for the restoration of the participation rights within the PACE.

The latter, in order to facilitate the ratification of the Russian delegation's credentials, passed a Resolution providing a derogation from certain Rules of its Rules of Procedure related to the transmission of credential to the Assembly for their ratification.<sup>207</sup> The

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<sup>203</sup> Resolution 2034 (2015), para. 16.

<sup>204</sup> Resolution 2063 (2015), *Consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation (follow-up to paragraph 16 of Resolution 2034 (2015))*, adopted on 24 May 2015.

<sup>205</sup> Resolution 2063 (2015), para. 6, 9.

<sup>206</sup> DRZEMCZEWSKI (2020), *The (Non-) Participation of Russian Parliamentarians in the Parliamentary Assembly of the Council of Europe: An Overview of Recent Developments*, in *Europe des droits & libertés*, vol. 1, pp. 51-52.

<sup>207</sup> Resolution 2287(2019) in paragraph 7 provides that "Assembly decides by way of derogation from Rules 6.1 (last sentence) and 6.3 of its Rules of Procedure, relating to the transmission of credentials of national

resolution was followed, on 26 June 2019, by the decision to “ratify the credentials of the delegation”, the country was also invited to “return to co-operating with the Monitoring Committee, and all other committees of the Assembly, and engage in meaningful dialogue on the fulfilment of its commitments and obligations”.<sup>208</sup>

The credentials’ restoration encountered different reactions coming from the various national groups present within the Assembly: if the head of the Ukrainian delegation described the decision as “a very bad message” sent to the Member States, others sustained that the definitive expulsion of the country from the Council would have had irreversible consequences on the effectiveness of the Council’s operations, as well as on the protection of Russian citizens’ rights.<sup>209</sup>

## 2.5 The aggression and Russia’s expulsion

The latest moment of rupture between the Council and Moscow happened on 25<sup>th</sup> February 2022, when, as a result of the Russian’s armed attack against Ukraine and following “an exchange of views” with the Parliamentary Assembly in the Joint Committee, the Committee of Ministers has once again decided the suspension of the Russian Federation’s rights of representation in the Committee of Ministers and in the Parliamentary Assembly with immediate effect (in accordance with Article 8 of the Statute)<sup>210</sup>. However, the country remained a contracting party of the Council’s most important conventions, including the European Convention on Human Rights<sup>211</sup>. Additionally, the judge elected from Russia remained member the European Court of Human Rights and the application filed against the country continued to be subjected to the jurisdiction of the Court.<sup>212</sup>

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delegations to the President of the Assembly and their ratification by the Assembly, and Rule 11.3 on the appointments following parliamentary elections, to invite the parliaments of Council of Europe member States which are not represented by a delegation to the Assembly to present the credentials of their representatives and substitutes at the June 2019 part-session of the Assembly.”.

<sup>208</sup> Resolution 2292(2019), paragraph 10, 12. In return, the PACE called Russia to fulfil all recommendations included in Resolutions 1990 (2014), 2034 (2015) and 2063 (2015) (para. 11), it also urged national authorities to undertake a series of actions (para. 13) and invited the State to honour its commitments and obligation no further than April 2020 (para. 14).

<sup>209</sup> All declarations are present in the article by ERLANGER (2019), *Council of Europe restores Russia's voting rights*, in *The New York Times*, available online.

<sup>210</sup> Committee of Ministers Decision CM/Del/Dec(2022)1426ter/2.3, *Situation in Ukraine – Measures to be taken, including under Article 8 of the Statute of the Council of Europe*, adopted on 25 February 2022, 1426<sup>th</sup> meeting.

<sup>211</sup> *Supra*.

<sup>212</sup> The Committee’s decision clarified that, despite the suspension, the Russian Federation remained a High contracting Party of the ECHR, the judge election to the Court by the Russian Federation remained in office

On 10<sup>th</sup> March, the Committee of Ministers opened the consultation with the Parliamentary Assembly<sup>213</sup> to discuss “further measures to be taken under Article 8 of the Organization’s Statute in response to the serious violations by the Russian Federation of its statutory obligations as a member State”.<sup>214</sup> The same day, the Russian diplomatic agency communicated to the press the declaration of the Russian Minister of Foreign Affairs who condemned EU and NATO countries as being “unfriendly to Russia” and underlined that the course of events was becoming “irreversible” since the West was carried out “subversive actions setting up a rules-based order to replace international law”.<sup>215</sup> These declarations were followed by the statement made by the Chairman of the State *Duma*’s International Affairs Committee, *Leonid Slutsky*, who sustained that the CoE was falling apart under the pressure of the EU and NATO becoming an organization “conducting a pro-Western policy towards Russia”.<sup>216</sup> Consequently, the country had no options but to leave the Council and launch the corresponding procedure in the next future.<sup>217</sup>

On 15<sup>th</sup> March both the CoE Parliamentary Assembly and the Russia Foreign Ministry expressed the decision to terminate the membership of the country within the Organization.

Indeed, the PACE delivered an Opinion<sup>218</sup> condemning the aggression against Ukraine, describing it as in breach of the Charter of the United Nations, a “crime against peace” under the Charter of the International Military Tribunal (Nuremberg Charter)<sup>219</sup>

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and any appeal filed against or by the Federation would have continued to be examined by the Court. Moreover, the Russian Federation continued to participate to the meetings of the Committee of Ministers when exercising its functions of monitoring the execution of the sentences (Article 46 of the Convention) for the purpose of providing and receiving information relating to judgments in reference to which it is a respondent or applicant State, without the right to participate in the adoption of decisions by the Committee and without the right to vote. (Decision CM/Del/Dec(2022)1426ter/2.3, para. 7) For further information see RAIMONDI (2022), *La Federazione russa annuncia il suo ritiro dal Consiglio d’Europa. Quali effetti sul sistema europeo di tutela dei diritti umani?*, in *Giustizia Insieme*. Available online.

<sup>213</sup> Following Resolution (51) 30 (of 3 May 1951), which provided that the Committee, before inviting a Member to withdraw shall first consult the Parliamentary Assembly.

<sup>214</sup> Committee of Ministers Communication, *Council of Europe to discuss further measures against Russia*, of 10 March 2022, ref. DC 042(2022).

<sup>215</sup> SHARIFULIN (2022), *Russia to cease participation in Council of Europe, Foreign Ministry says*, in TASS – Russian News Agency. Available online.

<sup>216</sup> Russian State Duma, 11 March 2022, *Russia must leave Council of Europe this year – Duma committee’s chief*, reported by TASS- Russian News Agency. Available online.

<sup>217</sup> *Supra*.

<sup>218</sup> Parliamentary Assembly Opinion 300(2022), *Consequences of the Russian Federation's aggression against Ukraine*, adopted on 15 March 2022.

<sup>219</sup> *The Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis* (also known as the Nuremberg Charter or London Charter), adopted on 8 August 1945. It provided the rules and procedures for the conduction of the Nuremberg Trials.

and constituting an “aggression” under the terms of Resolution 3314 (XXIX) of the United Nations General Assembly adopted in 1974<sup>220</sup>. It was also recognized as a violation of the Helsinki Final Act<sup>221</sup> and the Charter of Paris for a New Europe<sup>222</sup>. Above all, it was considered a serious breach of Article 3 of the Statute of the Council of Europe and a violation of the obligations and commitments that the Russian Federation accepted when becoming a member of the Organization. Therefore, the Assembly claimed that Committee of Ministers should have requested the state to immediately withdraw from the Council of Europe, and if Moscow had not complied with the request, the Assembly suggested that the Committee of Ministers should have determined the immediate possible date from which the Russian Federation would have ceased to be a member of the Council of Europe.<sup>223</sup>

The same day, the Russian authorities sent a formal communication to the Secretary-General of the Council containing the willingness to withdraw from the Council in accordance with the Statute and to denounce the European Convention on Human Rights. The decision was also communicated to the press by the deputy speaker of the State *Duma* *Pyotr Tolstoy*. *Tolstoy* stressed that the withdrawal was coming from Russia “under its own volition as being a well-balanced and deliberate decision” and he assigned the responsibility for the destruction of the dialogue between the country and the Council to the NATO Members and the pursue of their own geopolitical interests.<sup>224</sup>

Following the official letter, on 16 March, the Committee of Ministers adopted the Resolution CM/Res(2022)2, in which it recognized the State’s willingness to withdraw from the Council and to denounce the Convention, but decided to terminate the

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<sup>220</sup> UN General Assembly Resolution 3314 (XXIX), *Definition of Aggression*, adopted on 14 December 1974.

For further information consult RIFAAT (1979), *International Aggression: a Study of the Legal Concept, Its Development and Definition in International Law*, with an Introduction by J.W.F. Sundberg. Stockholm; SAYAPIN (2008), *The Definition of the Crime of Aggression for the Purpose of the International Criminal Court: Problems and Perspectives*, in *Journal of Conflict & Security Law*, vol. 13, no. 3, pp. 333–352. Available online.

<sup>221</sup> Organization for Security and Co-operation in Europe (OSCE), Conference on Security and Co-operation in Europe (CSCE): *Final Act of Helsinki*, adopted on 1 August 1975.

<sup>222</sup> *Charter of Paris for a New Europe*, adopted on 21 November 1990 by the heads of State and government of the Conference on Security and Cooperation in Europe, this Charter (30 I.L.M. 190 (1991)).

<sup>223</sup> Ibidem, paragraphs 3, 4, 20. Within the opinion, the Assembly also called on member States to undertake a series of actions in order to strengthen the position of Ukraine, and it also directly stressed the importance of the role of the Commissioner for Human Rights in her effort to raise awareness and to support initiatives dedicated to the Ukrainian situation; the Secretary General con the CoE regarding the activities involving refugees and displaced people; and, finally, it encouraged the European Court of Human Rights to prioritize application brought by Ukrainians against the Russian Federation (paras. 14-15).

<sup>224</sup> The full declaration is reported by TASS News Agency and available at: < <https://tass.com/politics/1422531> >.

membership with immediate effect because of “serious violation by the Russian Federation of its obligations under Article 3 of the Statute”.<sup>225</sup>

The decision of the Committee of Ministers to “terminate the membership with immediate effect” has opened a debate among the experts of international law. On the one hand, the legitimacy of the Committee’s decision is challenged following the interpretation of the provisions under Articles 7 and 8 of the Statute of the Council.<sup>226</sup> Indeed, within the Resolution suspending the Russian Federation<sup>227</sup> the Committee did not formulate a request of withdrawal, differently from what is required by Article 8 of the Statute of the Council.<sup>228</sup> Moreover, despite the official letter sent by the Minister Lavrov to the Secretary-General, the Committee established the immediate termination of Russia’s membership, without providing any explanation as to why the Russian willingness to withdraw should be considered unproductive (so contrarily from what is established by Article 7 of the Statute).<sup>229</sup> Indeed, the Article stipulates that, when a State notifies its willingness to leave the Council, the withdrawal will take effect “at the end of the financial year in which it is notified, if the notification is given during the first nine months of that financial year; or if the notification is given in the last three months of the financial year, it shall take effect at the end of the next financial year”.<sup>230</sup> Additionally, according to Article 8, the only situation in which the Committee can decide to cease the membership “from such date as it may determine” is when, after the invitation to terminate the membership is issued, under Article 7, the State in question does not comply with the Committee’s request.<sup>231</sup> Thus, since there is no clear evidence supporting the Committee’s decision of not considering the letter sent by the Russian Foreign Minister, the formalization of the expulsion with immediate effect seems not to be legitimate from Statute legal point of view.<sup>232</sup>

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<sup>225</sup> Committee of Ministers Resolution CM/Res(2022)2 *on the cessation of the membership of the Russian Federation to the Council of Europe*, adopted on 16 March 2022 at the 1428<sup>th</sup> meeting.

<sup>226</sup> This interpretation is given by SACCUCCI (2022) *Brevi considerazioni sull’espulsione della Russia dal Consiglio d’Europa e sulle sue conseguenze*, in *Sidiblog* (available online).

<sup>227</sup> CM/Del/Dec(2022)1426<sup>ter</sup>/2.3, of 25 February 2022.

<sup>228</sup> Statute of the Council of Europe, Article 8: “Any Member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7”.

<sup>229</sup> Statute of the Council of Europe, Article 7: “Any Member of the Council of Europe may withdraw by formally notifying the Secretary General of its intention to do so”.

<sup>230</sup> Statute of the Council of Europe, Article 7.

<sup>231</sup> Statute of the Council of Europe, Article 8.

<sup>232</sup> SACCUCCI (2022), *Brevi considerazioni sull’espulsione della Russia dal Consiglio d’Europa e sulle sue conseguenze*, in *SIDIBlog*. In this argumentation, Saccucci recalls the precedent of Greece (1969), when the Committee of Ministers initiated the suspension procedure under Article 8 (CM Recommendation 547 (1969)). Since the State expressed its willingness to leave the Organization, following Article 7, the

On the other hand, Zanghì takes a different position as regarding both the missing invitation to terminate the membership, and the interpretation of Article 7 and 8 in relation to the CM Resolution<sup>233</sup>. In fact, he argues that the request to withdraw mentioned in Article 8 is not intrinsically linked to the suspension procedure but, rather, an “accessory” (indeed, if addressed to the State in the same act that decrees the suspension, it would prejudice the hypothesis that the suspension can be concluded positively).<sup>234</sup> Moreover, it is necessary to make a distinction between the requirements under Article 7 and the ones under Article 8: if the former indicates the financial exercise as the most important elements in determining the withdrawal’s effects, the latter considers the date of the termination as established by the Committee. The result is that, since the Committee’s decision was taken within the framework of Article 8<sup>235</sup>, it was not compelled to send a request to withdraw, and it was legitimized to follow the suspension procedure with a Resolution assessing the end of the Russian membership, as well as to decide a date for the expulsion (16 March 2022).<sup>236</sup>

At this point, it is worth to remind that the expulsion does not only have repercussion upon the work of the Committee of Ministers and of the Parliamentary Assembly, it, also, entails that the Member State cease also to be a High Contracting Party to the ECHR,<sup>237</sup> thus it affects the influence of the European Court of Human Rights and its decisions.

## 2.6 The European Court of Human Rights

The European Court of Human Rights (ECtHR) was established under the European

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Committee did not proceed with the suspension procedure and termination of membership was achieved with a formal withdrawal having effect from the end of the following financial year. If the Committee had followed Greece's precedent, it would have had to take note of the withdrawal and Russia would have retained the status of member until 31 December 2022. See also RAIMONDI (2022), *Il Consiglio d'Europa e gli effetti giuridico-istituzionali della guerra in Ucraina sul sistema Convenzionale*, in *Freedom, Security and Justice – European Legal Studies*, available online.

<sup>233</sup> Committee of Ministers Resolution CM/Res(2022)2 *on the cessation of the membership of the Russian Federation to the Council of Europe*, adopted on 16 March 2022 at the 1428<sup>th</sup> meeting.

<sup>234</sup> ZAGHI (2022), *La problematica partecipazione della Federazione Russa al Consiglio d'Europa: dall'ammissione alla perdita dello status di membro*, in *Ordine internazionale e diritti umani*.

<sup>235</sup> The Resolution CM/Res(2022)2 postulates that the Committee of Ministers “Decides, in the context of the procedure launched under Article 8 of the Statute of the Council of Europe, that the Russian Federation ceases to be a member of the Council of Europe as from 16 March 2022”.

<sup>236</sup> ZANGHI (2022: 337). Zanghì also deals with Greece precedent mentioned by Saccucci, pointing out that, in that case, the suspension procedure was not enacted since the State notified its willingness to recede during the Committee’s meeting, thus impeding the adoption of the suspension provision.

<sup>237</sup> As provided by the *European Convention on Human Rights*, Article 58 § 3: “Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions”.



Convention on Human Rights<sup>238</sup>, in order to ensure the observance of the engagement undertaken by High Contracting Parties to the Convention and its Protocols<sup>239</sup> and started to operate in 1959.

It must also be recognized that, at least at the beginning, the Russia Constitutional Court had demonstrated to be an essential actor working in favor of the integration of the European Convention and of the Court ruling within the national law system. This was testified by the fact that, on many occasions, the European Court provided the impulse for quite a few major constitutional Court revolutionary sentences and national reforms.<sup>240</sup>

Nonetheless, Russia, overall, has also experienced a difficult relationship with the ECtHR, since, it was accused, more than once, of failing to address the ongoing national conditions that were leading to recurring human rights violations. Perhaps, the first instance that demonstrated the difficulties of Russia to integrate within the system of fundamental rights protection granted by the Council was the case *Burdov v. Russia*<sup>241</sup>. Indeed, in that moment, the Court implemented a pilot-judgment<sup>242</sup> procedure as a

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<sup>238</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, adopted on 4 November 1950, ETS no. 5. Further information on: GREER (2006), *The European Convention on Human Rights: Achievements, Problems and Prospects*, in Cambridge Studies in European Law and Policy, Cambridge; Higgins (1986) *The European Convention on Human Rights*, in Theodor Meron (ed.), *Human Rights in International Law: Legal and Policy Issues*, Oxford (online edn, Oxford Academic 2012); ULFSTEIN, RUUD & FØLLESDAL (2020) *The European Convention on Human Rights and other parts of international law*, in *The International Journal of Human Rights*, vol. 24, no. 7, pp. 913-916.

<sup>239</sup> European Convention on Human Rights, Sect. 2 ART. 19: "To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as *the Court*".

<sup>240</sup> POMERANZ (2012), *Uneasy Partners: Russia and the European Court of Human Rights*, in *Human Rights Brief*, vol. 19, no. 3, pp. 17, 19-20). For example, the Russian Constitutional Court ordered the legislator to amend the Code of Arbitration Procedure and the Code of Civil Procedure so that the ECtHR rulings could be used as a "newly discovered circumstance" and thus as justification for reexamining the case (Konst. Sud RF Judgment no.27-P, of 6 December 2013; Konst. Sud RF Judgment no 1-P, of 21 January 2010). Moreover, since 2003 numerous breaches of the principle of legal certainty were certified by the ECtHR (see Judgment of the European Court of Human Rights, 24 July 2003, application no. 52854/99, *Ryabykh v. Russia*), these decisions of the ECtHR have played a significant role in the reform of the Russian legal system, particularly the supervisory review process.

<sup>241</sup> *Burdov v Russia* (no. 2), application no. 33509/04, European Court of Human Rights, 15th January 2009.

<sup>242</sup> Rule 61 § 1 of the Rules of Court provides that "The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications". In doing so, the Court defined a link between the repetition of cases and the presence of "structural and systemic problems". Within the pilot judgment, the Court must specify the type of corrective actions that the Contracting Party in question is required to take at the domestic level in accordance with the judgment's operative provisions, as well as the nature of the structural or systemic (Rule 61 § 3 of the Rules of Court). For further information see: PARAU (2013) *Constitutionalism and the Enlargement of Europe*, in *West European Politics*, vol. 36, no. 5, pp. 1117-1119; HAIDER (2013) *Part III: Elements of the Pilot Judgments*, in *The Pilot-Judgment Procedure of the European Court of Human Rights*, Boston.

response to the problem of non-enforcement (or delayed enforcement) of domestic judgments. The conclusion was reached in the light of the huge number of petitions submitted on the same problematic, exposing the difficulties of the country to conform with the obligations set forth within the Convention. As a matter of fact, the Court cited a Resolution<sup>243</sup> of the Parliamentary Assembly reporting “the continuing existence in several States of major structural deficiencies which cause large numbers of repetitive findings of violations of the Convention and represent a serious danger to the rule of law in the States concerned”.<sup>244</sup> Therefore, the Court clearly expressed the necessity to align the domestic procedure with the Convention requirements, holding that the respondent State had to set up “an effective domestic remedy or combination of such remedies which secures adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments in line with the Convention principles”.<sup>245</sup>

A few years later, another case characterized a moment of serious tension between the ECtHR and Russia. In 2012, with the judgment *Markin v. Russia*<sup>246</sup>, the ECtHR found Russia in violation of Article 14 (prohibition of discrimination) and of Article 8 (the right to respect for private and family life) of the Convention.<sup>247</sup> This judgement essentially overruled a decision taken by the national Constitutional Court, which, previously, had rejected Markin’s application and provoked a rise of strong protests among Russian politicians and jurists. This case marked, for the first time, a direct confrontation between the ECtHR and the Russian Constitutional Court about the actual meaning of fundamental rights and about whose opinion had to prevail.

The *Markin v. Russia* case signed the opening of a season of continuous tensions not only between the Constitutional Court and the ECtHR, but also between the latter and the State

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<sup>243</sup> Resolution 1516 (2006) *on implementation of judgments of the European Court*. For the judgment *Burdov v. Russia* it is relevant Paragraph 10 of the Resolution in which provides that “the Assembly notes with grave concern the continuing existence of major structural deficiencies which cause large numbers of repetitive findings of violations of the ECHR, [...] among these problems there are major shortcomings in the judicial organisation and procedures in the Russian Federation”. (Para. 10(2)).

<sup>244</sup> *Burdov v. Russia* (no. 2), no. 33509/04, § 43, ECtHR 2009.

<sup>245</sup> *Ibid.*, Court decision para. 8.

<sup>246</sup> *Markin v. Russia*, application no. 30078/06. ECtHR (Grand Chamber), 22 March 2012. For further information see MÄLKSOO (2012). *Markin V. Russia*, in *The American Journal of International Law*, vol. 106, pp. 836-842. Available online.

<sup>247</sup> In this case, the applicant filed a claim before the Court, sustaining that he had experienced sex-based discrimination. Indeed, at the relevant time, the applicant had a newborn kid, he was a single parent, and served in the military. Due to the fact that only female military personnel were eligible for three years of parental leave, his application for the leave was denied first by the head of his military unit and then, by the Military Courts. Consequently, the applicant applied to the Constitutional Court claiming that the provisions related to the parental leave were incompatible with the principle of equity present within the Constitution, but his application was rejected. Finally, he filed a new application to the ECtHR which found a violation of Article 14 of the convention in conjunction with Article 8. (*Markin v. Russia*, application no. 30078/06.)

*Duma*. This period culminated in 2015 with the passage of a law “granting the Constitutional Court the power to review international human rights rulings to decide if they violate the Russian Constitution and are therefore non-executable”.<sup>248</sup>

To this confrontation it is necessary to add the Crimean Crisis which identified the beginning of the deterioration of the relationship between the Council of Europe and the Russia Federation, leading to the suspension of the latter.

In the following part, the applications presented to the Court from the beginning of the Crimean Annexation up until today will be analyzed.

### 2.6.1 The Crimean Crisis and the use of Inter-State applications

The cases that have been cited so far, concerning the relationship between the Court and Russia, are Individual Applications, which means that they have been lodged by private individuals<sup>249</sup>. However, from this moment, only Inter-State Application will be considered (which means application lodged by a State against another Contracting Party<sup>250</sup>), with a special focus on Inter-State Application involving Ukraine and Russia. At the present moment, there are four<sup>251</sup> Inter-State Applications filed by Ukraine against Russia concerning violations of the Convention by armed groups allegedly controlled by the latter and still pending before the European Court of Human Rights: namely, Ukraine

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<sup>248</sup> FLEIG-GOLDSTEIN (2017), *The Russian constitutional court versus the European court of human rights: how the Strasbourg court should respond to Russia's refusal to executive ECtHR judgments*, in *Columbia Journal of Transnational Law*, vol. 56, no. 1, pp. 199-200.

<sup>249</sup> Article 34 of the ECHR provides the definition of “individual application” as “applications from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols”.

<sup>250</sup> Article 33 of the ECHR defines the inter-states applications as cases in which “any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.”

<sup>251</sup> Originally, the pending Inter-State Application were five, however, in September 2015, the Court decided to strike out the application *Ukraine v. Russia (III)* concerning the deprivation of liberty and the alleged ill treatment of a Ukrainian national belonging to the Crimean Tatars ethnic group, given that an individual application (no. 49522/14) concerning the same subject matter was already pending before the Court and that Ukrainian Government had informed the Court that for this reason they did not wish to pursue the application.

v. Russia (application no. 20958/14)<sup>252</sup>, Ukraine v. Russia (IV) (no. 42410/15)<sup>253</sup>, Ukraine v. Russia (V) (no. 8019/16)<sup>254</sup>, and Ukraine v. Russia (VI) (no. 70856/16)<sup>255</sup>.

Subsequently, the Grand Chamber decided to join the four cases into two: Ukraine v. Russia (re Crimea) (application no. 20958/14) and Ukraine v. Russia (re Eastern Ukraine) (no. 8019/16). With the application named Ukraine v. Russia (re Crimea) no. 20958/14, the Grand Chamber of the European Court followed a geographical criterion merging applications no. 20958/14 and 42410/15, respectively lodged by Ukraine on 13 March 2014 and 26 August 2015 and related to the events in Crimea and Eastern Ukraine. Similarly, the applications related to the events in Eastern Ukraine (namely no. 8019/16 and 70856/16) were placed under application Ukraine v. Russia (re Eastern Ukraine) no. 8019/16.<sup>256</sup> With application no. 20958/14, Ukraine also submitted a request for interim measures under Rule 39<sup>257</sup> against the Russian government. The Court, considering the risk of “serious violations” ongoing in the region, decided to apply Rule 39 and called both Parties (Ukraine and Russia) to refrain from taking any kind of action, particularly military ones, which could have resulted in violations of the civilian population’s

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<sup>252</sup> Ukraine v. Russia: European Court of Human Rights deals with cases concerning Crimea and Eastern Ukraine. Application no. 20958/14 was lodged on 13 March 2014. It relates to events leading up to and following the assumption of control by the Russian Federation over the Crimean Peninsula and subsequent developments in Eastern Ukraine.

<sup>253</sup> Ukraine v. Russia (IV), application no. 42410/15, lodged on 27 August 2015. With this application, the Ukrainian Government maintain that the Russian Federation exercised effective control over Crimea and – by controlling separatists and armed groups there – *de facto* control over the regions of Donetsk and Luhansk. Therefore, the Ukrainian Government held Russia responsible for numerous Convention violations, among which there are violations of Articles 2, 3, 5, 6, 8, 9, 10, 11, 14 as well as Article 18 (limitation on use of restrictions on rights). It also cites Article 1 of Protocol No. 1, Article 2 of Protocol No. 1 (right to education) and Article 3 of Protocol No. 1 (right to free elections) to the Convention.

<sup>254</sup> Ukraine v. Russia (V), application no. 8019/16 was decided by the Court on 9 February 2016 to make the processing of the case more efficient following a geographical criterion: the complaints related to the events in Crimea up to September 2014 remained as case no. 20958/14, while complaints relating to events in Eastern Ukraine and Donbass up to September 2014 were put under Ukraine v. Russia (V).

<sup>255</sup> As with the above-mentioned applications, on 25 November 2016, the Court decided to geographically divide application no. 42410/15: the events happened in Crimea remained under the former applications, while the ones happened in Eastern Ukraine and Donbass were registered as Ukraine v. Russia (VI) (no. 70856/16).

<sup>256</sup> ECtHR Press Release, Forthcoming Grand Chamber ruling in the case Ukraine v. Russia (re Crimea) European Court of Human Rights, ECHR 003 (2021).

<sup>257</sup> Rule 39 of the Rules of Court gives the possibility to the Court to address interim measures against any State Party to the Convention. Interim measures are defined as urgent measures which apply only where there is an imminent risk of irreparable damage, thus they are applied only in limited situation which comprises: the risk of violating Art. 2 (right to life), the risk of violating Art.3 (prohibition of torture and inhuman or degrading treatment), or, in very exceptional cases, they can also be applied in respect of certain requests relating to the right to respect for private and family life (Article 8). For further information see: DZEHTSIAROU & TZEVELEKOS (2021), *Interim Measures: Are Some Opportunities Worth Missing?* in *European Convention on Human Rights Law Review* vol. 2, no. 1, pp. 1-10. Available online; BURGORGUE-LARSEN (2009), *Interims measures in the European system of Human Rights*, in *InterAmerican and European Human Rights Journal*, pp.99-118. Available online.

Convention rights, (especially Article 2, that protect the right to life, and Article 3, that contains the prohibition of inhuman or degrading treatment).<sup>258</sup>

A few years after the termination of the Crime Crisis, in 2018, the Ukrainian Government filled a new Inter-State Application against Russia<sup>259</sup> concerning the detention and prosecution of Ukrainian nationals on various criminal charges (among others incitement to hatred or violence, war crimes, espionage and terrorism).<sup>260</sup> In addition to this, over 4,000 individual applications were lodged before the Court as related to the events happened in Crimea or to the hostilities conducted in Eastern Ukraine.<sup>261</sup>

An inquiry made by the Council of Europe together with the ECtHR demonstrated that, since the beginning of the Court's activity, nearly 70,150 applications were pending before a judicial formation and approximately a quarter of them had been lodged against Russia. Moreover, around a quarter of all the judgments delivered by the Court concerned the Russian Federation.<sup>262</sup> These facts demonstrated the difficulty, and perhaps unwillingness, that the national government expressed in the fulfillment of its obligations about human rights protection and respect of the democratic principles.

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<sup>258</sup> ECtHR Press Release (13 March 2014), *Interim measure granted in inter-State case brought by Ukraine against Russia*, ECHR 073 (2014).

<sup>259</sup> New inter-State application brought by Ukraine against Russia, no. 38334/18. European Court of Human Rights, ECHR 277 (2018). With the application, the Ukrainian government alleged the violations of numerous Articles of the conventions (namely Articles 3, 5-11, 13, 14 and 18), accusing Russia of having adopt "administrative practices of suppressing the expression by Ukrainian nationals of political views favouring a return to the pre-2014 borders and penalising Ukrainian nationals' membership of certain organisations that are legal in Ukraine".

<sup>260</sup> In 2020, a new Inter-state application was filed by the Netherlands against Russia concerning downing of Malaysia Airlines flight MH17 (application no. 28525/20, lodged on 10 July 2020). The application concerned the downing of the Malaysia Airlines flight MH17 over the territory of Eastern Ukraine, killing 283 passengers and 15 crew members. Even if Russia has continuously denied its involvement in the accident, the Dutch authorities sustained that the airplane was shot down from a missile belonging and provided by the Federation to the rebel militia in Ukraine. For this reason, the Government of Netherland claimed that Russian Government "were responsible for the deaths, in breach of Articles 2 (right to life), 3 (prohibition of prohibition of torture and inhuman or degrading treatment) and 13 (right to an effective remedy) of the European Convention on Human Rights". (ECtHR Press Release, 15 July 2020, New inter-State application brought by the Netherlands against Russia concerning downing of Malaysia Airlines flight MH17, ECHR 213/2020).

<sup>261</sup> ECtHR Press Release, 09 May 2022, *Grand Chamber to examine four complaints by Ukraine against Russia over Crimea and Eastern Ukraine*, ECHR 173 (2018).

<sup>262</sup> See the statistical data (The ECHR Facts and figures 2021) available at the website of the ECtHR: <[https://www.echr.coe.int/Documents/Facts\\_Figures\\_2021\\_ENG.pdf](https://www.echr.coe.int/Documents/Facts_Figures_2021_ENG.pdf)>.

In 2021, the ECtHR declared partly admissible<sup>263</sup> the complaints filed by Ukraine against Russia concerning the situation of Crimea (application nos. 20958/14 and 38334/18).<sup>264</sup> The importance of such decision lies in the recognition, made by the Grand Chamber, of the Russian occupation of Crimean not only since 18 March 2014 (date of the signature of the Accession Treaty<sup>265</sup>), but since 27 February 2014. Indeed, even if the Court decided to avoid pronouncing over sovereignty over Crimea<sup>266</sup>, in its decision the Grand Chamber declared the Russian effective control over the Crimean territory and, thus, the requirement to apply the Convention long before the 18<sup>th</sup> of March.<sup>267</sup> In this occasion, the Courts seems to acquire an ambivalent attitude towards the situation of Crimea. Indeed, even if the Grand Chamber underlined that it was “not called upon to decide in the abstract on the ‘legality’ of the Russian Federation’s purported ‘invasion’ and ‘occupation’ of Crimea”, often, throughout the judgment the ECtHR mentioned a number of evidence supporting the illegal character of the Peninsula’s annexation.<sup>268</sup>

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<sup>263</sup> The term “partly” refers to the fact that, considering all the complaints brought by Ukraine (17 points), a small part of them (only 3) were declared inadmissible by the Grand Chamber. See *Ukraine v. Russia (re Crimea)*, 16 December 2020, [GC] – applications nos. 20958/14 and 38334/18, legal summary, conclusions.

<sup>264</sup> European Court of Human Rights Press Release, 14 January 2021, *Complaints brought by Ukraine against Russia concerning a pattern of human- rights violations in Crimea declared partly admissible*, ECHR 010 (2021).

<sup>265</sup> See Chapter I, note 67

<sup>266</sup> *Ukraine v. Russia (re Crimea)*, 16 December 2020, [GC] – applications nos. 20958/14 and 38334/18, Part IV § 339: “The Court reiterates that it is not called upon to decide whether Crimea’s admission, as a matter of Russian law, into the Russian Federation was lawful from the standpoint of international law”.

<sup>267</sup> In its argument on the effective control exercised by Russia between the 27<sup>th</sup> February and the 18<sup>th</sup> March, the Grande Chamber considered the Russian military presence in Crimea: it considered the doubling of Russian troops (§ 321) and the presence of “elite troops” which were “equipped for effective and prompt seizure and retention of a territory” (§ 322). Moreover, the Court underlined that Russia did not have any real justification for the deployment of such military personnel (§ 324), and the Ukrainian Government provided “consistent information” showing the mobilization of Russian military forces “with a view to ensuring the control of entry and exit points into Crimea, operations to block or disable (disarm) Ukrainian military forces and the detention of Ukrainian soldiers” (§ 328). For all these reasons, the Grand Chamber concluded that there was “sufficient evidence [...] to conclude that during the relevant period the respondent State exercised effective control over Crimea” (§ 335).

<sup>268</sup> For example, it noted that, when Ukraine ratified the ECHR (11 September 1997), Crimea was included as an “inseparable constituent part of Ukraine” and, since then, “no change to the sovereign territory of Ukraine having been accepted or notified by the applicant State”, thus the Court considered Ukraine’s jurisdiction as including Crimea (*Ukraine v. Russia (Re Crimea)*, § 346). On the other hand, the Court noted that when Russia ratified the ECHR (5 May 1998), concerning the State’s territory, “neither the respondent State nor any other State asserted or accepted that Crimea formed part of the territory of the Russian Federation” (§ 347). The Court also underlined that “a number of States and international bodies have refused to accept any change to the territorial integrity of Ukraine in respect of Crimea within the meaning of international law” (§ 348) and recalled the UN General Assembly Resolutions no. 68/262 of 27 March 2014 on the territorial integrity of Ukraine (A/RES/68/262) (§ 211) and no. 71/205 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), adopted on 19 December 2016 (A/RES/71/205) (§ 212). For further information see: KLECZKOWSKA (2022), *Where is the European Court of Human Rights Heading? Comments on the Grand Chamber Admissibility Decision in the Case of Ukraine v. Russia (re Crimea) (Applications No. 20958/14 and 38334/18)*, in *Polish Review of International and European Law*, available online; MILANOVIC (2021), *ECtHR Grand Chamber Declares Admissible the Case of Ukraine v. Russia re Crimea*, in *Blog of the European Journal of*

In the same year, two new Inter-State Application were lodged involving Ukraine and the Russia Federation. The first one (application no. 10691/21<sup>269</sup>) was filed by Ukraine against Russia and concerned substantive and procedural violation of Article 2 (right to life) consisting in targeted assassination operation against perceived opponents of the Federation conducted both in Russian territory and in other States outside a situation of armed conflict.

The second, (application no. 36958/21<sup>270</sup>), was lodged by Russia against Ukraine and regarded the alleged violation of several articles of the Convention by the latter. In this case, the allegation concerned Ukrainian's administrative practices which included, among others, killings, abductions, forced displacement, interference with the right to vote, restrictions on the use of the Russian language and attacks on Russian embassies and consulates. With the application, Russia also submitted a request for interim measure under Rule 39 of the Rules of Court to be addressed to the Ukrainian Government in order to stop restrictions on the rights of Russian-speaking people and to order the authorities to suspend the closure of the North Crimean Canal. In this case the Court decided to reject the request of Interim Measures since it did not recognize the risk an irreparable harm of the Convention's core rights.

#### 2.6.2 The ECtHR rulings after the aggression of Ukraine

As mentioned previously, on 24<sup>th</sup> February 2022, Russian armed forces entered into Ukrainian territory. Afterward, the ECtHR reacted by granting three requests of interim measures against Russia.

Only four days later, the Court received a request from the Ukrainian government to address urgent interim measures against the Russian Federation as a consequence of "massive human rights violations being committed by the Russian troops in the course of the military aggression against the sovereign territory of Ukraine".<sup>271</sup> In granting the request, the Court considered that the initiation of the aggression in different regions of

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*International Law*, available online; COYNASH (2021), *Crucial victory for Ukraine in ECHR case against Russia over Crimea*, in *Kharkiv Human Rights Protection Group*, available online.

<sup>269</sup> New inter-State application brought by Ukraine against Russia, no. 10691/21, European Court of Human Rights, ECHR 069 (2021).

<sup>270</sup> Inter-State application brought by Russia against Ukraine, no. 36958/21, European Court of Human Rights, ECHR 240 (2021).

<sup>271</sup> ECtHR Press release, 1 March 2022, *The European Court grants urgent interim measures in application concerning Russian military operations on Ukrainian territory*, ECHR 068(2022).

Ukraine gave rise to the risk of violation of a number of the Convention's core articles. In particular of Article 2 (right to life), Article 3 (prohibition of torture, inhumane or degrading treatment) and Article 8 (right to respect for private and family life). Consequently, it indicated to the Russian Government to undertake a series of action including to refrain from military attacks against civilians and civilian objects (residential premises, emergency vehicles, schools, hospitals and others) and to ensure the safety of medical establishment and personnel. Additionally, the Court decided to give immediate notice of the interim measures to the Committee of Ministers of the Council.<sup>272</sup>

On 4<sup>th</sup> March 2022, the Court decided to indicate new interim measures following the reception of requests arriving from individuals who were taking refuge in different kind of buildings and shelters and who were suffering from limited access to food, healthcare, water, sanitation, electricity and other services and, finally, in need of humanitarian assistance and safe evacuation. The ECtHR recalled the general scope of the measure previously indicated (decision ECHR 068/2022) and decided that the new interim measures should have covered “any request brought by persons falling into the above category of civilians who provide sufficient evidence showing that they face a serious and imminent risk of irreparable harm to their physical integrity and/or right to life”. In addition, the Court requested Russia to prevent from impeding the civilian population from accessing evacuation routes, healthcare, food and other essential supplies, as well as granting unconstrained passage of humanitarian aid.<sup>273</sup>

The third request for interim measures was submitted by the *ANO RID Novaya Gazeta, OOO Telekanal Dozhd* (two Russian newspapers), its owner *Natalya Vladimirovna Sindeyeva* together with the 2021 Nobel Peace and editor of the *Novaya Gazeta* *Dmitriy Andreyevich Muratov*. The applicants asked the Court to urge the Russian Government “to refrain from blocking information items and materials containing opinions different from the official point of view of the authorities; and to abstain from full blocking and termination of the activity of Russian mass media”.<sup>274</sup> Indeed, the actions taken by the Government were in violation of Article 10 of the Convention (freedom of expression). In granting the interim measures the ECtHR invited Russia “to abstain from actions and

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<sup>272</sup> *Ibidem*.

<sup>273</sup> European Court of Human Rights, *Decision of the Court on requests for interim measures in individual applications concerning Russian military operations on Ukrainian territory*, ECHR 073(2022).

<sup>274</sup> *ANO RID Novaya Gazeta and Others v. Russia*, application no. 11884/22, European Court of Human Rights, ECHR 984(2022).



decisions aimed at full blocking and termination of the activities of *Novaya Gazeta*, and from other actions that in the current circumstances could have deprived *Novaya Gazeta* of the enjoyment of its rights”.<sup>275</sup>

In April, the ECtHR decided to expand the previous interim measure against Russia decided on 1<sup>st</sup> March 2022. Indeed, the Court specified that the measures should be intended as to cover “any and all attacks against civilians, including with the use of any form of prohibited weapons, measures targeting particular civilians due to their status, as well as the destruction of civilian objects under the control of Russian forces”.<sup>276</sup> Moreover, the Court recalled the interim measures indicated on 4 March 2022 regarding the civilian population’s access to evacuation routes, healthcare and essential supplies, adding that the evacuation routes should have allowed civilians to take refuge also in safer regions of Ukraine.<sup>277</sup>

On 13<sup>th</sup> April 2022, the Russian Government announced the capture of 1,026 personnel of the Armed Forces of Ukraine, who have surrendered to the Russian forces in Mariupol. Subsequently, the Supreme Court of the Donetsk People’s Republic (the DPR), sentenced to death three foreigners belonging to the captured group: two British citizens and a Moroccan citizen.<sup>278</sup>

In this occasion the ECtHR granted inter measure both concerning the case of the Moroccan national<sup>279</sup>, and regarding the applications submitted by two British members<sup>280</sup>. Indeed, both on 16<sup>th</sup> June and on 30<sup>th</sup> June, the Court indicated to the Russian Government to: (a) ensure that the death penalty imposed on the applicants is not carried out; (b) ensure respect for the Convention rights of the applications, notably in respect of Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention, ensure the appropriate conditions of their detention, and provide them with any necessary medical assistance and medication.<sup>281</sup>

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<sup>275</sup> *Ibid.*

<sup>276</sup> European Court of Human Rights Press Release (01 April 2022), *Expansion of interim measures in relation to Russian military action in Ukraine*, ECHR 116 (2022).

<sup>277</sup> *Ibid.*

<sup>278</sup> KLITINA (2022), *Is self-proclaimed Donetsk People’s Republic going to execute war prisoners? in Kyiv Post*.

<sup>279</sup> *Saadoune v. Russia and Ukraine* (application no. 28944/22), submitted by the applicant’s representative on 14 June 2022.

<sup>280</sup> *Pinner v. Russia and Ukraine* (application no. 31217/22) and *Aslin v. Russia and Ukraine* (application no. 31233/22).

<sup>281</sup> European Court of Human Rights Press Release (16 June 2022), *European Court grants urgent measures in case of prisoner of war sentenced to death in the so-called “Donetsk People’s Republic”*, ECHR 204 (2022); and European Court of Human Rights Press Release (30 June 2022), *European Court grants urgent*

### 2.6.3 Effectiveness of the Court after the expulsion

After the decision of expel the Russian Federation from the Council, the Committee of Ministers confirmed that the state will cease to be a High Contracting Party of the ECHR starting from 16 September 2022.<sup>282</sup> Which means that the Court will continue to deal with application involving Russia regarding alleged violations happened until that date.<sup>283</sup> As pointed out throughout the chapter, the relationship between the Council and the ECtHR with the Russian Federation has always been difficult and, perhaps, the decision of expelling the country will have strongest repercussion upon the people, rather than upon the national attitude. Indeed, even if this decision will not have a huge effect on the conduct of the Russia authorities, it will be the Russian people who will suffer the most from being abandoned by the Convention's protection.<sup>284</sup>

However, the decision to extend the expulsion procedure to the Convention is defended under a moral and practical perspective. First of all, the decision to broaden the application of the Convention until September<sup>285</sup> is intended to give to the people (both Russian and Ukrainian) suffering from violations resulting from the aggression of Ukraine the possibility to seek redress with the Court.<sup>286</sup>

Secondly, even if Russia have remained within the jurisdiction of the ECtHR, the question of effectiveness of the Court authority would have remained. The level of compliance in terms of judgments' execution was poor even when the state was a formal member of the Council and a High Contracting Party of the Convention, which, in turns, testifies that the

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*measures in cases lodged by two British prisoners of war sentenced to death in the so-called "Donetsk People's Republic", ECHR 222 (2022).*

<sup>282</sup> The legal basis of the Resolution is the interaction between Article 58 of the ECHR and the Statute of the Council of Europe. Art. 58.3 ECHR provides that "Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions".

<sup>283</sup> Resolution (2022)3, On legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe. Adopted on 23 March 2022. This decision confirms a broad interpretation of Art. 58 § 3 of the ECHR sustaining that when a State is no longer a member of the Council, it also ceases to be a Party of the ECHR and the ratified Protocols under the same condition applying for the denunciation of the Convention (Articles 58 § 1, § 2). The result is that Art. 58 § 3 equates the denunciation of the Convention with the cases of withdrawal/expulsion providing that, in both cases, the State will cease to be a Party to the Convention six months after the notification of the denunciation or of the entering into effect of the withdrawal/expulsion. This interpretation is favored by the Secretariat of the Council and contained in the Memorandum CM(2022)70, adopted on 17 March 2022, after the 1429<sup>th</sup> meeting of the Committee of Ministers.

<sup>284</sup> RUSCONI (2022), Russia out of the Council of Europe: what about human rights? in *Centro di Ricerca sulle Organizzazioni Internazionali Europee*.

<sup>285</sup> Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, adopted on 22 March 2022.

<sup>286</sup> RUSCONI (2022)

influence and the effectiveness of the Organization and of the Court within the State were already fundamentally weak.<sup>287</sup>

## 2.7 Conclusion

In conclusion, the attitude of both the Council of Europe and of the European Court of Human Rights towards the Russian Federation seems the ambivalent.

First of all, doubts about Russia's capability (and willingness) to comply with the standards and obligation rising from the Council's membership have been present since its admission. This is made visible by the report drafted by the ECtHR, which signals that of all the applications pending before a judicial formation by December 2021 (approximately 70,150), nearly a quarter has been lodged against the Russian Federation.<sup>288</sup> Additionally, as mentioned before in the chapter, the decision to restore the State's voting rights suspended by the Council after the illegal annexation of Crimea could be seen as another concession to the Federation. This position was also expressed by the Professor and former ECtHR Justice Paulo Pinto de Albuquerque<sup>289</sup>, during a conference held by the Center for International and Strategic Studies at Luiss University. In that occasion, the Professor argued that the reintegration of Russia's voting right after the Crimean Crisis could be interpreted as an acceptance of the annexation of territory, even if it happened in breach of numerous norms of international law and of the Convention principles.<sup>290</sup>

To summarize, the attempt made by the Council to find a balance between the necessity to include Russia within the European space and the preservation of its credibility in terms of protection and promotion of human rights and democratic standards, seems to have resulted in the inability to be a mediation vehicle between Russia and Ukraine and a barrier against the violations and aggressiveness of the former.

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<sup>287</sup> DZEHTSIAROU & HELFER (2022), *Russia and the European human rights system: Doing the right thing ... but for the right legal reason?*, in *Blog of the European Journal of International Law*.

<sup>288</sup> *The European Court of Human Rights in facts and figures* (2021), available online.

<sup>289</sup> Paulo Pinto de Albuquerque is currently a Professor of European Human Rights Law at Lisbon University. Between 2009 and 2010 he was appointed by the Council of Europe as expert of the Court of States against corruption (GRECO) and, in 2011, he was elected judge of the European Court of Human Rights, remaining in charge until 2020.

<sup>290</sup> He also argued about the highly controversial position taken by the ECtHR especially in relation to its decision of limiting its jurisdiction outside periods of active hostilities between two States (*Georgia v. Russia (II)*, application no. 38263/08, European Court of Human Rights, judgment of the Grand Chamber on 21 January 2021.) and, thus, compromising its capability to concretely intervene in the current situation between Ukraine and Russia.

### 3. THE OSCE

This chapter is about the Organization for Security and Cooperation in Europe (OSCE), its organs, its functioning, and its role in the pan-European context.

The first part will be centered on a historical introduction of the Organization, as well as on its internal structure. Subsequently, the focus will be moved upon the Russia Federation and its activity within the OSCE, with special attention dedicated to the issue of “non-collaborative” attitude of the State. Furthermore, the relationship between the Organization and Ukraine and what happened during and after the Crimean Crisis will be analyzed.

The Chapter will include, finally, a conclusive evaluation about the future of the OSCE presenting both its positive and negative aspects.

#### 3.1 History and structure of the OSCE

The Organization for Security and Cooperation in Europe<sup>291</sup> traces its origins in the Conference on Security and Cooperation in Europe (CSCE)<sup>292</sup>, which was held in Helsinki in 1973 and continued in Geneva from 1973 to 1975. The Conference was created to be a multilateral forum for dialogue and negotiation between the East and the West during the Cold War, and it was concluded with the Helsinki Final Act, signed in August 1975<sup>293</sup>. Within the Act it is contained the so called “Decalogue”, which is a list of principles that the Contracting Parties pledged to observe “irrespective of their political, economic or social systems as well as of their size, geographical location or level of economic development”.<sup>294</sup>

In the following two decades, the CSCE primary acted by organizing meetings and conferences with the objective of enhancing the participating States’ commitments. A

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<sup>291</sup> See HARDEN (1988), *What is an OSCE?*, in *Medical Teacher*, vol. 10, no. 1, pp. 19-22; MOSER & PETERS (2019), *Introduction*, in PLATISE, MOSER & PETERS (ed.), *The Legal Framework of the OSCE*, Cambridge, pp. 1 – 26; GASBARRI (2018), *The International Responsibility of the OSCE*, in *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2018-35*.

<sup>292</sup> The Conference on Security and Cooperation in Europe (CSCE) was opened on 3 July 1973 in Helsinki and continued in Geneva between 1973-1975. The discussion held within the framework of the Conference was divided into three ‘baskets’: (1) issues related to European security; (2) cooperation in the field of economics, science, technology and environment; (3) cooperation in the humanitarian field, including information, education and culture.

<sup>293</sup> *Helsinki Final Act*, adopted on 1 August 1975 by the former Conference on Security and Co-operation in Europe (CSCE), now Organization for Security and Co-operation in Europe (OSCE).

<sup>294</sup> *Helsinki Final Act*, Preamble para. 1 § a.

new turn was taken in 1990 with the end of the Cold War and the Paris Summit. During the Summit, the States' responsibility to manage the post-Cold War transitional period and to face the new challenges arising from it was affirmed. The States recalled their obligations under the UN Charter and the commitments undertaken under the Helsinki Final Act "to refrain from the threat or use of force against the territorial integrity or political independence of any State, or from acting in any other manner inconsistent with the principles or purposes of those documents"; they also "reaffirm(ed) the commitment to settle disputes by peaceful means".<sup>295</sup> With the Charter of Paris, the contracting parties also formally pledged to create a Parliamentary Assembly in order to promote a greater legislative involvement in the CSCE process.<sup>296</sup>

Today, the OSCE is the world largest regional security organization, counting 57 participating States in North America, Europe and Asia. The Organization is conceived to be a forum for political dialogue on various security issues and it offers the possibility to implement joint actions aimed to improve the lives of people and communities. It is characterized by an intern-dimensional approach towards security, embracing the politico-military, economic, environmental, and human dimensions. The OSCE aspires to have a concrete impact promoting stability, peace, and democracy through the political debate about common principles, but also through the adoption of concrete actions. The Assembly was formally constituted in 1991, with the Final Resolution of the Madrid Conference<sup>297</sup>. The Resolution established in particular the composition, the size, the objectives, and the rule of procedures of the Assembly.<sup>298</sup>

In 1994, the Organization was re-named Organization for Security and Cooperation in Europe<sup>299</sup>, in the light of the expansion of its role and its fields of action.

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<sup>295</sup> Charter of Paris for a New Europe, adopted on 21 November 1990 after the Second CSCE Summit of Heads of State or Government, Paris. Preamble.

<sup>296</sup> *Ibid.*, New structures and institutions of the CSCE Process, para. 14.

<sup>297</sup> Conference on Security and Cooperation in Europe, *Final Resolution of the Madrid Conference concerning the establishment of the CSCE Parliamentary Assembly*, adopted on 3 April 1991.

<sup>298</sup> According to the above-mentioned Resolution, the Assembly was originally composed of 245 parliamentarians, proportionally representing each participating State. Also, the Holy See had the possibility of sending two representatives as guests of honour. The creation of Annual Meetings was established during which several activities were listed, among them it was given to the Assembly the possibility to approve declarations, recommendations, or proposals (para. 5). Finally, it was set up the date of the inaugural meeting of the Assembly as being the first week of July 1992, in the city of Budapest (para. 11).

<sup>299</sup> CSCE Budapest Summit Declaration, adopted on 6 December 1994, Decision I: Strengthening the CSCE, Article 1.

The fundamental decision-making body of the OSCE<sup>300</sup> is the Council of Minister of Foreign Affairs, which was officially created under the Charter of Paris in order to “provide the central forum for political consultations within the CSCE process”. Its meetings are convened once a year in the country holding the Chairmanship (for 2022 the Chairmanship is held by Poland).

However, the principal decision-making body for regular political consultations and for governing the day-to-day operational work of the OSCE is the Permanent Council which implements the tasks and the decision taken by the OSCE Summits and the Ministerial Council. It is composed by the delegates of the 57 Member States and its meetings are held in Vienna once a week.

Additionally, the Forum on Security and Cooperation is the body specifically dedicated to security issues, such as arm control and exchange of military information. Similarly, to the Permanent Council, it meets once a week and its mandate is to deal with a high number of politico-military issues: its main activity is to organize regular consultation and cooperation with the participating States on military security matters, on confidence and security building and on reduction of risks of conflict.<sup>301</sup>

The Parliamentary Assembly remains one of the most important institutions within the Organization.<sup>302</sup> Its objectives are set out in the Rule of Procedure as being: to (a) assess the implementation of the objectives of the OSCE; to (b) discuss subjects addressed during meetings of the Ministerial Council and the summits of Heads of State or

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<sup>300</sup> Among the organization subsidiary bodies have also been established, including three committees dedicated to the three areas of OSCE security concept: the Security Committee, the Economic and Environmental Committee and the Human Dimension Committee.

<sup>301</sup> To analyse in depth the structure internal structure of the OSCE, see among others: *The Legal and Institutional Framework as a Governance Issue* (2019), in PLATISE, MOSER, & PETERS (Eds.), *The Legal Framework of the OSCE*, pp. 239-330; HABEGGER, (2006), *Democratic Control of the OSCE: The Role of the Parliamentary Assembly*, in *Helsinki Monitor*, vol. 17, no. 2, pp. 133-143; TZIVARAS (2022), *Organization for Security and Co-operation in Europe (OSCE)*, in: SAYAPIN *et al.* (eds) *International Conflict and Security Law*, The Hague.

<sup>302</sup> The other relevant institutions are: the Secretariat, which is based in Vienna and provides administrative and programmatic activities focused on conflict prevention, economy and environment protections, cooperation with Third Parties, gender equality, anti-trafficking, and transnational threats. The High Commissioner on National Minorities (HCNM), whose activities are directed towards situations involving national minorities and that could develop into a conflict. The OSCE Office for Democratic Institutions and Human Rights (ODIHR), which provides support and expertise to States government and civil society to promote democracy, the rule of law, human rights and non-discrimination. In doing so, it is highly involved in the national electoral processes, it reviews legislation and assists government in the development of their democratic institutions. The Representative on Freedom of the Media is another organ, with a double function: on the one hand it observes media development, and, on the other hand, it helps the participating States to abide by their commitments to freedom of expression and free media. Finally, the Court of Conciliation and Arbitration, based in Geneva, is a mechanism for the peaceful settlement of disputes between States.

Government; to (c) develop and promote mechanisms for the prevention and resolution of conflicts; to (d) support the strengthening and consolidation of democratic institutions in the OSCE participating States; to (e) contribute to the development of the institutional structures of the OSCE and of relations and cooperation between the existing OSCE institutions.<sup>303</sup>

Each July the Annual Session is held<sup>304</sup>: in this session, Members elect the Assembly officers and adopt declarations and resolution about the work of the OSCE. The value of these declarations and resolution is symbolized by the fact that they led to the creation of the Representative of Freedom of the Media<sup>305</sup> and the Economic and Environmental Coordinator.<sup>306</sup>

### 3.1.1 The international legal personality problem

The OSCE offers a number of opportunities to its participating State, but it also presents some relevant problematics and, perhaps, one of the most relevant and interesting is the lack of international legal personality.<sup>307</sup> Indeed, it must be reminded that the Organization misses a foundational Charter and, despite having changed its name, it remains a forum of dialogue<sup>308</sup> without the capacity of taking binding decision and with a semi-permanent structure.<sup>309</sup> The question of acquiring a legal personality has ancient roots and it involves both political evaluations, rather than legal ones, concerning the two most important participant states: the Russian Federation and the USA.

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<sup>303</sup> Rule of Procedure, Part I, Rule 1-2.

<sup>304</sup> Ibid., Part III, Rule 11 para. 1.

<sup>305</sup> OSCE Decision No. 193, Mandate of the OSCE Representative on Freedom of the Media, adopted on 5 November 1997, PC Journal No. 137.

<sup>306</sup> OSCE Decision No. 194, *Mandate for a Coordinator of OSCE Economic and Environmental Activities*, adopted on 5 November 1997, PC Journal No. 137.

<sup>307</sup> The possession of international legal personality by an international organization was recognized for the first time by the International Court of Justice in 1949. In its advisory opinion in the *Reparation Case* (Reparation for Injuries Suffered in the service of the United Nations) the ICJ provided that “In the opinion of the Court, the Organization (UN) was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane.” (page 179).

<sup>308</sup> Within the Budapest Document, which is the agreement establishing the change from CSCE to OSCE, it is clearly expressed that “The change in name from CSCE to OSCE alters neither the character of our CSCE commitments nor the status of the CSCE and its institutions” (para. 29).

<sup>309</sup> GÜNTHER (2022). According to the author, the OSCE is currently suffering a political crisis which prevents the Organization from fully use its resources in terms of early warning and conflict prevention, crisis management and resolution and confidence-building measures to deal with the issue of security in Europe (and with the current conflict in Ukraine). Moreover, in the future, it would be important to re-think the structure of European security placing a platform of European collective security and cooperation next to the one embodied by NATO, not as alternatives but, rather, as complementary.

The authors Niels Blokker and Ramses Wessel have deepened the question of legal personality in the OSCE with a special focus on the relationship between law, politics and practice.<sup>310</sup> They underline that, even if the debate about the lack of legal personality has been present within the Organization since decades, the legal issue, if resolved, would have political implications which are not welcomed by all the participants. In fact, the acquisition of a legal personality is seen as potentially influencing the weight that each State has over the activities of the Organization (which is especially true if thinking about the Consensus Rule<sup>311</sup>).

On the one hand, it is widely recognized that accepting OSCE's international legal personality would imply a more effective and efficient accomplishment of many objectives of the Organization. Moreover, its staff and its activities on the field are currently unable to receive legal protection arising from the fact of being part of the Organization, but rather, they must rely on the legal protection granted by their own national government.<sup>312</sup>

On the other hand, as mentioned before, the two main objections have a political nature and they come from the two biggest powers within the Organization. Indeed, the Russia Federation claims that "there cannot be a convention without a formal charter", which would be irreparably difficult to achieve. However, from the legal point of view, it could be perfectly possible to grant the legal personality without the adoption of a new constituent charter, since the objective, the internal structure and the tasks of the OSCE are currently present within different official documents and have been translated into practice. Differently, the USA argues that the adoption of a foundational charter would result in a loss of flexibility by the Organization. Once again, the authors highlight that the flexibility nature of the organization would not be damaged by the adoption of a constitutional treaty, which can be limited only to certain basic issues.<sup>313</sup>

There are, however, different views of the issue. Indeed, a different point of view argues that the current geopolitical and international situation seeing an open confrontation between Russia and Ukraine, with the latter supported by the 'Western countries', seems

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<sup>310</sup> See BLOKKER & WESSEL (2019), *Revisiting Questions of Organisationhood, Legal Personality and Membership in the OSCE: The Interplay Between Law, in Politics and Practice*, available online.

<sup>311</sup> Rule of Procedure "Decisions of the OSCE decision-making bodies shall be adopted by consensus. Consensus shall be understood to mean the absence of any objection expressed by a participating State to the adoption of the decision in question".

<sup>312</sup> BLOKKER & WESSEL (2019), *Revisiting Questions of Organisationhood, Legal Personality and Membership in the OSCE: The Interplay Between Law, Politics and Practice*, in Steinbrück, MOSER & PETERS (Eds.), *The Legal Framework of the OSCE*, Cambridge pp. 150-152.

<sup>313</sup> *Ibid.*, pp. 153-154.



reviving the OSCE's original scope.<sup>314</sup> The flexibility of the OSCE, deriving from the fact of lacking a formal legalization has permitted easier and informal communication between diplomats and ministries, while its Participating States have demonstrated their unwillingness to even use the few legal instruments present within the Organization.<sup>315</sup> In this sense, maintaining the original OSCE mission of being a forum of negotiation seems to be the most realistic and productive way to promote the effectiveness of the Organization and to preserve an open line of communication between Russia and the Western countries.<sup>316</sup>

It is useful to recall that in October 2007, the Spanish Chairmanship organized an informal Working Group, supervised by the Delegation of the Netherlands, in order to design a charter. After long negotiations, the Group adopted a Draft Convention (DC) composed by 25 articles.<sup>317</sup> Nonetheless, a universal consensus over the document was not reached during the 15<sup>th</sup> Ministerial Council in Madrid, when it was officially presented.<sup>318</sup> The implementation of the 2007 Draft Convention would mark the definitive acquisition of an international legal personality, giving to the Organization the possibility of implementing its mandate in a more efficient and easier manner, but it would also cement its position within the European security architecture.<sup>319</sup> In this case, the political interests, especially the ones of the Russia Federation and of the USA, have prevailed over the benefits that the OSCE would achieve by the adoption of a convention. Before concluding, it is worthful to mention that the personality of an international organization may be also derived from the powers, purposes, and practices of the organization itself.<sup>320</sup> This is what was affirmed by the International Court of Justice in

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<sup>314</sup> BOGUSH (2016), *OSCE: Do we really need an international legal personality and why?* in *Völkerrechtsblog – International law & International legal thought*.

<sup>315</sup> The author makes an example citing the OSCE Court of Conciliation and Arbitration, which was created by *Convention on conciliation and arbitration within the CSCE* (also known as Stockholm Convention), adopted by the CSCE Council on 15 December 1992 at Stockholm. Here there is a general evaluation of the Participating States' behavior *vis-à-vis* the Court underlying that no State has ever brought a single dispute to it. BOGUSH (2016).

<sup>316</sup> For further information see also TOMUSCHAT (2016), *Legalization of the OSCE?*, in *Völkerrechtsblog – International law & International legal thought* (available online); LEY (2016), *Legal personality for the OSCE?*, in *Völkerrechtsblog – International law & International legal thought* (available online).

<sup>317</sup> Draft Convention on the International Legal Personality, Legal Capacity, and Privileges and Immunities of the OSCE. Adopted on 30 November 2007, Annex to MC.DD/28/07 of 29 November 2007.

<sup>318</sup> SIMONET & LÜBER (2017), *The OSCE and Its Legal Status: Revisiting the Myth of Sisyphus*, in *OSCE Yearbook 2016*, pp. 289-290.

<sup>319</sup> *Ibid.*, p. 313.

<sup>320</sup> SHAW (2017), *International law*, VIII ed., Cambridge, pp. 991-992. Another opinion is expressed by FRY (2018), *Rights, Functions, and International Legal Personality of international organizations*, in Boston University (available online), the author claims that ICJ's opinion has more to do with state parties endowing the international institution with rights and functions than just functions in order for it to acquire

the case *Reparation for Injuries Suffered in the Service of the United Nations*<sup>321</sup>, when the Court provided that an IO, in that case the UN, has an international legal personality insofar as it is indispensable to achieve the principles and objectives contained in its Charter. Still, in the OSCE's foundation, the intention of the Participating States seemed to be the ones of maintaining the political aspect as the most important one within its framework, with the intention of putting distance between the Organization and the realm of international law.<sup>322</sup>

Nonetheless, there are other theories dealing with problem of the possession of international legal personality by international organization. It is worthful to mention the Theory of 'objective personality' formulated by Finn Seyersted, who compared the acquisition of legal personality by an organization to the one of the State: as soon as an entity is recognized as an international organization, it acquires an international legal personality, in the same manner in which a State, once recognized as such, becomes a legal subject.<sup>323</sup> This theory overcomes the centrality of the willingness of the State founders, but it remains fundamentally uncertain since there is not a clear definition of what an international organization is (thus there is not a threshold after which an organization actually acquires a legal personality)<sup>324</sup>. Third, and final theory, is the 'Presumptive Theory' of Jan Klabbers, which argues that international organizations are presumed to possess an international legal personality, until the contrary is proven<sup>325</sup>. The Presumptive Theory is interesting since it finds a middle ground between the criteria of objective personality of Seyersted, and the content of the Reparation case of the ICJ (since the Member States can decide to not provide the legal personality).<sup>326</sup>

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international legal personality. In his view, Focusing on this language of function without considering how it relates to rights is a misinterpretation of the idea of functional necessity, which forms the foundation for an international organization's authority.

<sup>321</sup> Advisory Opinion on the case *Reparation for Injuries Suffered in the Service of the United Nations* of 11 April 1949, ICJ Report.

<sup>322</sup> BOGUSH (2016), the author sustains this view also by citing the Helsinki Final Act, 1975, where it is specified that the document was "is not eligible for registration under Article 102 of the Charter of the United Nations" (Helsinki Final Act, 1975, p. 59). The explanation given by Bogush is that the expression underlines the willingness of the States to maintain the provisions contained within the Act as being political commitments, rather than basing the Organization on the general regime of international law.

<sup>323</sup> See SEYERSTED (1963). *Objective international personality of intergovernmental organizations : do their capacities really depend upon the conventions establishing them?*.

<sup>324</sup> KLABBERS (2015), *Advanced introduction to the Law of International Organizations*, Cheltenham, p. 20.

<sup>325</sup> KLABBERS (2015: 22). Also see KLABBERS (2009), *Lawmaking and Constitutionalism*, in KLABBERS, PETERS & ULFSTEIN, *The Constitutionalization of International Law*.

<sup>326</sup> *Ibid.*

### 3.2 The Russian Federation in the OSCE

The Russia Federation was among the States that signed the Helsinki Final Act back in 1975. Particularly significant for the Federation was the principle of inviolability of borders and the principle of non-interference into States' internal affairs. However, starting from the beginning of the XI century, Moscow's attitude towards the organization started to change and the distance between the State and the Organization increased.

Today, it is possible to define a number of issues which have become sensitive for the development of OSCE - Russia relationship.

The first one is related to the Russian perception of being alienated within the Organization and seeing its own interest being overcome by the Western countries. In this case the discourse is pretty similar to the one that have been made about the Council of Europe, and it became explicit with the accusation moved from the newly elected Foreign Minister Sergei Lavrov, in 2004, sustaining the impossibility to continue a cooperative relationship with OSCE because of the application of the so called "double standards".<sup>327</sup> The critic moved against the OSCE is that, especially after the end of the Cold War, the Organization strengthened its activities in the Post-Soviet and Post-Yugoslav countries. This is explained by the willingness of influencing these eastern territories with the values and the practices of the Western part.

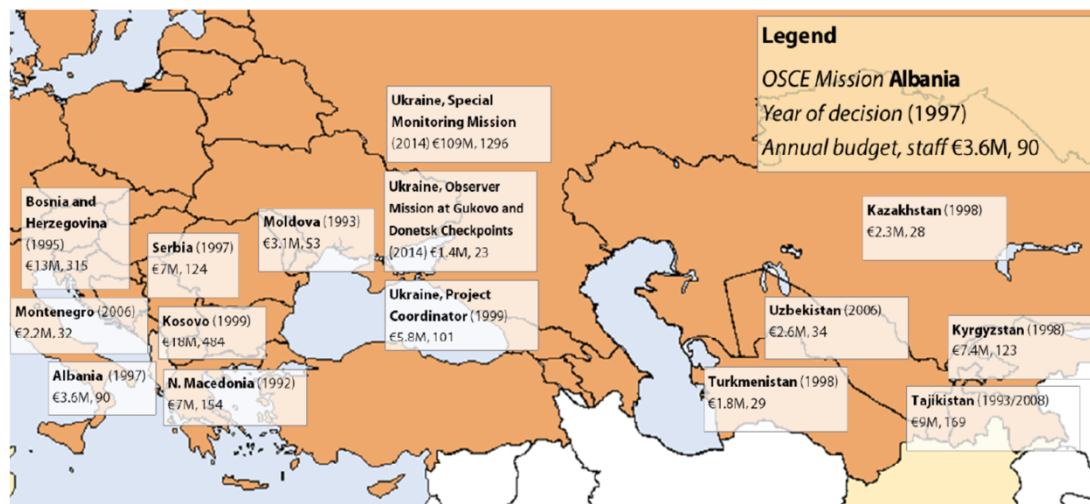


Figure 1: European Parliament Research Service, in Current OSCE field mission. Available online.

Surely, it is true that the majority of OSCE's activities have been historically located in these areas, but this assumption remains disputable under many points of view. First of

<sup>327</sup> MOROZOV (2005), *Russia's Changing Attitude toward the OSCE: Contradictions and Continuity*, in *Sicherheit Und Frieden (Security and Peace)*, vol. 23, no. 2, pp.70 – 72.

all, a new wave of populism, extremism, disrespect of the rule of law and limitation of certain rights is affecting the West, underlying the difficulties and the challenges that will soon require to be tackled even in that part of the continent. Secondly, as the charter shows, even if, in the 90s, many operations and projects have been conducted in former Yugoslavia and (to a lesser extent) in the former Soviet Union countries, the trend has significantly declined in the last years (with the exception of Ukraine).<sup>328</sup> Finally, even if the OSCE was indeed aimed at expanding the Western influence in the East, Russia's role within the Organization would acquire even a greater scope since it gives to the Federation to have a say in the OSCE activities monitoring its influence in the East.<sup>329</sup> The other major difficult issue in the relationship between the OSCE and Moscow regards the third basket of the Helsinki Act which is dedicated to human rights protection and democratic promotion.<sup>330</sup>

Among the occasion in which Russia had the possibility to express its disappointment towards the OSCE, there were the 2004 elections. Indeed, it was pointed out that, after the Russian election of 2004, the Office for Democratic Institutions and Human Rights (ODIHR) declared "the overall electoral process did not adequately reflect principles necessary for a healthy democratic election. The election process failed to meet important commitments concerning treatment of candidates by the State-controlled media on a non-discriminatory basis, equal opportunities for all candidates and secrecy of the ballot."<sup>331</sup> On the other hand, however, the same level of criticism was not directed towards the controversial Ukrainian Presidential elections, which were held the same year. In this occasion, Russia underlined how national rallies and the Orange Revolution were welcomed as an expression of people's will, while the victory of the pro-Western president *Yushchenko* was perceived as a defeat for Russia itself.<sup>332</sup>

The result has been a growing non-compliance of the country with the activity of the Organization and, especially, with the ODIHR. The most recent example is related to the elections of 2021, when the ODIHR Director Matteo Mecacci issued a statement saying

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<sup>328</sup> KORTUNOV (2021), *To stay or not to stay? Seven concerns Russia has about the OSCE*, in *Security and Human Rights Monitor*.

<sup>329</sup> *Ibid.*

<sup>330</sup> Notice that the Helsinki Final Act is commonly divided into four "baskets": the first one includes the principles dedicated to the issue of military security, territorial integrity, non-interference and peaceful settlement of disputes; the second basket focuses on cooperation in the fields of economy, technology and science; the third basket is related to human rights and democratic process; finally, the fourth basket provides for follow-up and implementation activities.

<sup>331</sup> ODIHR, Election observation mission, Presidential Election, 14 March 2004. Available *online*.

<sup>332</sup> MOROZOV (2005: 72).

that the OSCE would not have participated to the *Duma*'s elections "due to limitations imposed by Russian Federation authorities on the election observation"<sup>333</sup>. According to the Director, the possibility to assess the electoral process in an effective manner was obstructed by the "insistence of the Russian authorities on limiting the number of observers without any clear pandemic-related restrictions". Indeed, Moscow invited the ODIHR and the OSCE Parliamentary Assembly to observe the vote of 17<sup>th</sup> and 19<sup>th</sup> of September but with the restriction of 50 and 10 observer respectively; on the contrary, the original assessment mission provided for 80 long-term observers and 420 short-term ones. The following day, the Permanent Representative of the Russian Federation at the Permanent Council responded to Director Mecacci stressing that, in sending the invitation, the Federation had fulfilled its requirement, but that the state was entitled to decide about the amount of observers to welcome. The Representative also recalled a number of occasions in which the Office was able to fully assess the implementation of the electoral process with a lower number of personnel: in 2020, under the special election assessment mission, the Office was able to monitor the election in Poland, Serbia, North Macedonia and Romania where there were between seven and ten observers. "The format of limited election observation mission was also not considered in the case of Russia, even though it has been widely used by the ODIHR this year at elections in Kazakhstan, Kyrgyzstan and twice in Bulgaria, and last year in the United States. The numerical strength of these missions did not even reach 50 observers"<sup>334</sup>.

In terms of military security, the Russian Federation intensified its policies of non-compliance especially after the Crimean Crisis.

In 2015, the country officially suspended its participation to the Conventional Armed Forces in Europe (CFE) Treaty<sup>335</sup> Joint Consultative Group (JCG)<sup>336</sup>. The CFE was signed at the end of the Cold War, and it is aimed to limit the Soviet Union's quantitative advantage in terms of conventional weapons in Europe by setting common limits on various military equipment. Russia had already suspended the implementation of the Treaty in the past, but it had continued to be part of the Consultative Group with the

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<sup>333</sup> OSCE Press Release, 4 August 2021, *No OSCE observers for Russian parliamentary elections following major limitations*. Available *online*.

<sup>334</sup> See Statement by Mr. Alexander Lukashevich, Permanent Representative of the Russian Federation, at the 1328th Meeting of the OSCE Permanent Council, 5 August 2021, PC.DEL/1259/21. Available *online*.

<sup>335</sup> Treaty on Conventional Armed Forces in Europe (CFE), signed on 19 November 1990 and entered into force on 9 November 1992.

<sup>336</sup> The Joint Consultative Group (JCG) was established under Article 16 of the Treaty on Conventional Armed Forces in Europe (CFE), 1990, in order to deal with issues relating compliance or circumvention of the Treaty.

official perspective of pursuing a dialogue possibly leading to a more equal conventional arms control regime in Europe. However, according to Moscow, there was no more possibility to continue the cooperation within the framework of the Treaty since it was “anachronistic” and “absolutely not synchronized with the present realities”.<sup>337</sup>

As a consequence, in 2016, the Organization launched a new project called ‘OSCE Structured Dialogue’<sup>338</sup>: said project was aimed to discuss sensitive security issues such as arms control, military exercises and military encounters, as well as to reach a “greater mutual understanding and a common solid basis for a way forward”.<sup>339</sup> In practice, the idea was to move from incident prevention and confidence-building measures to a new institutional instrument regulating conventional forces which would have replaced both the CFE (from which Russia had already withdrew) and the Adapted CFE<sup>340</sup>. However, Russia rejected prevention and confidence-building measures, with the justification that they could have put the country in a difficult position *vis-à-vis* NATO’s military capability. For this reason, Moscow blocked the process arguing that, in order to reach a new agreement, the Alliance should have “abandoned its policy of containment of Russia, recognized and respects Russian interests, and restored normal relations with the Russian Federation, including in the military sphere”.<sup>341</sup>

### 3.3 The OSCE and Ukraine

After the collapse of the Soviet Union, Ukraine became a full participating State of the OSCE on 30<sup>th</sup> January 1992<sup>342</sup>. In 1995, with the passage from the CSCE to the OSCE, the country acquired eight seats in the OSCE Parliamentary Assembly.

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<sup>337</sup> REIF (2015), *Russia Completes CFE Treaty Suspension*, in Arms Control Association.

<sup>338</sup> OSCE Ministerial Council, *Declaration on the Twentieth Anniversary of the OSCE Framework for Arms Control*, 9 December 2016, MC(23) Journal No. 2.

<sup>339</sup> *Declaration on the Twentieth Anniversary of the OSCE Framework for Arms Control*, para. 4.

<sup>340</sup> Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe (Adapted CFE), signed on 19 November 1999, CFE.DOC/1/99.

<sup>341</sup> OSCE 834<sup>th</sup> Plenary Meeting, 9 November 2016, *Statement by the Delegation of the Russian Federation*, FSC Journal No. 840, Agenda item 1.

<sup>342</sup> On 28 January 1992, the Ukrainian Minister of Foreign Affairs sent a letter to the Chairman-in-Office of the CSCE Council of Ministers containing the information related to the full adoption by the State of the Helsinki Final Act, the Charter of Paris for a New Europe, and other documents of the CSCE. The Government also adopted the requirements to urge the entry into force of the treaty on Conventional Armed Forces in Europe and assumed all the obligations deriving from the CFE (originally belonging to the former Soviet Union). TOLTOV (2000: 106). Ukraine officially became a participating State of the former CSCE on 30 January 1991 during the Second Meeting of the Council of Ministers, held in Prague (30-31 January 1992), where “The Ministers welcomed Armenia, Azerbaijan, Belarus, Kazakhstan, Kirgizstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan as participating States, following receipt of letters accepting CSCE commitments and responsibilities from each of

As it was mentioned in the first chapter, right after the dissolution of the Soviet Union and the creation of the independent state of Ukraine, there were numerous problematic situations: economy was in turmoil, democratic institutions were underdeveloped, and there was unrest among various nationalities in different regions of the country (such as in Eastern Ukraine or within the Donbas region). However, what triggered the direct involvement of the former CSCE in Ukraine was the situation of Crimean Peninsula. Because of the growing tension between the Peninsula administration and the central authorities, the parties agreed upon the invitation of the High Commissioner on National Minorities<sup>343</sup> (*Max van der Stoep*) to visit the country and evaluate the situation. The Commissioner identified three main sources of instabilities: separatist tendencies, the situation of the former Soviet Black Sea Fleet and of the Naval Base in the city of Sevastopol and the integration of the Crimean Tatars.<sup>344</sup>

In June 1994 the CSCE Committee of Senior Officials approved the establishment of a Mission in Ukraine “with the task, inter alia, of supporting the work of the aforementioned experts (experts on constitutional and economic matters) and reporting on the situation in the Crimea”.<sup>345</sup> The Mission became operational on 24 November 1994 having the headquarter in Kyiv. The operation was concluded in 1999, with Decision no. 295, when the Permanent Council replaced it with a new form of cooperation with Ukraine based “on the planning, implementation and monitoring of projects between relevant authorities of Ukraine and the OSCE and its institutions”.<sup>346</sup> It is useful to recall that the normative base of the Mission, besides the PC Decision, was the Memorandum of Understanding (MoU) between the Ukrainian Government and the OSCE<sup>347</sup>. In its first Article, the Memorandum established the mandate of the Mission as being based “on planning, implementation, and monitoring of projects between relevant authorities of Ukraine and the OSCE and its institutions”.

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them” (*Prague Meeting of the CSCE Council*, 30-31 January 1992, Summary of Conclusion, para. I § 2.)

<sup>343</sup> The *Helsinki Summit Declaration* adopted on 10 July 1992 (as conclusion of the CSCE Helsinki Summit 9 – 10 July 1992), in para. II established the High Commissioner on National Minorities as an “instrument of conflict prevention at the earliest possible stage” (§ 2). The role of the High Commission is to provide early warning and appropriate early action regarding tensions involving national minority issues which could potentially develop into full-scale conflicts and, thus, requiring the attention and action of the Organization. (§ 3)

<sup>344</sup> OBERSCHMIDT (2002a), *The OSCE Mission to Ukraine (1994-1999)*, in *Improving the Effectiveness of OSCE Missions: The Case of Ukraine*, pp. 80-93.

<sup>345</sup> CSCE Permanent Committee, 25 August 1994, Journal No. 31. For further information see OBERSCHMIDT (2002), *Annex: Mandates of the CSCE/OSCE Presence in Ukraine*, p. 136.

<sup>346</sup> Permanent Council Decision No. 295, 1 June 1999, PC Journal No. 231 (PC.DEC/295).

<sup>347</sup> Memorandum of understanding between the Government of Ukraine and the OSCE, OSCE Project Coordinator in Ukraine, 13 July 1999.

Since that moment, Ukraine has started to collaborate with all of the OSCE institutions, establishing special relationships with the High Commissioner on National Minorities, the Office for Democratic Institutions and Human Rights and the Representative on Freedom of the Media.

In 2010 the Ministerial Meeting decided unanimously the Ukraine's Chairmanship for the year 2013.<sup>348</sup> In presenting the agenda for the Chairmanship, the Ukrainian Foreign Minister emphasized the nation's dedication in strengthening the OSCE, encouraging balance in all areas of the Organization's operations, and boosting the capability to resolve conflicts.<sup>349</sup>

### 3.3.1 The OSCE and the Crimean Crisis

According to some scholars<sup>350</sup>, the Crimean Crisis contributed to the revival of the OSCE's relevance in the international geopolitical scenario since the Organization provided an effective plan for handling the crisis and preventing an additional escalation. Following the increasing violence related to the crisis, the Swiss OSCE Chairmanship addressed the UN Security Council proposing the launch of a dedicated on-field mission and the establishment of an international contact group.

The Special Monitoring Mission (SMM) was officially initiated by consensus on 21<sup>st</sup> March 2014. The aim of the mission was "to contribute, throughout the country and in cooperation with the concerned OSCE executive structures and relevant actors of the international community (such as the United Nations and the Council of Europe), to reducing tensions and fostering peace, stability and security; and to monitoring and supporting the implementation of all OSCE principles and commitments".<sup>351</sup> It comprehended different tasks, among which gathering of information, monitoring and supporting respect of human rights, facilitating the dialogue between the parts to reduce tension and to promote a normalization of the situation.<sup>352</sup>

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<sup>348</sup> Decision No. 4/10 OSCE Chairmanship in the Year 2013, MC.DEC/4/10, 23 November 2010.

<sup>349</sup> See Press Release, Ukrainian Foreign Minister outlines country's agenda for 2013 OSCE Chairmanship. Available at: < <https://www.osce.org/pc/91461>>.

<sup>350</sup> See REMLER (2015), *Ukraine, Protracted Conflicts and the OSCE*, in *Security and Human Rights*, vol. 26, pp. 88-106 (available online); UMLAND (2021), *Achievements and Limitations of the OSCE's Special Monitoring Mission to Ukraine*, in *SCEEUS Reports on Human Rights and Security* No. 3 (available online); LEHNE (2015), *Reviving the OSCE European Security and the Ukraine Crisis*, in *Carnegie Endowment for International Peace Publications Department* (available online).

<sup>351</sup> Decision no. 1117 Deployment of an OSCE Special Monitoring Mission to Ukraine. 991st Plenary Meeting PC Journal No. 991, Agenda item 1. Para. 2. Data!

<sup>352</sup> Ibid., para. 3(1), 3(3), 3(5).



Furthermore, in June 2014, the Normandy format was inaugurated. The Normandy format was a diplomatic formation created with the objective of reaching a peaceful resolution to the crisis. It involved the engagement of Berlin and Paris, but it had as main core the Trilateral Contact Group between the Russia Federation, Ukraine and the OSCE, which, on 2<sup>nd</sup> July 2014, reached a Joint Declaration<sup>353</sup> (adopted in Berlin) expressing the willingness of making concrete progresses for a peaceful resolution of the crisis. With the Joint Declaration it was decided the deployment of OSCE observers at the checkpoints of *Donetsk* and *Gukovo* on the Russian-Ukrainian border. This mission was smaller than the SMM and its effectivity was limited because of the Ukraine's loss of the entire border. In the same period, the Annual Session of the Parliamentary Assembly was held in Baku, and, in that occasion, the so-called Baku Declaration<sup>354</sup> was adopted, containing the Declaration and the resolutions provided by the Assembly's General Committees, namely the Committee on Political Affairs and Security; the Committee on Economic Affairs, Science, Technology and Environment; and the Committee on Democracy, Human Rights and Humanitarian Questions. The document had as central theme the situation in Ukraine, as the States expressed their "grave concern about the situation in Ukraine, and emphasized the role of the OSCE in engaging all parties in a constructive dialogue, monitoring and supporting the implementation of all OSCE principles and commitments on the ground, preventing further escalation of the crisis and promoting a diplomatic process towards a peaceful resolution".<sup>355</sup> It also called on the Russia Federation to reverse the annexation of the Republic of Crimea and the city of *Sevastopol*<sup>356</sup> and required all participating State to "refuse to recognize the forced annexation of Crimea by the Russian Federation".<sup>357</sup> The activity of the Normandy format led, in September 2014 to the adoption of the Minsk Protocol<sup>358</sup> and Memorandum<sup>359</sup> which, together with the Minsk Package of 2015<sup>360</sup>, designed the condition of the settlement of the dispute.

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<sup>353</sup> Berlin Declaration, 1012th Plenary Meeting. PC Journal No. 1012, Agenda item 3. Approved on 2 July 2014.

<sup>354</sup> *Baku Declaration and Resolutions*, adopted by the OSCE Parliamentary Assembly on 2 July 2014, AS (14) DE.

<sup>355</sup> Baku Declaration, Chapter I, para. 8.

<sup>356</sup> *Ibid.*, para. 39.

<sup>357</sup> *Ibid.*, *Resolution on clear, gross and uncorrected violations of Helsinki Principles by the Russia Federation*, para. 16.

<sup>358</sup> *Protocol on the results of consultations of the Trilateral Contact Group* (also called Minsk Protocol), signed on 5 September 2014 in Minsk (the only official version available is in Russian).

<sup>359</sup> *Memorandum outlining the parameters for the implementation of commitments of the Minsk Protocol of 5 September 2014*, signed on 19 September 2014 in Minsk (the only official version available is in Russian).

<sup>360</sup> *Package of Measures for the Implementation of the Minsk Agreements* (also called Minsk Package or referred to as Minsk II), signed on 12 February 2015 (the only official version available is in Russian).

The Minsk Protocol and Memorandum provided the role of the OSCE in monitoring the ceasefire regimes, the withdrawal of all armed groups and similar from the Ukrainian territory and the creation of a Safety Zone at least 30 km wide.<sup>361</sup>

The Minsk Package of Measures (sometimes referred as Minsk II) confirmed the responsibility of monitoring the ceasefire regime and the withdrawal of heavy weapons. It also called for the use of the necessary equipment (including drones, satellites and radar) in order to monitor the process.<sup>362</sup>

The SMM played an essential role in supporting the implementation of all the relevant provisions of the Minsk Agreements and, despite the fact that it has been tackled by Russian authorities as a biased pro-Ukraine initiative, it is widely recognized as a major foster of stability and de-escalation in the eastern part of Ukraine.<sup>363</sup>

The Agreements, on the other hand, received many critics: the control of the international border was subjected to constitutional change, decentralization, and the restoration of Ukraine's economic relations to *Donbas* by the year's end. Most crucially, the Minsk II agreements failed to address the issue of implementation of the ceasefire. The result was the possibility for Russia to continue to sustain the rebels with both intelligence and weapons and to influence the internal structure of Ukraine both politically and economically.<sup>364</sup> Another point that needs to be stressed is what emerged right before the initiation of the latest aggression by Russia against Ukraine and that some observers have defined the “Minsk conundrum”.

The content of the so-called Minsk II agreement must be taken into consideration. The document is formed by 13 points which can be divided into two main spheres: nine points are related to the management of the conflict (for example Articles 1 to 3 defined the ceasefire's condition and the withdrawal of heavy weaponry<sup>365</sup>); while the other four points are dedicated to political issues (for instance, Article 4 displays the provisions for

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<sup>361</sup> HAUG (2016), *The Minsk Agreements and the OSCE Special Monitoring Mission*, in *Security and Human Rights*, Vol. 27 no. 3-4, pp 346-347.

<sup>362</sup> *Ibid.*

<sup>363</sup> LEHNE (2015), *Reviving the OSCE European Security and the Ukraine Crisis*, in *Carnegie Endowment for International Peace Publications Department*, p. 6.

<sup>364</sup> JARÁBIK (2015), *What Did Minsk II Actually Achieve?* in *Carnegie Endowment for International Peace*.

<sup>365</sup> *Package of Measures for the Implementation of the Minsk Agreements*, signed on 12 February 2015, Article 1 and 3. Another example is Article 10 which provides the “withdrawal of all foreign armed formations, military equipment, as well as mercenaries from the territory of Ukraine under monitoring of the OSCE. Disarmament of all illegal groups”. Besides the ones previously mentioned, the other Articles which are focused on the military and security issue are Articles 5, 6, 8, 8 and 13.

the elections in the Donetsk and Luhansk regions<sup>366</sup>). The first problematic aspect was the requirement directed towards Ukraine's authorities to grant a 'special status' to certain areas of the Donetsk and Luhansk regions by a constitutional reform<sup>367</sup>. This was, at least, extremely difficult to reach, since the majority of Ukrainians considered it unacceptable, thus national leaders remained quite cautious in implementing such requirement<sup>368</sup>. On the other hand, the possibility that the regions of Donetsk and Luhansk could have remained without a recognition of a 'special status' granted by Ukraine's constitution was regarded as inadmissible by Russia<sup>369</sup>.

The second issue was the already mentioned conundrum which, in short, is the different interpretation of Minsk II by Moscow and Kyiv. From Ukraine's perspective the re-establishment of the national control over the rebel territories was meant to be a precondition for reaching a new political settlement<sup>370</sup>. On the contrary, in Russia's view, the Agreement was demanding Ukraine to accord to the rebel leaders in the *Donbas* complete autonomy and representation in the national government and only after that Ukraine could have regained control over the areas<sup>371</sup>. This latter interpretation was effectively granting Moscow the capability of deeply influencing Kyiv's foreign politics.<sup>372</sup>

### 3.3.2 From the Crisis to Russia's invasion of Ukraine

In the years after the Annexation of Crimea, the OSCE Parliamentary Assembly adopted several documents aiming to contrast the Russian aggressive activity against Ukraine.

In 2015, the PA Annual Session was held in the Finnish capital and had as its final product the Helsinki Declaration, which included, among others, a number of resolutions

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<sup>366</sup> *Supra*, Article 4. Additionally, Article 9 provides the reinstatement "of full control of the state border by the government of Ukraine throughout the conflict area"; Article 11 indicates the requirement of "carrying out constitutional reform in Ukraine with a new Constitution entering into force by the end of 2015"; Article 12 contains indications for the elections in the Donbas zone which must be held on the basis of the discussion and agreement reached by the government and the representatives of certain areas of the Donetsk and Lugansk regions.

<sup>367</sup> *Package of Measures for the Implementation of the Minsk Agreements*, signed on 12 February 2015, Article 11.

<sup>368</sup> DUNCAN (2020), *The Minsk Conundrum: Western Policy and Russia's War in Eastern Ukraine*, in *Chatham House*, p. 14.

<sup>369</sup> *Ibid.*, p. 15.

<sup>370</sup> *Ibid.*

<sup>371</sup> *Ibid.* For further information see also KLIJN (2022), *Mulling over Minsk: what do the agreements (not) say?*, in *Clingendael Netherlands Institute of International Relations* (available online).

<sup>372</sup> *Ukraine-Russia crisis: What is the Minsk agreement?*, 9 February 2022, in *Aljazeera*. Available online.

supporting Ukraine<sup>373</sup>. It required all parties “to fully implement the Package of Measures for the Implementation of the Minsk Agreements, adopted and signed on 12 February 2015 in Minsk by all signatories who also signed the Minsk Protocol of 5 September 2014, and the Memorandum of 19 September 2014, which is an essential step towards a peaceful settlement of the crisis in and around Ukraine, and condemning the ongoing violations of the ceasefire”.<sup>374</sup> It also recommended the expansion of the Observer Mission to all the relevant check-points present within the Russian territory and bordering the Ukrainian regions of *Donetsk* and *Luhansk* to “allow proper and comprehensive monitoring on the Ukrainian-Russian border and verification by the OSCE”.<sup>375</sup>

In 2016, the Draft Resolution “on Violations of Human Rights and Fundamental Freedoms in Crimea”<sup>376</sup> was presented, which re-affirmed the illegality and invalidity of the Crimean referendum, since it was not authorized by Ukraine’s central government and violated its Constitution, as well as international law. With the Resolution, the PA urged the Russian Federation “to abide by its obligations under international law” and (among other) to stop violations of human rights on the Crimean Peninsula, conduct impartial and effective investigations into cases of violations, and to halt the eradication and suppression of the language, culture, religion, and other manifestations of the Ukrainian identity in the occupied Crimea”.<sup>377</sup>

In 2017, in conclusion of the 26<sup>th</sup> Annual Session, the Parliamentary Assembly adopted the Minsk Declaration<sup>378</sup>, which included the Resolution on Restoration of the Sovereignty and Territorial Integrity of Ukraine. The Declaration, containing the Resolution, was adopted by a vote of 91-15<sup>379</sup>, with three abstentions. In particular, by including the Resolution, the PA recognized the independence and territorial integrity of

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<sup>373</sup> *Helsinki Declaration and Resolution*, Adopted on 9 July 2015 by the OSCE Parliamentary Assembly (24<sup>th</sup> Annual Session 5-9 July 2015), [AS (15) D E]. 1st Committee Resolution: Political Affairs and Security, Resolution on the Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation, Resolution on Abducted and Illegally Detained Ukrainian Citizens in the Russian Federation.

<sup>374</sup> *Helsinki Declaration*, 1st Committee Resolution: Political Affairs and Security § 12.

<sup>375</sup> *Ibid.*, § 42.

<sup>376</sup> *Draft Resolution “on Violations of Human Rights and Fundamental Freedoms in Crimea”*, presented during the 25<sup>th</sup> Annual Session of the OSCE Parliament Assembly, Tbilisi 1 – 5- July 2016, SC (16) SI 1 E. The Draft Resolution was included within the final *Tbilisi Declaration and Resolutions*, adopted on 5 July 2016 as *Resolution on Violations of Human Rights and Fundamental Freedoms in the Autonomous Republic of Crimea and the City of Sevastopol*.

<sup>377</sup> *Tbilisi Declaration, 2016, Resolution on Violations of Human Rights and Fundamental Freedoms in the Autonomous Republic of Crimea and the City of Sevastopol*, § 5, 25.

<sup>378</sup> *Minsk Declaration and Resolutions*, Adopted on 9 July 2017 by the OSCE Parliamentary Assembly (26<sup>th</sup> Annual Session 5-9 July 2017), [AS (17) D E].

<sup>379</sup> *Report on the OSCE Parliamentary Assembly’s 26th Annual Session Minsk, Belarus*, prepared by the OSCE PA International Secretariat (available *online*).

Ukraine “within its internationally recognized borders, which include the Autonomous Republic of Crimea and the city of Sevastopol” and re-affirmed the condemnation of the occupation of the Republic of Crimea and the city of *Sevastopol* by the Russia Federation, together with the “Russian hybrid aggression against Ukraine in Donbas”. The PA indicated that Russia had failed to implement every previous Resolutions on violation of fundamental Helsinki principle and international norms about human rights in both of the occupied territories.<sup>380</sup>

In 2018, the Berlin Declaration<sup>381</sup> was adopted after the 27<sup>th</sup> Annual Session, including the Resolution on Ongoing Violations of Human Rights and Fundamental Freedoms in the Autonomous Republic of Crimea and the City of Sevastopol (Ukraine). The Resolution strongly condemned “all violations of human rights and fundamental freedoms in Crimea, marked in particular by increasing repression, violence and discrimination against the Crimean Tatar indigenous people and ethnic Ukrainians, including abductions, killings, torture and ill treatment, enforced disappearances and harassment, arbitrary arrest, detention or incarceration”. It reiterated the call on the Russia Federation to reverse the annexation of the Autonomous Republic of Crimea and the city of Sevastopol and demanded that the country respect its obligation under international law “with regard to respecting the laws in force in Crimea prior to occupation”.<sup>382</sup>

In January 2018, the OSCE’s Italian Presidency begun facing important difficulties rising on the one hand from the consensus mechanism and, on the other hand, from the high level of contraposition among the Participating States<sup>383</sup>. Indeed, during the precedent years there were numerous clashes between Ukrainian and Russian military groups, which were translated, within the Organization, in reciprocal accusation between the State backing the Ukrainian or the Russian Delegation<sup>384</sup>. Despite the efforts and the results of the Special Monitoring Mission and the continued dialoged within the Trilateral Contact Group, during the Ministerial Council of Milan, the Italian Presidency was unable to

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<sup>380</sup> *Minsk Declaration*, 2017, *Resolution on Restoration of the Sovereignty and Territorial Integrity of Ukraine*, § 18–20.

<sup>381</sup> *Berlin Declaration and Resolutions*, adopted on 11 July 2018 by the OSCE Parliamentary Assembly (27<sup>th</sup> Annual Session 7-11 July 2018) [AS (18) D E], including the *Resolution on Ongoing Violations of Human Rights and Fundamental Freedoms in the Autonomous Republic of Crimea and the City of Sevastopol (Ukraine)*.

<sup>382</sup> *Ibid.*, § 10, 23, 24.

<sup>383</sup> SANTANGELO (2020), *Introduzione breve alla crisi ucraina e al ruolo dell’OSCE*, in AZZONI (ed.) *Ricostruire Il Dialogo: La Presidenza italiana dell’OSCE nel 2018*, Pisa.

<sup>384</sup> GIOVANNONI (2020), *La crisi ucraina nell’anno della Presidenza italiana*, in AZZONI (ed.) *Ricostruire Il Dialogo: La Presidenza italiana dell’OSCE nel 2018*, Pisa.

reach a shared agreement upon a declaration on the humanitarian impact of the conflict and on the binding character and on the importance of the Minsk Agreements. However, the Italian Presidency decided to present the so-called Quadriga declarations, signed by the 2018 OSCE Chairmanship Troika (Austria, Italy, Slovakia), together with Albania as the incoming Troika member. The two Declarations, in addition to expressing the worry about the crisis in and surrounding Ukraine, emphasized the concern about deepening mistrust, increasing tensions, violence, and instability both inside and between OSCE participating States.<sup>385</sup>

In 2019, the 28<sup>th</sup> Annual Session was concluded with the adoption of the Luxemburg Declaration<sup>386</sup>, which contained recommendations coming from national parliaments and the international community in different fields, such as security, economics, environment and human rights. The declaration included also the Resolution on the Militarization by the Russian Federation of the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol, Ukraine, the Black Sea and the Sea of Azov. The Resolution emphasized the “continuation by the Russia Federation of gross violations of the principles present within the UN Charter, and the Helsinki Final Act, especially in relation to the inviolability of frontiers of States, peaceful settlement of disputes, [...] and fulfilment in good faith of obligations under international law”. It openly condemned the increasing militarization of the Sea of Azov, of the Kerch Strait and of the Black Sea by the Russian Federation, as well as the armed aggression against Ukrainian vessels and crew which happened in neutral international waters in November 2018.<sup>387</sup>

In 2021, the Parliamentary Assembly voted a Question of Urgency under Rule 26<sup>388</sup> adopting a Resolution on the “Destabilizing Military Build-Up by the Russian Federation Near Ukraine, in the Temporarily Occupied Autonomous Republic of Crimea and the

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<sup>385</sup> *OSCE Annual Report 2018*, Published by the Organization for Security and Co-operation in Europe Office of the Secretary General, pp. 11-12. Available *online*.

<sup>386</sup> *Luxembourg Declaration and Resolutions*, adopted on 8 July 2019 by the OSCE Parliamentary Assembly (28<sup>th</sup> Annual Session 4-8 July 2019) [AS (19) D E].

<sup>387</sup> *Luxembourg Declaration*, Resolution on the Militarization by the Russian Federation of the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol, Ukraine, the Black Sea and the Sea of Azov, § 1, 12, 14, 15.

<sup>388</sup> Rule of Procedure, Part I, Rule 26(1) provides that “Questions of urgency may be placed on the agenda of the Assembly at any time on the proposal of the Standing Committee, or in the absence of a meeting of the Standing Committee, on the proposal of the Bureau. Such questions of urgency must be pertinent to the OSCE process and relate to an event which has taken place or come to public knowledge less than twenty-four days before the opening of the first plenary session”. The question of urgency must be in a form of a draft resolution and must be signed at least by 25 members and at least 10 Countries. The first signatory is the principal sponsor of the question.

City of Sevastopol, Ukraine, the Black Sea and the Sea of Azov”<sup>389</sup>, sponsored by Ukraine. The Question was proposed because of the concern over “conduct by the Russian Federation of the large-scale no notice military exercises near the border with Ukraine in April 2021 [...] accompanied by aggressive rhetoric and escalation of violence in the conflict zone in the east of Ukraine”. The Parliamentary Assembly urged Moscow to withdraw its additional troops, weapons, military equipment, and warships deployed following the military exercises and to lift all restrictions to the freedom of navigation in the Black Sea, the Sea of Azov, and through the Kerch Strait.<sup>390</sup>

During February 2022, the SMM reported thousands ceasefire violations and explosion in the regions of *Donetsk* and *Luhansk* and continued to monitor the situation of civilians, the entry-exit checkpoints, and the checkpoints of the armed formations in the regions. On 24<sup>th</sup> February, the SMM daily Report informed the Organization that the security situation was deteriorated in various locations across Ukraine and there were multiple explosions, including multiple launch rocket system fire. The report confirmed the beginning of Russian aggression against Ukraine.<sup>391</sup>

On 23<sup>rd</sup> February, during a televised speech, President Vladimir Putin justified the Russian intervention in Ukraine on the basis of the Friendship Treaties signed between Russian and the *Donetsk People’s Republic* and the *Lugansk People’s Republic*<sup>392</sup> and with the aim to protect the people living in those regions from the humiliation and genocide perpetrated by the Ukrainian authorities<sup>393</sup>. Nonetheless, according to the daily and thematic reports drafted by the OSCE SMM since 2014, there is no evidence of such allegations against Ukraine’s government. Additionally, the only violations of human rights reported by the Mission is related to the restriction of civilian’s freedom of movement at the crossing points along the contact line between Ukraine and the regions of *Donetsk* and *Lugansk*<sup>394</sup>. It must be underlined that, also in other previous occasions,

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<sup>389</sup> *Resolution on the Destabilizing Military Build-Up by the Russian Federation Near Ukraine, in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol, Ukraine, the Black Sea and the Sea of Azov*, adopted on 6 July 2021, by the OSCE Parliamentary Assembly, [SC (21) URG 03 E].

<sup>390</sup> *Ibid.*, § 3, 7, 9.

<sup>391</sup> See OSCE Special Monitoring Mission to Ukraine (SMM) Daily Report 43/2022. Available *online*.

<sup>392</sup> Federal Law on Ratifying the Treaty of Friendship, Cooperation and Mutual Assistance Between the Russian Federation and the *Donetsk People’s Republic* and Federal Law On Ratifying the Treaty of Friendship, Cooperation and Mutual Assistance Between the Russian Federation and the *Lugansk People’s Republic*, signed on 21 February 2021 in Moscow, adopted by the State Duma and approved by the Federation Council on 22 February 2022.

<sup>393</sup> Presidency of Russia Press Release, *Address by the President of the Russian Federation*, 24<sup>th</sup> February 2022. Available *online*.

<sup>394</sup> Special Monitoring Mission to Ukraine, *Thematic Report: Restrictions to civilian freedom of movement at crossing points along the contact line and the impact on civilians*, covering the period between 16

Russian authorities used national media and their role within international organizations to promote their interpretation of events. This happened in 2008 with Russia's invasion of Georgia when Moscow exploited its position within the OSCE in order to promote itself as the protector of the civilians living in South Ossetia against the genocide perpetrated by the Georgian government<sup>395</sup>. Also in this case, a small number of the allegations made by Moscow were sustained by independent fact-finding missions<sup>396</sup>.

A strong U-turn related to the OSCE presence in Ukraine was taken on 31 March 2022, when the mandate of the SMM Ukraine expired<sup>397</sup>. The news was delivered by the OSCE Chairman-in-Office and Polish Foreign Minister Zbigniew Rau and Secretary General Helga Maria Schmid, who confirmed that "no consensus was reached on the extension of the mandate of OSCE Special Monitoring Mission" which was "the Organization's largest field presence and a key component of its response to the crisis in and around Ukraine".<sup>398</sup> In the following months, the closure of the Mission was implemented, but numerous participants were subjected to allegations and detained in the regions of Donetsk and Luhansk. The OSCE Chairman-in-Office and the Secretary-General condemned the allegations and the detentions, reassured that the Organization would have taken action to use all possible avenues to protect the rights and privileges of current and former OSCE officials.<sup>399</sup> In July, the (SMM) Acting Head of Mission Antje Grawe denounced the persecution of SMM's national Mission members, including those deprived of their liberty in the regions of Donetsk and Luhansk and called for immediate release.<sup>400</sup>

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November 2020 – 30 September 2021. Available *online*. The report emphasized that, while the Ukrainian authorities have taken multiple steps to alleviate the difficulties faced by civilian and to facilitate the crossing of the entry-exit checkpoints (EECPs), several difficulties remain for the checkpointed placed within the non-government-controlled areas.

<sup>395</sup> BOND (2015), *Russia in International Organizations: The Shift from Defence to Offence*, in CADIER & LIGHT (ed.) *Russia's Foreign Policy – Ideas, Domestic Politics and External Relations*, Houndmills, pp. 194-195.

<sup>396</sup> *Ibid.*

<sup>397</sup> Decision no. 1401, adopted on 31 March 2021, by the 1308th Plenary Meeting PC Journal No. 1308, Agenda item 1.

<sup>398</sup> See OSCE Press Release, *Chairman-in-Office and Secretary General expressed regret that no consensus reached on extension of mandate of Special Monitoring Mission to Ukraine*, 31 March 2022, available *online*.

<sup>399</sup> See OSCE Press Release, *OSCE Chairman-in-Office and Secretary General condemn intimidation and detention of OSCE staff in Donetsk and Luhansk*, 25 May 2022, available *online*.

<sup>400</sup> See OSCE Press Release, *OSCE SMM Acting Head of Mission refutes claims and denounces persecution of national Mission members, demands immediate and unconditional release of those deprived of their liberty*, 25 July 2022, available *online*.



### 3.4 Conclusion

The OSCE could be the most suitable platform to consider when facing the current situation between Ukraine and Russia, not only because it is a forum for dialogue dealing with a wide range of regional issue, but also because it is the widest regional organization currently comprehending Russia's membership. Nonetheless, it has many critical constraints limiting its capability to perform effectively. In analyzing the possible role of the OSCE in next future there are both positive and negative points.

On the positive side, the Organization was created precisely in order to promote a constructive dialogue between Eastern and Western Europe during the Cold War, having as membership criterion only the geographical one. Secondly, the consensus-based internal mechanism allows each participating State to have an equal say in each decision. Third, considering the recent actions of the Russia Federation, as well as its rhetoric calling for a re-organization of the European security space, the OSCE seems to be the most appropriate platform to discuss such question. This is particularly true in the light of the fact that Russia has ratified the OSCE's core declarations containing the fundamental principles of European security (such as the Helsinki Final Act and its Decalogue). Finally, at the diplomatic level, the Organization has the necessary expertise and technical capacity to foster a discussion about lowering tensions through openness, enhanced communication and reciprocal restraints.<sup>401</sup>

On the negative side, some points need to be considered. First of all, the budgetary one: among the three regional organization considered in this work, the OSCE is the one presenting the lowest budget. In 2021 the OSCE total Unified Budget was of 138,204,100 euros<sup>402</sup>, while the budget of the Council of Europe was a total of 496,779,000 euros<sup>403</sup>. This obviously have an impact on the efficiency and on the magnitude of the operation that the OSCE can perform.

Secondly, the recognition that its activities are irreversibly linked to the willingness of its participating States. This, in practice, means that even if the presence of OSCE international observer have been extremely productive in terms of resolution of local ceasefires or in securing access to water, electricity and other services to civilians, their

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<sup>401</sup> LOHSEN (2022), *Can the OSCE Help Resolve the Russia-Ukraine Crisis?* in *Center for Strategic and International Studies (CSIS)*.

<sup>402</sup> Decision no. 1413 Approval of the 2021 Unified Budget, PC Journal No. 1331, Agenda item 3.

<sup>403</sup> *Council of Europe Programme and Budget 2020-2021*, Table 1, Ministers' Deputies CM Documents approved on 20 December 2019, CM(2020)1. Available *online*.

work has often been blocked by Russian authorities by denying them access to certain regions or sites and restricting their freedom of movement.<sup>404</sup> This reasoning is clear also recalling the attitude of Russian Representatives accusing the Organization of applying “double standards” (as it was mentioned before in the chapter), with the consequence of debilitating the OSCE’s credibility within the public opinion and justifying its own non-compliance (or even obstruction) of many decisions and resolutions.

In conclusion, once again, the future and the incisiveness of the OSCE regarding the relationship between Ukraine and Russia (but also between Eastern and Western Europe) is ultimately linked to the political will of the participating States, to their capability of engaging in a constructive dialogue, in their willingness to respect the Declarations and Resolution adopted within the Organization, and in their recognition of the OSCE as the ultimate and most inclusive diplomatic and geopolitical platform of dialogue.

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<sup>404</sup> *Thematic Report: restrictions to the SMM’s freedom of movement and other impediments to the fulfilments of its mandate*, covering the period between 1 January – 30 June 2021 and published on December 2021 by the OSCE Special Monitoring Mission to Ukraine. The Report provides that “restrictions considerably limited the SMM’s monitoring in areas outside government control near the border with the Russian Federation. The Mission continued its efforts to alleviate the situation, but its observations in these areas could not be categorized as unconditional” (p. 3).

#### 4. THE EUROPEAN UNION

This chapter is dedicated to the European Union and its role from 2014 to the present days concerning the relations between Russia and Ukraine.

Both Ukraine and the Russian Federation are not Member States of the European Union, however, as it will be explained in this Chapter, the relationship between the Organization and those States have always been intense, thus it seems relevant to offer a brief review on the matter.

Subsequently, a description of the sanctions adopted by the EU as response to the annexation of Crimea will be presented, as well as an analysis of the period between the Crisis and the latest aggression of Ukraine. In this framework, a special focus will be placed on the economic ties between the EU and Russia, especially regarding the energy sector and the concept of “energy dependency” of the former.

Finally, the timeline of EU’s reaction to Ukraine’s aggression will be displayed, comprehending not only the packages of restrictive measures adopted by the EU Council, but also other relevant activities performed in the field of security and defense.

##### 4.1 Brief history of EU – Russia relationship

The Russia Federation is the biggest neighbour of the European Union and, for several years, it has been one of its most important economic partners.

The history of the formal relationship between the two started in 1994, when the parties agreed on a legal framework of cooperation known as the Partnership and Cooperation Agreement (PCA)<sup>405</sup>. The PCA covered three main areas, namely Political Dialogue, Trade Relations and Investment and Business Environment. With the document, both parties committed to a number of principles, among them the respect of the rule of law, the safeguard of minorities and the protection of human rights and of multi-party democracy. According to Sir Leon Brittan, the European Commissioner for external economic relations from 1989 to 1999, the agreement would have built “a solid framework base on mutual respect”. Moreover, *Hans van den Broek*, European Commissioner for external political relations from 1993 to 1999, claimed that it would

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<sup>405</sup> *Partnership and Cooperation Agreement between the EU, its Member States and the Russian Federation*, signed on 24. June 1994, entered into force on 28 November 1997, OJ L 327.

have established “a regular political dialogue contributing to overall security and stability in Europe”<sup>406</sup>.

Only two years after the PCA entered into force, the Common Strategy of the EU on Russia was approved<sup>407</sup>. The Common Strategy promoted “A stable, democratic and prosperous Russia, firmly anchored in a united Europe free of new dividing lines, is essential to lasting peace on the continent”<sup>408</sup>. It presented four principal objectives: (a) consolidation of democracy, the rule of law and public institutions in Russia; (b) integration of Russia into a common European economic and social space; (c) cooperation to strengthen stability and security in Europe and beyond; and (d) common challenges on the European continent<sup>409</sup>.

In the following years, the relationship between the EU and the Russian Federation became even deeper as proved by a press conference held by the Russian President Vladimir Putin, during which he defined Europe as “a major trade and economic partner, and our (Russia’s) natural, most important partner, including in the political sphere”<sup>410</sup>.

Nonetheless, despite the general positive attitude, there were concrete weaknesses in the EU-Russia partnership. Perhaps the clearest one was the inability of the Union to communicate with Russia unmistakably by speaking with a single voice, with the consequence of mining its own credibility. Secondly, the great number of goals to be reached were not counterbalanced by a concrete and practical agenda with the capability of converting broad purposes into operational activities. Furthermore, the institutional framework of the Strategic Partnership demonstrated to be too dispersive and not effective. Finally, the two partners did not produce a defined pattern of cooperation but proceeded independently following their own targets<sup>411</sup>.

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<sup>406</sup> European Commission Press Release, 22 June 1994, *Russia and European Union reach historic agreement to deepen trade and political ties* IP/94/565. Available online.

<sup>407</sup> Council of the European Union, General Secretariat of the Council (1999), *Common strategy of the European Union on Russia*, Cologne, 3 and 4 June 1999, Publications Office. The Common Strategy of the European Union on Russia was the first one adopted by the European Council through the application of Art. 13(1) of the Treaty on the European Union which provides that: “The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.”

<sup>408</sup> *Ibidem*, part I, page 7.

<sup>409</sup> *Ibidem*, pages 8 – 10.

<sup>410</sup> President Putin’s full interview: Presidency of Russia Press Release, 3 November 2003, *Interview with the ANSA Italian News Agency, Corriere della Sera Newspaper and the RAI Television Company*. Available online.

<sup>411</sup> VAN ELSUWEGE (2008), *The four Common Spaces: New impetus to the EU–Russia Strategic Partnership?* In *Law and Practice of EU External Relations: Salient Features of a Changing Landscape*, pp. 336 – 338.

Notwithstanding these problematic issues, in 2003, a new ambitious bilateral project was launched creating four “Common Spaces”<sup>412</sup>, being an economic space; a freedom, security and justice space; an external security space; and a research, education and culture space. The project was officially launched on 10<sup>th</sup> of May 2005, in Moscow, when President of Russia Vladimir Putin, Prime Minister of Luxembourg Jean-Claude Juncker (holding, in than moment, the Presidency of the European Council), President of the European Commission Jose Manuel Durao Barroso and European Union High Representative for Foreign Policy and Security Javier Solana, approved the Road Map on the four Common Space, giving life to a long-term partnership.<sup>413</sup>

The vastest space was the Common Economic Space, providing a standard agenda for all EU negotiations, however excluding the possibility to establish a “free trade” area between the two partners. This demonstrated the ongoing protectionist attitude of both Russian and European industrial lobbies regarding those sectors in which the Federation, or the Union, had a competitive strength. The other two highly political spaces, the Freedom Security and Justice space and the External Security space seemed to provide high level of cooperation in low-controversial fields (such as terrorism, weapons of mass destruction or regional instability) but they lacked a provision for a serious commitment to respect and promote democracy, rule of law and human rights.<sup>414</sup>

The developing of a closer relationship was, nonetheless, subjected to a stall because of the Russia – Georgian war of 2008. In this occasion, an major role was played by the French President *Sarkozy*, who was holding EU Presidency, because of his negotiation of the ceasefire agreements, comprehending also the establishment of an EU Monitoring Mission<sup>415</sup>. The war had serious repercussion on the relationship between the Union and the Federation since that event provoked the reassessment of EU strategy *vis-à-vis* Russia<sup>416</sup>.

During the two years following the conflict, negotiations between the EU and Russia were gradually resumed with the goal of achieving a new agreement which should have

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<sup>412</sup> EU – Russia Summit, 31 May 2003, *Joint Statement*, St. Petersburg, Press 154 no. 9937/03. Available *online*.

<sup>413</sup> Council of the European Union, *Road Map for the Common Economic Space Building Blocks for Sustained Economic Growth*, 10 May 2005, 15th EU-Russia Summit, Moscow, Press 110 no. 8799/05.

<sup>414</sup> EMERSON (2005), *EU-Russia Four Common Spaces and the Proliferation of the Fuzzy*, in *CEPS Policy Brief* no. 71 Centre for European Policy Studies, pp. 2 – 3.

<sup>415</sup> LARIVÉ (2014) *Has the CSDP Become the Instrument for Foreign Intervention and Engagement Envisioned by the Member States and the EU?* In *Debating European Security and Defence Policy*, New York, p. 208.

<sup>416</sup> See *After Georgia – the EU and Russia follow-up report to the UK Parliament*, available *online*.

included “‘legally binding commitments’ in areas such as political dialogue, justice, liberty, security, economic cooperation, research, education, culture, trade, investment and energy”.<sup>417</sup>

The result was the launch of the new “Partnership for Modernization” during the 25<sup>th</sup> EU-Russia Summit in 2010. The Partnership included numerous areas of cooperation such as bilateral trade and economic relations, promotion of sustainable low-carbon economy and energy efficiency, enhancing dialogue with civil society.<sup>418</sup>

In spite of this, the tensions between the EU and Russia continued to grow and culminated with the Crimea Crisis which signalled the suspension of all the political process between the two.

#### 4.2 The EU and the Crimean Crisis

Before analysing the actions taken by the European Union in response to the Crimean Crisis, it seems useful to introduce the concept of sanctions in the European Union framework.

In general, the sanctions are imposed to force a change in policy or activity perpetrated by the target party (or parties) responsible for a wrongful behaviour (for instance, not respecting international law or human rights, or pursuing policies that do not conform with the rule of law or democratic principles)<sup>419</sup>. Indeed, these measures must be consistent with the EU’s external action, as displayed in Article 21 TEU, which includes the objective of “preserving peace, preventing conflicts and strengthening international security, in accordance with the purposes and principles of the United Nations Charter”<sup>420</sup>. The legal framework containing the EU discipline about sanctions is built

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<sup>417</sup> CSASZI (2021), Russia in Fact Sheets on the European Union European Parliament. Available online.

<sup>418</sup> Council of the EU, 1 June 2010, *Joint Statement of the Partnership for Modernization EU-Russia Summit*, no. 10546/10 Available online.

<sup>419</sup> This definition is given by the official site of the European Union Law available online. For example, in 2017, the EU Council adopted restrictive measures against Venezuela due to the continuing deterioration of democracy, the rule of law and human rights within the country following the beginning of the constitutional crisis within the country. The sanctions were introduced by Council Decision (CFSP) no. 2017/2074 *concerning restrictive measures in view of the situation in Venezuela*, adopted on 13<sup>th</sup> of November 2017, OJ L 296/60.

<sup>420</sup> *Consolidated version of the Treaty on European Union (TEU)*, Title V - General provisions on the Union's external action and specific provisions on the common foreign and security policy, Chapter 1 - General provisions on the Union's external action, OJ C 202. Article 21 § 2(c).

upon two main pillars: Article 29 of the TEU<sup>421</sup> and Article 215 of the TFUE<sup>422</sup>. The latter grants to the EU Council the possibility to adopt sanction against governments of third countries, but also against non-state entities and individuals<sup>423</sup>. The two Articles are combined, indeed following Article 29, the Council takes decision in order to adopt, extend or lift sanctions (these decision are taken by unanimity), but if these sanctions include economic and/or financial aspects, then they are implemented by regulations adopted by the Council on the basis of Article 251 (voted by qualified majority upon a joint proposal submitted by the High Representative and the European Commission). The EU can adopt sanctions either as being its own measures (autonomous sanctions), or to implement the resolutions taken by the UN Security Council<sup>424</sup>.

Sanctions (which under EU law are also defined as “restrictive measures”) are, thus, recognised as extremely important tools of the EU’s Common Foreign and Security Policy (CFSP)<sup>425</sup>.

The adoption of CFSP decisions that impose restrictive measures, their characteristics and (most importantly) their conditions and objectives are governed by a series of acts, among which, the Note containing Basic Principles on the Use of Restrictive Measures (Sanctions)<sup>426</sup> adopted is particularly relevant. In the Note, sanctions are identified “as

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<sup>421</sup> *Consolidated version of the Treaty on European Union* [no. 12016M029], OJ C 202, Title V, Chapter II § 1, Article 29: “The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the Union positions”.

<sup>422</sup> *Consolidated version of the Treaty on the Functioning of the European Union* [no. 12008E215], OJ L 115, Part V, Title IV, Article 251 § 1: “Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof”.

<sup>423</sup> *Consolidated version of the Treaty on the Functioning of the European Union* [no. 12008E215], Article 251 § 2: “Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities”.

<sup>424</sup> *Charter of the United Nations*, signed on 26 June 1945 in San Francisco and entered into force on 24 October 1945, Chapter VII, Article 41.

<sup>425</sup> The Common Foreign and Security Policy (CFSP) was introduced with the Treaty on the European Union (Maastricht Treaty), no. 11992M/TXT, signed on 7 February 1992, entered into force on 1 November 1993, Title V, OJ C 191. The CFSP is an instrument for “reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world” (Maastricht Treaty, Preamble). For further information see: KOUTRAKOS (2018), *Judicial review in the EU’s Common Foreign and Security Policy*, in *International and Comparative Law Quarterly*, vol. 67, no. 1, pp. 1-35, available online; WESSEL (2021), *Legality in EU Common Foreign and Security Policy: The Choice of the Appropriate Legal Basis*, in Claire Kilpatrick, and Joanne Scott (eds), *Contemporary Challenges to EU Legality*, available online.

<sup>426</sup> Council of the EU – Political and Security Committee, Political and Security Committee, *Basic Principles on the Use of Restrictive Measures (Sanctions)*, adopted on 7 June 2014, no. 10198/1/04.

part of an integrated, comprehensive policy approach which should include political dialogue, incentives, conditionality and could even involve, as a last resort, the use of coercive measures in accordance with the UN Charter<sup>427</sup>. The choice of which measures should be used is defined on a case-by-case basis, the goal of the measures should be clearly defined, and the sanctions must be lifted once these objectives are met<sup>428</sup>. The decision about adopting, renewing, or lifting the sanctions are taken by the Council (by unanimity) on the basis of proposals from the High Representative. The latter, together with the Commission, have the role of giving effect to these decisions in the EU law through joint proposals for Council regulations. Moreover, the Commission monitors the implementation of the sanctions by the Member States as disciplined by the TFEU<sup>429</sup>. With the annexation of the Crimean Peninsula (and, later, with the aggression against Ukraine), the Russia Federation committed a violation of the prohibition on the use of force, as provided by UN Charter<sup>430</sup> and by the international customary law<sup>431</sup>, triggering the response of the EU which opted for the adoption of sanctions and restrictive measures against the Federation<sup>432</sup>.

It must be underlined that, in recent times, there have been the recognition that, often, sanction's implementation has not been uniform across the Union, creating distortions in the Single Market and the possibility for governments and companies to circumvents the prohibitions. This is a highly problematic issue, since an "inconsistent enforcement undermines the efficacy of sanctions and the EU's ability to speak with one voice"<sup>433</sup>.

Responding to the annexation of Crimea and the overall crisis that started in 2014, the EU adopted a series of measures including: diplomatic, economic, individual sanctions, and sanctions against Crimea. Particularly, diplomatic sanctions regarded the interruption

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<sup>427</sup> *Supra*, para. 5.

<sup>428</sup> *Supra*, para. 8, 9.

<sup>429</sup> *Consolidated version of the Treaty on European Union*, no. 12008M017, Title III: Provisions on The Institutions, Article 17 § 1, OJ C 115.

<sup>430</sup> *Charter of the United Nations* (1945), 1 UNTS XVI (UN Charter) Article 2 § 4: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

<sup>431</sup> For further information see KRYVOI (2022), *Russia's Invasion of Ukraine and International Law*, in *British Institute of International and Comparative law* (available online); BELLINGER (2022), *How Russia's Invasion of Ukraine Violates International Law*, in *Council on Foreign Relations* (available online).

<sup>432</sup> Following the invasion of Ukraine by the Federation, sanctions were also adopted by other States such as the United States, Canada and the UK. In particular, Switzerland, which is a historically neutral state, decided to adopt a number of sanctions against Russia, including asset freezes. Additionally, even if China maintained a neutral position, other Asian nations (among which Japan, South Korea and Singapore), decided to join some U.S. and European measures.

<sup>433</sup> Communication COM/2021/32/EC.



of EU-Russia summits with indefinite effects. Conversely, the economic sanctions were embodied by three main Council Regulations.

The first Regulation was adopted on 17<sup>th</sup> March 2014<sup>434</sup> and introduced a first set of restrictive measures against 21 Russian and Ukrainian officials. It provided the freeze of “all held or controlled by any natural persons or natural or legal persons, entities or bodies” which recognized as associated with the 21 officials<sup>435</sup>.

In May, the Council decided to broaden the sanctions regarding Crimea “in respect of actions undermining or threatening the territorial integrity, sovereignty and independence” of Ukraine, thus adding the “the possibility to target persons associated with actions and policies undermining stability or security in Ukraine as well as with obstructing the work of international organizations in the country, and entities linked to such persons”<sup>436</sup>. Finally, the Council added 13 people to the list of those subject to travel ban and assets’ freeze (at that point the total number of persons subjected to sanction connected to the Crimea Crisis reach the number of 61 individuals)<sup>437</sup>.

The second package of measures was adopted on 23<sup>rd</sup> June<sup>438</sup>, in this case it was implemented a policy of non-recognition of the annexation of the Crimean Peninsula, and it was decided an import ban on goods imported from Crimea and Sevastopol. It was also prohibited “to provide, directly or indirectly, financing or financial assistance as well as insurance and reinsurance” related to the import of those goods<sup>439</sup>.

By the end of June, the EU leaders renewed their support to Ukraine and to the peace plan proposed by President *Poroshenko*. They also convened to adopt further significant restrictive measures if Russia did not comply with a list of steps: (a) the respect of the ceasefire and of the effective border control, (b) the return to the Ukrainian authorities of three border checkpoints, (c) the release of hostages including all of the OSCE observers and (d) the launch of substantial negotiations on the implementation of the peace plan<sup>440</sup>.

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<sup>434</sup> Council Regulation no. 269/2014, 17th March 2014, *Concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*, OJ L 78. Available online.

<sup>435</sup> See Article 2(1).

<sup>436</sup> Council of the European Union (2014), no. 9687/14, *Council broadens EU sanctions regarding the situation in Ukraine*. Available online.

<sup>437</sup> *Supra*.

<sup>438</sup> Council Regulation (EC) no. 692/2014, 23 June 2014, *Concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol*, OJ 183. Available online.

<sup>439</sup> See Article 2.

<sup>440</sup> Remarks by President *Herman Van Rompuy* following the European Council EUCO 138/14, 27 June 2014. Available online.

In that occasion, it was also signed an Association Agreement with Georgia and with the Republic of Moldova, and the signature process with Ukraine was officially completed. Neither the Russian Federation nor the separatist movements took the steps requested by the European Council, consequently its EU leaders agreed to the arrangement of a new set of restrictive measures, comprehending restrictions on economic cooperation with Russia. The new package of sanctions was approved at the end of July, and it included the elimination of the possibility of Russia to access to EU capital markets, as well as an embargo on the import and exports of arms and related material<sup>441</sup>. Indeed, the Regulations provided the prohibition “to sell, supply, transfer or export, directly or indirectly, dual-use goods and technology, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia, if those items are or may be intended, in their entirety or in part, for military use or for a military end-user”.<sup>442</sup> Finally, the prohibition on exports of certain energy-related goods and technology if not subjected to a prior authorization by competent authorities of Member States was decided<sup>443</sup>.

On 12<sup>th</sup> February 2015, during an informal meeting of Heads of State or Government, the EU leaders welcomed the Minsk Agreement, but Council President Donald Tusk claimed that they should have remained “cautious until words put down on paper translate into real deeds”<sup>444</sup>.

In fact, the leaders decided to link the duration of the sanction’s regime to the respect of the Minsk Agreements, which means that the measures should have remained in force until the full implementation of the Agreements<sup>445</sup>.

Before concluding this part, it must be added that, starting from 2014, Russia responded to the EU measures imposing counter-sanctions targeting imports of food (especially agricultural products) from the US, the EU and other countries. These counter-sanctions resulted in a conspicuous decline in the Western import of food products, accounting for about \$10.5 billion of lost trade<sup>446</sup>. In conclusion, if EU measures were targeting firms

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<sup>441</sup> Council Regulation (EC) no. 833/2014 of 31st July 2014, *Concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*, OJ L 229. Available online.

<sup>442</sup> Council Regulation (EC) no. 833/2014 Article 2(1).

<sup>443</sup> Council Regulation (EC) no. 833/2014 Article 3(1)(2).

<sup>444</sup> S.N. Press Release (2015), *Remarks by President Donald Tusk after President Poroshenko's exchange of views with the members of the European Council*. Available online.

<sup>445</sup> General Secretariat of the EU Council (2015), *Conclusions*, European Council meeting 19-20, EUCO 11/15. Part III: External Relations, para. 9, 10. Available online.

<sup>446</sup> BĚLÍN & HANOUSEK (2019), *Making sanctions bite: The EU–Russian sanctions of 2014*, in *VoxEU: Centre for Economic and Policy Research*.

and individuals rather than international trade, the Russian ones directly impacted a specific (and rather vital) sector of Western economy<sup>447</sup>.

#### 4.3 From the Crimean Crisis to the Ukraine's aggression

In 2016, the EU Global Strategy for Foreign and Security Policy<sup>448</sup> was presented by the High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, Federica Mogherini, to the European Council. The Strategy presented the EU's values and interests, and it defined the five priorities of EU's foreign and security policies. The first priority was the Union's security, including activities dedicated to counterterrorism, cyber security and energy security. The second priority was the "State and Societal Resilience to our East and South", which covered quite a broad area including the Balkans, Sub-Saharan Africa and Central Asia and provided activities especially targeting migrants and refugees. Third, it was introduced "An Integrated Approach to Conflicts and Crises" together with the recognition of states' fragility and the threat of violent conflicts. In this case the EU strategy for dealing with crises and conflicts was based on preventative peace, security and stabilization, conflict resolution, and addressing the "political economy" of insecurity. The fourth priority was dedicated to "Cooperative Regional Orders", this point dealt not only with the opposition to Russia's actions in Ukraine, but with other regional situations such as the Mediterranean, Middle East and Africa, the Northern and Southern Atlantic, Asia and the Arctic. Finally, the fifth priority was dedicated to the "Global Governance for the 21st Century" and renewed the commitment of the Union to a multilateral, rule-based system of global governance<sup>449</sup>. As mentioned, the situation in Ukraine was included in the fourth priority, in which the key elements of the European security order were reminded as being sovereignty, independence and territorial integrity of states, the inviolability of borders and the peaceful settlement of disputes. In this framework, the management of the relationship with Russia were defined as a "key strategic challenge" but it was also underlined that the EU would have not recognized the illegal annexation of Crimea, nor it would have accepted the destabilization of Eastern Ukraine.

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<sup>447</sup> *Supra*.

<sup>448</sup> European Union Global Strategy (2016), *Shared Vision, Common Action: A Stronger Europe*, p. 33-34. Available online.

<sup>449</sup> FRONTINI (2016) *The EU Global Strategy for Foreign and Security Policy: A Short Guide for the Perplexed*, in *ISPI: Istituto per gli Studi di Politica Internazionale*.

The same year, the EU Foreign Affairs Council agreed on Five Guiding Principles for EU-Russia Relations. The analysis of a document drafted by the European Parliamentary Research Service upon the actual implementation of the EU's Russia Policy<sup>450</sup> will follow, with a special focus on the application of the five principles<sup>451</sup>.

The First Principle provided for the full implementation of the Minsk agreements as major condition for lifting the sanctions against Russia. Considering the information given by the OSCE's Special Monitoring Mission, in 2017, there were continuing ceasefire violations, as well as killings, maintained captivity of many prisoners, and not all heavy weapons were withdrawn from the combat zone. On the other hand, despite Russia's economic recession of 2015-2016 was primarily driven by

falling oil prices, it was undisputable that the sanctions represented an exacerbating factor.<sup>452</sup>



Figure 3: from the Factsheet "Facts and figures about EU-Russia Relations", <[https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia\\_relation-en\\_2021-07.pdf](https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia_relation-en_2021-07.pdf)>.



Figure 2: from the Factsheet "Facts and figures about EU-Russia Relations", <[https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia\\_relation-en\\_2021-07.pdf](https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia_relation-en_2021-07.pdf)>.

The Second principle concerned the promotion of closer relations with the former Soviet Republics and Central Asia. There are six main countries targeted by this principle which are namely: Ukraine, Moldova, Georgia, Armenia, Azerbaijan and Belarus. In order to have a clearer understanding of the political and economic position of these countries, it is useful to make some reflections. In order to have a clearer understanding of the political and economic position of these countries, it is useful to make some reflections. First of all, perhaps the states which find themselves in the most difficult position are Ukraine,

<sup>450</sup> 3457th Council meeting Foreign Affairs, 14 March 2016, *Outcome of the Council Meeting*, Brussels, Presse 16 no. 7042/16, p. 4.

<sup>451</sup> RUSSELL (2018), *The EU's Russia policy: Five guiding principles*, in EPRS | European Russian Presidency (2003), *Interview with the ANSA Italian News Agency*, in *Corriere della Sera Newspaper* and *RAI Television Company*, pp. 3-8.

<sup>452</sup> *Supra*.

the Republic of Moldova and Georgia. These three countries, indeed, have expressed on several occasions the willingness to join the EU (every one of them present an Association Agreement and a DCFTA<sup>453</sup> signed and entered into force), but they are continuously threatened by the geographic vicinity to Russia and because of the presence of Russian troops within and close to their territories. Besides, Belarus and Armenia are the states presenting the tightest economic dependency from Russia: since 2015, both of them are part of the Eurasian Economic Union, led by Russia. Both states are also Russia's partners in terms of defense and security being part of the Collective Security Treaty Organization. Finally, Azerbaijan, together with Uzbekistan and Turkmenistan are considered to be "neutral countries" because of their independence from both sides (the Federation of the EU) in terms of energy, security and economy.<sup>454</sup>

The Third principle foresees improving resilience to Russian threats. In this case there are two main fields of action considered by the EU: energy security and new kinds of threats. Even if the first one will be deepened in other parts of the chapter, it is worthful to make some observations. Although the European sanctions have heavily limited energy cooperation with Russia, the export sector has been almost unaffected, resulting in around one third of EU's imports of gas and oil. Conversely, Russia has received the 70% of its import earnings directly from European countries (among them, the most dependent are Latvia, Finland, Slovakia and Hungary)<sup>455</sup>. Moreover, considering Russia military and non-military tools, it is true that NATO presents the biggest military capability, but it



Figure 4: from the Factsheet "Facts and figures about EU-Russia Relations", <[https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia\\_relation-en\\_2021-07.pdf](https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia_relation-en_2021-07.pdf)>.

<sup>453</sup> *The Deep and Comprehensive Free Trade Area (DCFTA)* is an integral part of the Association Agreement signed by the EU and, respectively, Ukraine (Association Agreement between the EU and Ukraine, 29 May 2014, OJ L 161), the Republic of Moldova (Association Agreement between the EU and the Republic of Moldova, 30 August 2014, OJ L 260) and Georgia (Association Agreement between the EU and Georgia, 30 August 2014, OJ L 261). The DCFTA provided the reciprocal opening of the goods and services' markets following predictable and enforceable rules.

<sup>454</sup> MARSHALL (2016). *Prisoners of geography*, New York, NY: Scribner, I ed. Vol 1, pp. 44-45.

<sup>455</sup> RUSSELL (2018: 5), the data are extracted from KOCAK, DE MICCO & FELICI (2016), *Study: The quest for natural gas pipelines*, in *EPRS | European Parliamentary Research Service and Directorate-General for External Policies*, PE 586.626, pp. 6-7, available online.

has been proven that Russia has strongly developed another source of destabilization. These sources mainly include anti-Western propaganda and cyber capability<sup>456</sup>.

The Fourth principle attains selective engagement with Russia on foreign-policy issues. This principle recognizes the existence of areas in which both the EU and Russia continue to share interests. Russia remains part of the UN Security Council, thus holding the potential of being a fundamental player in tackling global challenges: supporting the conclusions of important nuclear deals (especially with Iran), working in favor of a peaceful and

longlisting solution to the Israeli-Palestinian conflict, and promoting a stronger participation to the Paris Agreement and to the fight against climate change<sup>457</sup>.

The Fifth principle concerns supporting civil society and promoting people-to-people



Figure 5: from the Factsheet "Facts and figures about EU-Russia Relations", <[https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia\\_relation-en\\_2021-07.pdf](https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia_relation-en_2021-07.pdf)>.



Figure 6: from the Factsheet "Facts and figures about EU-Russia Relations", <[https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia\\_relation-en\\_2021-07.pdf](https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia_relation-en_2021-07.pdf)>.

contacts. In 2012, at the beginning of his third mandate as Russia's President, Vladimir Putin approved the so-called Foreign Agents Law<sup>458</sup>. The new law targeted NGOs funded from abroad and engaged in political activity, forcing them to register as 'foreign agents' with the Justice Ministry and to provide a report every quarter<sup>459</sup>. Additionally, in 2015, the Russian *Duma* passed a new law on "undesirable international organizations", giving the possibility to the prosecutor general and to the foreign ministry to register organization presenting "a threat to the defensive capabilities or security of the state, to

<sup>456</sup> *Ibid.*, p. 6.

<sup>457</sup> *Ibid.*, p. 7.

<sup>458</sup> Federal Law no. 121-FZ, *Federal Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents* (also known as Law on Foreign Agents), approved on 20 July 2012, entered into force on 21 November 2012.

<sup>459</sup> OSTROUKH & HEINRICH (2012), *Russia's Putin signs NGO "foreign agents" law*, in *Reuter online journal*.

the public order, or to the health of the population”<sup>460</sup>. These NGOs started to be prohibited from operating and distributing information and forced to notify every financial movement involving them<sup>461</sup>. Consequently, the EU recognized the importance of supporting and funding projects involving Russian civil society, with special attention given to activity involving people-to-people contacts (such as scientific research, high education exchanges, cross-border cooperation). However, despite the effort, surveys have showed the declining of Russians favorably considering the EU and, conversely, the percentage of European not viewing favorably Russia has increased (with the exception of Greece)<sup>462</sup>.

As mentioned in the first chapter, in 2014, the EU and Ukraine signed an Association Agreement (AA), marking the promotion of stronger political and economic links, as well as the respect of common principles. In 2016, the EU renewed its commitment to the positive conclusion of the AA, together with the exponents of its Member States.

The final step towards the ratification was taken in July 2017, when the decision was officially adopted by the EU Council and the date of full implementation was set for the 1<sup>st</sup> of September 2017. Briefly recalling what is reported in the first chapter<sup>463</sup>, the Agreement set out a number of objectives: the promotion of a rapprochement between the Parties based on common values and the incrementation Ukraine’s participation to EU policies, agencies, and programs; the construction of an appropriate framework for promoting political dialogue; the reinforcement of peace, stability and security within the region<sup>464</sup>. Additionally, it included the creations of the conditions for promoting economic and trade relationship and for completing the transition towards market economy; improvement of the cooperation in the fields of justice, freedom, and security; and the promotion of greater cooperation in areas of mutual interest<sup>465</sup>. Of particular relevance, within the AA, is Title II regarding “Political dialogue and reform, political association, cooperation and convergence in the field of foreign and security policy”. Within this Title, both parties pledged “to promote the principles of independence, sovereignty, territorial integrity and the inviolability of borders” and to intensify their

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<sup>460</sup> Federal Law no. 129-FZ, *Federal law on Amendments to Certain Legislative Acts of the Russian Federation*, approved on 19 May 2015, entered into force on 20 May 2015, Article 1.

<sup>461</sup> LUHN (2015), *Russia bans 'undesirable' international organisations ahead of 2016 elections*, in *The Guardian*.

<sup>462</sup> RUSSELL (2018: 8).

<sup>463</sup> See Ch. I, note 75.

<sup>464</sup> *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part*, of 29 May 2014, OJ L 161, p. 3–2137. Article 1. Available online.

<sup>465</sup> *Supra*

dialogue and cooperation enhancing convergence in are of foreign and security policy<sup>466</sup>. Finally, the parties recognized the necessity of maintaining international peace and security “as established by the by the UN Charter, the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and other relevant multilateral documents”.<sup>467</sup>

Remaining in the field of security and political dialogue, it is worthful to mention the EUAM Ukraine (EU Advisory Mission)<sup>468</sup>. The mission was officially launched by the EU Council in 2014, following the Euromaidan Revolution of 2013-2014. Its official mandate was to support the country in its commitments to reform the security sector, to elaborate new strategy and to restructure the security services in order to recover control and accountability.<sup>469</sup> To reach these objectives, the mandate is implemented as based on three fields of activity: (a) Strategic advice on civilian security sector reform, in particular, the need to develop civilian security strategies; (b) Support for the implementation of reforms through the delivery of practical advice, training and other projects; (c) Cooperation and coordination ensure that reform efforts are coordinated with Ukrainian and international actors.<sup>470</sup> Initially, the mission was meant to last 24 months, however the mission was extended three times: in 2017 the Council adopted the Decision 2017/2161<sup>471</sup> extending the mandate of the mission until 31 May 2019; subsequently, on May 2019, with the Council decision 2019/761<sup>472</sup> the mission was extended until 31 May 2021; finally, in 2021, it was prolonged until 31 May 2024 by Council Decision 2021/813.<sup>473</sup>

At the beginning of Russia’s invasion of Ukraine, the Mission was forced to leave the country and it returned only on 19<sup>th</sup> of May 2022. The High Representative of the Union

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<sup>466</sup> *Association Agreement*, OJ L 161, Title II, Article 4

<sup>467</sup> *Association Agreement*, OJ L 161, Title II, Articles 7 and 9(2).

<sup>468</sup> Council Decision, 17 November 2014, *Launching the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) and amending Decision 2014/486/CFSP*, no. 2014/800/CFSP, OJ L 331.

<sup>469</sup> Council Decision (CFSP) 2014/486, 22 July 2014, *On the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine)*, OJ L 217. Article 2. Available online.

<sup>470</sup> See EUAM Ukraine official website. Available online.

<sup>471</sup> Council Decision (CFSP) 2017/2161, 20 November 2017, *Amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine)*, OJ L304. Available online.

<sup>472</sup> Council Decision (CFSP) 2019/761 of 13 May 2019, *Amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine)*, OJ L 125. Preamble. Available online.

<sup>473</sup> Council Decision (CFSP) 2021/813 of 20 May 2021, *Amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine)*, OJ L 180. Preamble. Available online.



for Foreign Affairs and Security Policy, Borrell, announced the redeployment of the forces and that the mission would have also supported the work “of the Ukrainian General Prosecutor to facilitate the investigation and prosecution of any international crimes committed in the context of Russia’s unprovoked and unjustified military aggression against Ukraine”<sup>474</sup>. Indeed, additionally to the original mandate, the EUAM arranges teams on the crossing points with Poland, Slovakia and Romania to facilitate the passage of peoples and goods and supported Ukrainian authorities with the investigation and prosecution of international crimes. The Mission also donated emergency supplies to support its partners.<sup>475</sup>

#### 4.3.1 The energy issue

Despite the sanctions and the counter-sanctions following the 2014 Crimea Crisis, Russia remained one of the main trading partners of the EU.

In 2019, the EU was the biggest investor in Russia, which received €311.4 billion in foreign direct investment (FDI) from the EU<sup>476</sup>. Moreover, in 2021, Russia was the fifth largest trade partner of the EU exports of goods and the third largest partner for EU imports of goods<sup>477</sup>.

Nonetheless, since the beginning of the aggression against Ukraine, the concept of “energy dependence” has gain momentum: practically it means that, in order to meet its own requirement of consumption, the EU needs energy to be imported from third countries. In 2020, the main imported energy commodity were petroleum products (especially crude oil and accounting for around two-thirds of EU imports), natural gas (representing 27% of imports), and solid fossil fuels (5% of imports)<sup>478</sup>. In this framework, Russia has always been the largest trade partner of Europe, providing for 29% of EU’s total import of crude oil, 43% of natural gas, 54% of solid fossil fuels<sup>479</sup>. This as irreparably linked some EU members to Russia, which is particularly clear if observing that Cyprus, Malta, Greece and Sweden imported the more than 80% of petroleum products; Hungary, Austria and Italy imported more than one-third of their natural gas

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<sup>474</sup> EEAS Press Release, 18 May 2022, *Ukraine: the EU Advisory Mission returns to Ukraine*, in EEAS Press Release. Available *online*.

<sup>475</sup> *Supra*.

<sup>476</sup> S.N. *EU trade relations with Russia – facts, figures and latest developments*. Available *online*.

<sup>477</sup> Eurostat (2022) *Energy represented 62% of EU imports from Russia*. Available *online*.

<sup>478</sup> Eurostat (S.d.) *From where do we import energy?* Available *online*.

<sup>479</sup> *Supra*.

requirement; and Slovakia, Poland and Czech Republic had as energy import around 15% of solid fuels.<sup>480</sup>

Special attention should be given to natural gas, which has increasingly become an important energy resource for the EU, especially as response to the impact of energy commodities on climate change and the consequent need to phase down coal consumption<sup>481</sup>. In 2021, gas represented 21.5% of the EU's primary energy consumption, becoming the primary source of energy for households<sup>482</sup>. Natural gas is transported towards Europe using national and international pipelines, which have gradually become new source of international tensions, as well as important factors in different geopolitical scenarios which worth a mention.

The pipeline Nord Stream I was opened in 2011, it connects Russia (the biggest EU supplier) to Germany (the biggest EU consumer) under the Baltic Sea and it has always been targeted by several criticisms. These can be summarized in two main accusations: the first one sees the pipeline as an instrument of Russia to penetrate within European economy and balance; the second one blames the pipeline of being

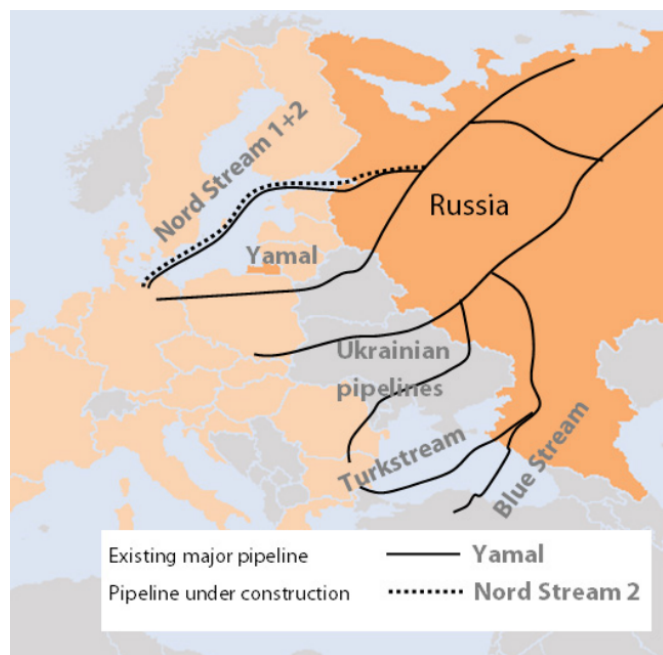


Figure 7: Main Russian pipelines to Europe and Turkey. EP Briefing ([https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690705/EPRS\\_BRI\(2021\)690705\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690705/EPRS_BRI(2021)690705_EN.pdf)).

the most important blockage to the process of diversification of energy imports<sup>483</sup>.

Indeed, it must be pointed out that Nord Stream I, together with other pipelines, including the Yamal pipeline (opened in 1996 connecting Russia to Europe via Belarus and Poland), the Blue Stream (which is operating since 2003 and it is directed towards Turkey) and TurkStream (operating since 2002 and connecting Russia to Turkey and southeast

<sup>480</sup> *Supra*.

<sup>481</sup> S.N. (2022), *The energy prices crisis and the EU's answers* – Policy Brief, in *IndustriAll*, p. 4. Available online.

<sup>482</sup> ACER (2021) *Gas Factsheet*. Available online.

<sup>483</sup> SZIKLAI, KOCZY, & CSERCSIK (2019), *The Geopolitical Impact of Nord Stream 2*, in *SSRN Electronic Journal* - Institute of Economics, Centre for Economic and Regional Studies, Hungarian Academy of Sciences, pp. 2 -3.

Europe) are owned by *Gazprom*, the biggest Russia state-controlled gas company<sup>484</sup>. Besides, the Nord Stream project consists of two pipelines, namely Nord Stream I and Nord Stream II whose construction initiated in 2018 and, since the beginning, it divided Europe in two blocks: the countries supporting the pipeline (German and Austria) and their opponents (including Poland, the Baltic States, the US and Ukraine)<sup>485</sup>. The pipeline crosses the exclusive economic zones of five states (Russia, Germany, Denmark, Finland, and Sweden) which have all granted the permits of the construction. Russian and German authorities have been the project's main supporters, claiming that the pipeline would advance sustainability goals by displacing coal as a less CO<sub>2</sub>-intensive complement to renewable energies and enhancing supply security by connecting western Europe to the largest gas reserves in the world<sup>486</sup>. On the other hand, the US, together with several Eastern European countries and many groups of civil society, have suggested that the pipeline would endanger delicate marine ecosystems, hinder the bloc's transition to a low-carbon economy, throw Europe's reliance on Russian energy at a severely high level, and strengthen Russia at a time when it is currently under many criticisms<sup>487</sup>.

In February 2022, the growing tensions between Russia and Ukraine led the German Chancellor Olaf Scholz to take an important turn regarding the country's position on Nord Stream II<sup>488</sup>. Indeed, the Chancellor announced the withdrawal of the positive assessment of the pipeline's impact on the security of gas supplies to Germany and to the Union. This decision *de facto* blocked the project requiring a re-examination made by the economy ministry upon the impact of NS2 considering Russia's aggressive attitude towards Ukraine and the activities of *Gazprom* within the European energy market. the Chancellor's decision was followed by new sanctions imposed by the US President Biden on the pipeline's owner-operator (Nord stream 2 AG) and to its president<sup>489</sup>.

The consequence of these decisions has been dramatic exacerbation of the energy cost crisis, which, in turn, has led to an increase in the electricity prices directly damaging households and industries all over Europe<sup>490</sup>.

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<sup>484</sup> RUSSEL (2021), *The Nord Stream 2 pipeline - Economic, environmental and geopolitical issues*, in *EPRS | European Parliamentary Research Service*, PE 690.705, p. 2.

<sup>485</sup> *Supra*.

<sup>486</sup> WETTENGEL (2022). *Gas pipeline Nord Stream 2 links Germany to Russia, but splits Europe*, in *CLEW – Clean Energy Wire*.

<sup>487</sup> *Supra*.

<sup>488</sup> KĘDZIERSKI, KARDAŚ & ŁOSKOT-STRACHOTA (2022) *The Nord Stream 2 project is frozen due to Russia's aggression against Ukraine*, in *OSW – Centre for Eastern Studies*.

<sup>489</sup> *Supra*.

<sup>490</sup> See EUAM Ukraine official website. Available *online*.

For these reasons, in May 2022, the European Commission presented the REPowerEU plan aimed to reduce Europe's dependency on Russia energy and to accelerate the transition towards sustainable source of energy<sup>491</sup>.

In order to reach these objectives, the plan was built on three main pillars: (a) saving energy; (b) diversifying energy supplies; and (c) speeding up the achievement of clear energy production. Regarding the first measures, the Commission recognized that "savings are the quickest and cheapest way to address the current energy crisis", since they are the easiest way to cut the energy bills and to decrease the need of importing Russian fossil fuel. Energy saving will be enhanced adopting two main approaches: mid- to long-term energy efficiency improvements that support structural transformation must be combined with rapid energy savings through behavioral changes<sup>492</sup>.

The second pillar regarded the establishment of new relationship with reliable international partners to diversify the supplies and, thus, mitigate the growth of energy prices. With this in mind, the Commission, together with the Member State, has launched the EU Energy Platform for the voluntary common purchase of gas, LNG and hydrogen<sup>493</sup>. The Platform operates in three main fields of activity: performing analysis about States' demand of energy and sustaining legislative measures promoting diversification; optimizing the activities of gas infrastructures (import, storage and transmission) and securing supply and renovation of storage; enhancing the conclusion of long-term cooperation agreements with trusted partners, especially focusing on the purchasing of gas and hydrogen and on the promotion of clean energy projects.<sup>494</sup>

Finally, the third pillar regarded the necessity of accelerating and scaling-up in terms of renewable energy which, in turn, would have positively affect the energy dependency on Russia, but also lowering electricity prices and reducing fossil fuel imports. The Commission aimed to increase the target in the Renewable Energy Directive<sup>495</sup> from 40% to 45% by 2030. In doing so, the plan comprised a tighter legislation over solar photovoltaics installments (through the EU Solar Strategy<sup>496</sup> and the European Solar

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<sup>491</sup> *REPowerEU Plan*, 18 May 2022, COM(2022)230 final. Available online.

<sup>492</sup> *Supra*, p. 1-3.

<sup>493</sup> *Supra*, p. 4.

<sup>494</sup> *Supra*, p. 5.

<sup>495</sup> Directive of the European Parliament and of the Council 2009/28/EC, 23 April 2009, *Renewable Energy Directive of on the promotion of the use of energy from renewable sources*. Available online.

<sup>496</sup> *EU Solar Energy Strategy*, 18 May 2022, COM(2022)221 final. Available online.

Rooftop Initiative<sup>497</sup>), encouraging the global competitiveness of the EU wind sector and developing and modernizing the system of heat pumps all over the Union.<sup>498</sup>

Finally, REPowerEU plan set out a number of short- and medium-term measures. In the short-term measures, among other, it is possible to mention the common purchase of gas, LNG and hydrogen for all MS, but also for Ukraine, Moldova, Georgia and the Western Balkans; new energy partnerships with reliable suppliers; reaching gas storage to 80% of capacity by November 2022; and coordinating demand reduction plans in case of gas supply disruption<sup>499</sup>.

The medium-terms measures comprehend projects to be completed before 2027, including supporting investment and reform under the modified Recovery and Resilience Fund (withing up to €300 billion), promoting regulatory measures for hydrogen and for increasing energy efficiency in the transport sectors, investing in an integrated and adapted gas and electricity infrastructure network<sup>500</sup>.

The plan, however, was not exempt from criticism since it appeared not to consider its impact on other sectors. For example, the fund streams dedicated to its implementation have the capability of redirecting large quantity of capitals, potentially resulting in gaps in other programs. Another problematic point seemed to be the use of green hydrogen, which was considered by certain stakeholders as excessive in absence of clear limits and criteria creating risks of increasing the overall emissions in the sector. Ultimately, there was lack of clarification about the timing of implementation of the global functioning of the EU Energy Platform for the shared purchase of pipeline gas, LNG and hydrogen<sup>501</sup>.

#### 4.4 The EU and the aggression against Ukraine

At the end of 2021, the Council decided to prolong the sanctions against Russia, targeting both physical and legal actors involved in threatening Ukraine's territorial integrity for other six months (until March 2022). In that moment, the measures were covering travel restrictions, freezing of assets and ban on funds and other economic resources destined to

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<sup>497</sup> *EU Solar Energy Strategy*, 18 May 2022, p.3.

<sup>498</sup> S.N. (2022), *The energy prices crisis and the EU's answers*, p. 6.

<sup>499</sup> European Commission (2022) *Facsheet – REPowerEU Actions*. Available online.

<sup>500</sup> *Supra*

<sup>501</sup> CONTI & KNEEBONE (2022) *A first look at REPowerEU: The European Commission's plan for energy independence from Russia*, in *EUI – Florence School of Regulation*.

a total of 177 individuals and 48 entities.<sup>502</sup> In October, 8 more individuals were added to the list, reaching a total of 185 people.<sup>503</sup>

As mentioned previously in the chapter, the EU can adopt sanctions either for implementing resolutions adopted by the UN Security Council, or on autonomous basis. In the latter case, the sanctions are imposed to force a change in policy or activity perpetrated by the target party (or parties) responsible for the behaviour that is considered (for instance, not respecting international law or human rights, or pursuing policies or actions that do not conform with the rule of law or democratic principles)<sup>504</sup>. Indeed, these measures must be consistent with the EU's external action, as displayed in Article 21 TEU, which includes the objective of "preserving peace, preventing conflicts and strengthening international security, in accordance with the purposes and principles of the United Nations Charter"<sup>505</sup>.

With the beginning of the aggression against Ukraine, the Russia Federation committed a violation of the prohibition on the use of force, as provided by UN Charter<sup>506</sup> and by the international customary law<sup>507</sup>.

On 22<sup>nd</sup> February, the Presidents of the European Council and European Commission issued a statement condemning the decision taken by the Russia Federation to recognize the regions of *Donetsk* and *Luhansk* as independent entities and to send Russian troops<sup>508</sup>. These actions were described as violations of international law, of Ukraine's territorial

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<sup>502</sup> Council of the EU (2021), *Ukraine: EU sanctions over territorial integrity prolonged for a further six months*, in Press Release. Available online.

<sup>503</sup> Council Decision (CFSP) 2021/1792 of 11 October 2021, Amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 359, para. 5. Available online.

<sup>504</sup> This definition is given by the official site of the European Union Law available online. For example, in 2017, the EU Council adopted restrictive measures against Venezuela due to the continuing deterioration of democracy, the rule of law and human rights within the country following the beginning of the constitutional crisis within the country. The sanctions were introduced by Council Decision (CFSP) no. 2017/2074 *concerning restrictive measures in view of the situation in Venezuela*, adopted on 13<sup>th</sup> of November 2017, OJ L 296/60.

<sup>505</sup> *Consolidated version of the Treaty on European Union* (TEU), Title V - General provisions on the Union's external action and specific provisions on the common foreign and security policy, Chapter 1 - General provisions on the Union's external action, OJ C 202. Article 21 § 2(c).

<sup>506</sup> *Charter of the United Nations* (1945), 1 UNTS XVI (UN Charter) Article 2 § 4: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

<sup>507</sup> For further information see KRYVOI (2022), *Russia's Invasion of Ukraine and International Law*, in *British Institute of International and Comparative law* (available online); BELLINGER (2022), *How Russia's Invasion of Ukraine Violates International Law*, in *Council on Foreign Relations* (available online).

<sup>508</sup> European Council Press Release, 22 February 2022, *Statement by the Presidents of the European Council and European Commission on Russian aggression against Ukraine*. Available online.

integrity and sovereignty and of Russia's international commitments. The same day, a declaration of the High Representative of the EU was also published, which renewed the condemnation of the actions taken by President Putin recalling that, being a signatory of the Minsk agreements, Russia had "a clear and direct responsibility to work to find a peaceful settlement of the conflict".<sup>509</sup> Moreover, the Federation was breaking its responsibilities under the Normandy Format and the Trilateral Contact Group. For these reasons, the EU urged Russia, "to reverse the recognition, uphold its commitments, abide by international law and return to the discussions within the Normandy format and the Trilateral Contact Group".<sup>510</sup>

On 23<sup>rd</sup> February the first package of sanctions against Russia was adopted, it comprehended: (a) targeted sanctions against the 351 members of the Russian State Duma and an additional 27 individuals<sup>511</sup>; (b) prohibition of importing into the Union goods originating in the non-government controlled areas of *Donetsk oblast* or in the non-government controlled areas of *Luhansk oblast*<sup>512</sup>; (c) restriction on Russia's access to the capital, financial, and service markets of the EU<sup>513</sup>.

Subsequently a special meeting of the European Council was convened, and the EU leaders called up on Russia to "immediately ceases its military actions, unconditionally withdraw all forces and military equipment from the entire territory of Ukraine and fully respects Ukraine's territorial integrity, sovereignty and independence"<sup>514</sup>. They also agreed on the adoption of further restrictive measures targeting the financial sector, the energy and transport sectors, dual-use goods as well as export control and export financing, visa policy, additional listings of Russian individuals and new listing criteria.<sup>515</sup> Furthermore, the EU also decided to freeze the assets of President Putin, as well as of the Russian Minister for Foreign Affairs *Sergey Lavrov* and imposing restrictive measures to other member of the Russian National Security council and the

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<sup>509</sup>European Council Press Release, 22 February 2022, *Ukraine: Declaration by the High Representative on behalf of the European Union on the decisions of the Russian Federation further undermining Ukraine's sovereignty and territorial integrity*. Available online.

<sup>510</sup> *Supra*

<sup>511</sup> Council Decision (CFSP) 2022/267, 23 February 2022, *Amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*, OJ L 42 I/114. Annex I.

<sup>512</sup> Council Decision (CFSP) 2022/266, 23 February 2022, *Concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas*, OJ L 42 I/109. Available online. Article 1.

<sup>513</sup> *Supra*, Article 5.

<sup>514</sup> Special meeting of the European Council, *Conclusions*, EUCO 18/22, 24 February 2022, para. 2. Available online.

<sup>515</sup> *Supra*, para 5.

remaining member of the Duma who reported the recognition of the regions of *Donetsk* and *Luhansk*.

Consequently, on 28<sup>th</sup> February, the Council approved the second package of restrictive measures<sup>516</sup>. This package included the prohibition of transactions related to the management of reserves and of assets of the Central Bank of Russia (including transaction with legal person entities or body acting in behalf of the Central Bank); it was prohibited “to any Russian-registered aircraft, and to any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, permission to land in, take off from, or overfly the territory of the Union”.<sup>517</sup> Furthermore, it was established an assistance measures benefitting Ukraine, to be financed under the European Peace Facility. The objective was “to contribute to strengthening the capabilities and resilience of the Armed Forces to defend the territorial integrity and sovereignty and protect the civilian population against the ongoing military aggression.” The financial assistance amounted to € 500 million dedicated to the acquisition of equipment and non-lethal supplies (such as protective equipment first aid kits and fuel) for a total duration of 24 months.<sup>518</sup>

On 2<sup>nd</sup> March, the Council adopted the third package of sanctions providing the exclusion of seven Russian banks from SWIFT (namely, Bank *Otkritie*, *Novikombank*, *Promsvyazbank*, *Rossiya Bank*, *Sovcombank*, *Vnesheconombank* (VEB), and *VTB Bank*), ensuring their disconnection from the international financial system and, thus, damaging their ability to operate.<sup>519</sup> To clarify, SWIFT is the Society for Worldwide Interbank Financial Telecommunication, and it is the international financial channel that enables quick and easy cross-border money transfers. The main objective of this measure was to prevent Russian banks from accessing to instant transactions provided by the system and undermining the national exports of energy and agriculture. Indeed, the banks were forced to communicate directly between them, causing delays, extra expenses, and eventually a loss of money for the Russian authorities. The Federation was already threatened of expulsion from SWIFT in 2014, as consequence of the annexation of Crimea, so the

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<sup>516</sup> Council Decision (CFSP) 2022/335 of 28 February 2022, *Amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilizing the situation in Ukraine*, OJ L 57. Available online.

<sup>517</sup> *Supra*, Article 1(1)(4), 1(2)(1).

<sup>518</sup> Council Decision (CFSP) 2022/339, 28 February 2022, *On an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces*, OJ L 61, Articles 1, 2. Available online.

<sup>519</sup> Council Decision (CFSP) 2022/346 of 1 March 2022, *Amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine*, OJ L 63, para. 1, Article 1(e), Annex VIII. Available online.



national authorities started to develop an alternative transfer system: the System for Transfer of Financial Messages (SPFS). The System cannot compete with the SWIFT, however it is used by a number of countries, the last of them has been India.<sup>520</sup>

The Council decision also prohibited selling, supplying, and transferring euro denominated banknotes to Russian or any physical person, entity, or body in Russia. Finally, it prohibited “prohibited to invest, participate or otherwise contribute to projects co-financed by the Russian Direct Investment Fund”.<sup>521</sup>

Additionally, the Council tackled the disinformation campaign conducted by the Russian Federation suspending the broadcasting activities of *Sputnik*’ and RT (Russia Today) in the Union. The High Representative for Foreign Affairs and Security explained the decision by claiming that “systematic information manipulation and disinformation by the Kremlin is applied as an operational tool in its assault on Ukraine” and represent “direct threat to the Union’s public order and security”<sup>522</sup>. In fact, *Sputnik* and Russia Today are considered crucial and integral in advancing and supporting the military action against Ukraine and for the destabilization of its neighboring nations, since they are permanently under the direct or indirect control of the authorities of the Russian Federation.<sup>523</sup>

Furthermore, the restrictive measures were expanded to Belarus considering its involvement in the aggression against Ukraine. These measures have been directed to the financial sectoring, comprising the exclusion of three Belarusian banks from SWIFT; prohibition of transaction with the Central Bank of Belarus; prohibition to list and provide services on trading venue of the Union in relation to shares of Belarusian state-own entities; banning the provision of financing or financial assistance for trade or investments in Belarus; prohibition of selling, supplying, transferring or exporting euro denominated banknotes to Belarus.<sup>524</sup>

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<sup>520</sup> HOTTEN (2022) *Ukraine conflict: What is Swift and why is banning Russia so significant?* In *BBC Online Journal*.

<sup>521</sup> Council Decision (CFSP) 2022/346, para. 1 Article 1(f)(1), para.2 Article 4(b)(3).

<sup>522</sup> Council of the EU (2022) *EU imposes sanctions on state-owned outlets RT/Russia Today and Sputnik's broadcasting in the EU*, in Press Release. Available online.

<sup>523</sup> *Supra*

<sup>524</sup> Council Decision (CFSP) 2022/399, 9 March 2022, *Amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine*, OJ L 82, Preamble para. 6. Available online.

The fourth package of sanctions was approved on 15<sup>th</sup> March<sup>525</sup>, this package included economic and individual sanctions determining the ban of: transaction with certain state-owned companies; the provision of any credit rating services or the access to any subscription services to any Russian person or entity; new investments in the national energy sector. The Council also tighten the export restriction regarding dual-use goods, as well as goods and technology which might contribute to the technological enhancement of Russia's defense and security sector. Ultimately, it was expanded the list of people subjected to restriction because of their connection to Russian defense and industrial base. On 21<sup>st</sup> March, the Council of Europe formally launched a new plan of action aimed to reinforce the EU's security and defense system by 2030, the so-called Strategic Compass.<sup>526</sup> The overall work that has brought to the Compass was based on a Threat Analysis which helped to develop a share understanding of present and future challenges. The result has been the description of a "security landscape that has become more volatile, complex and fragmented than ever due to multi-layered threats".<sup>527</sup> Within the document the focus is on the fact that the EU found itself as "surrounded by instability and conflicts": on the east the main actor is the Russia Federation which, on the one hand, it is currently attacking Ukraine, but, on the other hand, it is threatening the Republic of Moldova, Georgia and other countries in the South Caucasus region with strategic intimidations and threats to their sovereignty. China is depicted both as a partner for cooperation but also as a systemic rival, indeed, if a partnership with the country is essential in addressing certain matters (such as climate change), it is also true that China is increasingly involved in regional tensions, it is developing its military means and it is pursuing its own policies through a growing presence at all levels. In the South, it remains unresolved the situation in Libya and Syria determining the deterioration of the security environment of the region: the threat of terrorism, traffic of human being and organized crime are growing and affecting both shores of the Mediterranean Sea. Finally, the situation in Africa is described as having "strategic importance", this is particularly relevant in the Sahel region and Central Africa where a wide range of challenges can obstruct a favorable EU engagement.<sup>528</sup>

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<sup>525</sup> Council Decision (CFSP) 2022/430, 15 March 2022, *Amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*, OJ L 87I, Preamble para. 5. Available *online*.

<sup>526</sup> General Secretariat of the Council, 21 March 2022, *A Strategic Compass for Security and Defence*. Available *online*.

<sup>527</sup> *Supra*, p. 17.

<sup>528</sup> *Supra*, p. 18 – 20.

The Compass, then, recognizes that the EU is “underequipped to counter the whole range of threats and challenges” and, in order to develop the security and defense system, it proposes four work strands. First, to develop the Eu’s integrated approach and the capability to prepare for crisis: since the unanimity is the standard for decision-making process in the field of security and defense, it is important to act “more rapidly, robustness and flexibility to undertake the full range of crisis management tasks”<sup>529</sup>. Secondly, to foster the resilience for anticipating, detecting and responding to both military and hybrid threats (especially by secure access to the maritime, air, cyber and space domains).<sup>530</sup> Third, to invest in order to strengthen the EU defense capabilities and adequately equip the military forces. These activities require supporting economy, innovators and manufacturers, achieving technological sovereignty in some critical areas, mitigating strategic dependency and reducing the vulnerability of critical value chains.<sup>531</sup> Fourth, to promote partnership with strategic organizations such as NATO and the UN, but also with relevant regional partners (OSCE, AU and ASEAN) and encouraging bilateral partnership “on the basis of shared values and interests”.<sup>532</sup>

The Strategic Compass has collected both praises and criticism. According to some observers, it failed to concretely design the EU role on the international scene and to define if developing a system of common defense must be seen as a new stage of the EU’s integration process, or if it remains a problem of coordination between the Members States.<sup>533</sup> Moreover, it did not clarify which should be the relationship between the EU and NATO, since the latter has always been considered the forum in which concrete decisions and operation in the military field were taken (mainly because of the presence of the US). Also, with the crisis in Ukraine, NATO has regained its central position in the European security environment, being the first competitor against Russia.<sup>534</sup> however, it has been pointed out that the Compass is not intended to prepare the EU for becoming an alternative to NATO, but, rather, it is an instrument fostering complementarity between the two organizations. Indeed, the collaboration would lead to a natural division of labor and, if there would be any overlap between the EU and NATO, it is likely to have a

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<sup>529</sup> *Supra*, p. 25 – 30.

<sup>530</sup> *Supra*, p. 33 – 40.

<sup>531</sup> *Supra*, p. 43 – 51.

<sup>532</sup> *Supra*, p. 53 – 60.

<sup>533</sup> SANTOPINTO (2022), *The new Strategic Compass leaves the EU disoriented*, in *IPS Journal*.

<sup>534</sup> WITNEY (2022) *The EU’s Strategic Compass: Brand new, already obsolete*, in *European Council on Foreign Relations (ECFR)*.

limited political impact because rising defense budgets should relieve resource shortages<sup>535</sup>.

Moving forward in the analysis of the measures taken by the EU with respect of the aggression of Ukraine, in April, the fifth package of sanctions was adopted<sup>536</sup>. The sanctions concerned the field of finance and on trade: deposits in crypto-wallets started to be prohibited, together with the export of euro-denominated banknotes and on the sale of euro-denominated transferrable securities.<sup>537</sup> Additionally, it was canceled the possibility for Russian vessels to access to ports in territory of the Union and additional import restriction on certain goods (including coal and other solid fossil fuels) were decided.<sup>538</sup> Finally, it was prohibited for Russian-based road transport company to move products by road anywhere on Union territory, including during transit.<sup>539</sup>

Finally, the sixth package was adopted in June<sup>540</sup>. The Decision was reached after intense negotiations between the Member States since the sanctions were aimed to cover the delivery of crude oil and petroleum products from Russia. The country most involved was Hungary, which is almost completely dependent on Russian oil and, thus, it was demanding guarantees about the protection of national energy needs.<sup>541</sup>

In the end, the package was launched comprehending the prohibition of importing, purchasing or transferring into member states crude oil and certain petroleum products from Russian. The Council, however, provided for temporary derogation for those Member States which, due to their geographical proximity, present specific dependence on crude oil imported by pipeline from Russia. These States, however, were required to take all the necessary measures to obtain alternative supplies in the most rapid manner.<sup>542</sup> In July, the Council approved the “Maintenance and Alignment package” containing measures aimed to reinforce the already existing economic sanctions against Russia,

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<sup>535</sup> SCAZZIERI (2022) *Does the Strategic Compass herald a stronger EU in security and defence?* in *Center for European Reform*, p. 4.

<sup>536</sup> Council Decision (CFSP) 2022/578, 8 April 2022, *Amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*, OJ L 111. Available online.

<sup>537</sup> Council Decision (CFSP) 2022/578, Article 1(4)(6).

<sup>538</sup> Council Decision (CFSP) 2022/578, Article 1(18).

<sup>539</sup> Council Decision (CFSP) 2022/578, Article 1(20).

<sup>540</sup> Council Decision (CFSP) 2022/884, 3 June 2022, *Amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine*, OJ L 153. Available online

<sup>541</sup> RANKIN (2022) *Hungary 'holding EU hostage' over sanctions on Russian oil*, in *The Guardian*.

<sup>542</sup> Council Decision (CFSP) 2022/884, Article 1(13).

improve their implementation and their effectiveness.<sup>543</sup> In particular, the package included the prohibition to direct or indirect import, purchase or transfer Russia-origin gold and jewelry, the reinforcement of export controls of dual-use goods, extending the port access ban to locks and clarifying existing measures (such as provisions on public procurement, aviation and justice).<sup>544</sup>

#### 4.5 The Ukrainian candidacy as an EU Member State

ON 15 December 2014, the first meeting of the Association Council<sup>545</sup> between Ukraine and the EU was held, in this occasion the progresses made by the State were welcomed (especially the provisional application of the most important parts of the EU-Ukraine Association Agreement), and it was reaffirmed the willingness to keep working in order to achieve a stronger political association and economic integration<sup>546</sup>. Since that moment, the meetings of the Association Council were organized once a year to monitor and evaluate the implementation of the Association Agreement.

Right after the initiation of the aggression by the Russian Federation, the Ukrainian President Volodymyr Zelenskyy signed and submitted an application for Ukraine's membership<sup>547</sup> to the EU<sup>548</sup>. The President, also, requested the use of a 'special procedure' to assess the application, which would entail promptly starting a formal process and designating our country as a candidate for membership<sup>549</sup>. On 7 March, the Council of the European Union invited the Commission to present an opinion on the application of Ukraine, as well as on the ones of the Republic of Moldova and of Georgia.

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<sup>543</sup> Council Decision (CFSP) 2022/1271, 21 July 2022, *Amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*, OJ L 193. Available online.

<sup>544</sup> Council Decision (CFSP) 2022/1271, Article 1(9), Preamble para. 12.

<sup>545</sup> *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part*, published on the Official Journal of the European Union on 29 May 2014, no. L 161/4. Article 461.

<sup>546</sup> EU Council Press Release, 15 December 2014, *Joint Press Release following the first Association Council meeting between the European Union and Ukraine*, Presse 653 no. 16934/14. Available online.

<sup>547</sup> It must be reminded that the membership must be submitted accordingly with Article 49 of the Treaty of the European Union (*Consolidated version of the Treaty on European Union*, OJ C 202, Title VI - Final Provisions, Article 49), which provides as condition for the accession the respect of the principles contained in Article 2 of the TEU. Article 49 also provides that: "The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account" (*Consolidated version of the TEU*, Art. 49 § 1).

<sup>548</sup> Presidency of Ukraine Press Release, 28 February 2022, *Volodymyr Zelenskyy signed an application for Ukraine's membership in the European Union*. Available online.

<sup>549</sup> *Ibid.*

On 17 June, the Commission submitted its opinion in which it underlined the positive assessment upon Ukraine's memberships delivered by the EU Heads of Government and State during the informal meeting of Versailles<sup>550</sup>. The Commission continued recognizing that, "while losing control over part of its territory and suffering human economic losses because of the conflict in the eastern part of the country, Ukraine continued throughout the years as a resilient democracy moving closer to the European Union and gradually aligning with the *acquis*".<sup>551</sup> The Commission assessed Ukraine's application on the basis of the criteria set by the EU Council in Copenhagen in 1993<sup>552</sup> and in Madrid in 1995<sup>553</sup> regarding the State's administrative capacity. The Opinion considered also the efforts dedicated to the implementation of the Association Agreement and of the Deep and Comprehensive Free trade Area (DCFTA). Finally, the Commission recommended to grant the candidate status to Ukraine but listed a number of obligations to be met by the State.<sup>554</sup>

The acquisition was welcomed, on the one hand, as a sign of European solidarity with Ukraine *vis-à-vis* Russian aggression and, on the other hand, as an instrument leading to the eradication of national systemic corruption and to the cancellation of the national endemic oligarchy<sup>555</sup>. However, if states such as France, Italy, Germany and Romania strongly supported Ukraine's candidacy, some Western Balkans politicians have expressed disappointment about the protracted delays that have plagued their membership efforts (for example recalling the Bulgaria's continuous obstruction against North Macedonia).<sup>556</sup>

On 23<sup>rd</sup> June, the EU Parliament adopted a resolution granting EU candidate status to to Ukraine and the Republic of Moldova "without delay".<sup>557</sup> With this decision, the EU appears to have moved away from a "technocratic" vision of its identity that was focused

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<sup>550</sup> Informal meeting of the Heads of State or Government, 10-11 March 2022, *Versailles Declaration*. Within the Declaration it is affirmed that "Pending this and without delay, we will further strengthen our bonds and deepen our partnership to support Ukraine in pursuing its European path. Ukraine belongs to our European family" (§ 4).

<sup>551</sup> EU Commission Opinion no. 22/3802, 17 June 2022, *Opinion on the EU membership application by Ukraine*, Introduction. Available online.

<sup>552</sup> Copenhagen European Council, 21-22 June 1993, *Conclusion of the Presidency*, Part VII, § 3, SN 180/93.

<sup>553</sup> Madrid European Council, 15-16 December 1995, *Conclusion of the Presidency*, Part III, § a, SN 12/95.

<sup>554</sup> EU Commission Opinion no. 22/3802, *Part V: Conclusions and Recommendations*.

<sup>555</sup> FRANCIS (2022) *EU candidate status for Ukraine is the ideal response to Russian aggression in Atlantic Council – UkraineAlert*.

<sup>556</sup> HERSZENHORN, BAYER, DE LA BAUME & VON DER BURCHARD (2022) *Ukraine: Not just a country, an EU candidate country in Politico*.

<sup>557</sup> European Parliament Resolution no 2022/2716(RSP), 23 June 2022, *On the candidate status of Ukraine, the Republic of Moldova and Georgia*, para. 3. Available online.

on institutions and the legal system and toward one that is based on a sense of community. At the moment, the new challenge regards the actual capability of the EU to intervene in favor of Ukraine and of its citizens, as well as the protection of the Union internal economy and population which will surely suffer the impact of a continued war.<sup>558</sup>

#### 4.6 Conclusion

The period between 2013/2014 and today has seen a deepening in the relationship between Ukraine and the EU. This was developed in terms of economic assistance, especially through the Association Agreement and the establishment of the Deep and Comprehensive Free Trade Area, and state-building assistance (recalling the EU Advisory Mission in Ukraine). All these activities, however, did never seemed to be officially aimed to the preparation of Ukraine for effectively become a Member State of the Union<sup>559</sup>. At the same time, despite Russia demonstrated its attitude towards Ukraine with the annexation of Crimea, the EU did not pursue a policy of economic and energy diversification, but rather continued in strengthening its economic relationship with the Federation.

This scenario changed with the latest Russian aggression of Ukraine, which triggered an unprecedented response by the European Union.

The political effects of this event have, at least, initiated a process possibly leading to the overcome of the distance between Central and Western European States that, for a long time, has affected the discussion about the Union's role in the field of security.<sup>560</sup>

This new approach was translated into policy, but also in the adoption sanctions which have been unprecedented in terms of velocity and application range.

First of all, it must be underlined the speed with which the sanctions were approved. It is important to remind that such measures are adopted by the Council's unanimity, therefore the very tight timing has shown a strong cohesion between the Member States and a common will to counter Russian violations. Secondly, the reach of the measures has been

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<sup>558</sup> BOSSE (2022) *Values, rights, and changing interests: The EU's response to the war against Ukraine and the responsibility to protect Europeans in Contemporary Security Policy*, Vol. 43 no. 3, pp. 531-546.

<sup>559</sup> To deepen the question, see RABINOVYCH (2019) *EU's development policy vis-à-vis Ukraine after the Euromaidan: securitisation, state-building and integration*, in *East European Politics*, vol. 35, no. 3, pp. 332-350, available online.

<sup>560</sup> BALFOUR (2022), *Russia's invasion of Ukraine marks a turning point for the EU. When boosting its capabilities and resilience, Europe must not neglect engagement with the wider world*, in *Carnegie Europe*.

expanded not only to the economic field, but also to the financial and the security<sup>561</sup> ones, directly targeting the Russian government, but also private entities and individuals.

The spirit of union which initially has characterized the adoption of the sanctions was, however, diminished in relation to the implementation of the sanctions and to certain sensitive issue. For instance, the Hungarian Prime Minister Viktor Orban has repeatedly sustained his unwillingness to support EU embargoes or limitations on Russian gas imports and to not be involved in the war<sup>562</sup>.

Besides the divisions on the sanctions, the new issue about travel bans against Russians inflamed the debate among the EU State Member in August. The proposal was advanced by the Czech Republic, currently holding the EU presidency, regarding the suspension of the 2007 Visa Facilitation Agreement<sup>563</sup> and blockage of tourist visas for Russian citizens<sup>564</sup>. The proposal was sustained by the Baltic and Nordic Countries and Poland, but it was initially rejected by other Members, including Germany, France, Hungary and Austria<sup>565</sup>. Eventually, at an informal meeting held in Prague, the EU leaders were able to reach a political agreement to fully suspend a Visa Facilitation Agreement<sup>566</sup>.

Additionally, a debate has been opened about their efficacy and their cost upon the EU and its Member States' economy.

As mentioned before in the chapter, the Union is still heavily relying on Russia's export of energy and the use of gas as a blackmail tool (together with the other bans imposed by Moscow<sup>567</sup>) is resulting in huge consequences<sup>568</sup>.

However, the central point of imposing sanctions does not appear to be limited to the economic aspects, but also to undermine President's Putin credibility and authority within his own State. To summarize, the Union's restrictive measures can be interpreted as a

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<sup>561</sup> Recalling Council Decision (CFSP) 2022/338, OJ L 60.

<sup>562</sup> See the Prime Minister's declaration in the article *Hungary's Orban says Russia sanctions have failed, EU needs new Ukraine strategy*, published by Reuters on 23 July 2022 (available online).

<sup>563</sup> *Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation*, adopted on 17<sup>th</sup> May 2007, OJ L 129.

<sup>564</sup> More information in the article *EU members split over travel ban against Russians*, published by Aljazeera online journal on 30 august 2022 (available online).

<sup>565</sup> *Ibid.*

<sup>566</sup> BRZOZOWSKI (2022), *EU to suspend visa deal with Russia, gives border countries more leverage*, in *Eroactiv*, available online.

<sup>567</sup> Decree of the President of the Russian Federation No. 100, *On the Application of Special Economic Measures in the Sphere of Foreign Economic Activity for the Purpose of Ensuring the Security of the Russian Federation*, adopted on 8 March 2022.

<sup>568</sup> See IndustriAll – Policy Brief (2022), *The energy prices crisis and the EU's answers*, available online; CASERT (2022), *Russia's war to keep hitting EU economy, push up inflation*, in *AP News*, available online; MILOV (2022), *Yes, It Hurts: Measuring the Effects of Western Sanctions Against Russia*, in *Globesec*, available online.



‘modern’ coercive instrument which does not involve the use of force, but, together with all the necessary diplomatic efforts, it can be valuable for reacting to serious violations, as in the present case.<sup>569</sup>

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<sup>569</sup> POLI (2022), *La portata e i limiti delle misure restrittive dell'Unione Europea nel conflitto tra Russia e Ucraina*, in *SIDIblog*.

## 5. CONCLUSION

This work arose from the events that took place starting from the 24<sup>th</sup> of February, the beginning of the conflict between Russia and Ukraine.

The overall willingness is to analyze which roles the main European Regional Organizations (namely the Council of Europe, the Organization for Security and Cooperation in Europe and the European Union) have played in the development of the relationship between the two States. In other words, the thesis aims at explaining and evaluating their operate, so as to understand the positive and negative side, their results and limitations, and to reflect if something more could have been done.

The first Organization that have been presented is the Council of Europe.

Since the very beginning of Russia's participation to the Council, there have been consistent problems related to its compliance with the obligations deriving from the membership. Nonetheless, the Council did never take a strong position *vis-à-vis* the Federation, following, perhaps, the idea that a stronger inclusion of the State with the European space would have been beneficial for both parties. This attitude emerged in 2014, with the annexation of the Crimean Peninsula and the decision to adopt sanctions against the Russian delegation at the Parliamentary Assembly<sup>570</sup>. Indeed, despite the recognition of grave violations of the Statute of the Council (particularly of Article 3) and of the obligations undertaken by the Federation at the moment of accession, the Parliamentary Assembly decided neither to suspend the State, nor to annul its representative's credentials, but only to suspend certain rights in order to promote a political dialogue leading to a peaceful resolution (a dialogue that Moscow never accepted)<sup>571</sup>. Moreover, such rights were subsequently restored portraying the Council's practical immobility regarding the annexation of the Peninsula and the consequent breaches perpetrated by Russia of the principles of international law, and of the provisions contained both in the Statue of the Council and in the European Convention of Human Rights.

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<sup>570</sup> Which is different from the decision taken after the beginning of the conflict as explained in note 195.

<sup>571</sup> See Resolution 1990 (2014), *Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation*, adopted by the Assembly on 10 April 2014, and Resolution 2034 (2015), *Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation*, approved on 28 January 2015.

Thus, even if after the aggression, the Council adopted a much stronger position in deciding for the expulsion of Russia, this past *modus operandi* has prohibited the Organization from playing a significant role as a mediator in the relationship between the two States.

Focusing on the European Court of Human Rights it seems that its effectiveness is limited by practical and juridical obstacles. Indeed, the use of Inter-State application concerning Ukraine and Russia presents many difficulties about the work of the Court. On the one hand, this type of application is particularly delicate in the sense that involve a direct confrontation between two States concerning gross violations of human rights. This means that the Court may be accused of using various standards while making decisions, depending on which is the applicant State, and which is the respondent<sup>572</sup> (the famous ‘double standard’ repeatedly denounced by the Russian authorities). Additionally, Inter-state judgement implementation is complex, and each ruling that is not carried out might damage the standing of an international tribunal<sup>573</sup>. Considering the low level of compliance of the Russian Federation and the fact that, due to the expulsion, the State will cease to be a High Contracting Party to the European Convention on Human Rights on 16 September 2022, it is uncertain if the rulings of the ECtHR will have a concrete impact on the State but, most importantly, on their population. This situation is also exacerbated by the decision taken by the Court in its judgment *Georgia v. Russia (II)*, where it established the impossibility to rule in situations of active conflict between the parties<sup>574</sup>, with the consequence of further limiting its capacity in the present circumstance.

The analysis of the actions taken by the Council of Europe, especially in the period after the Crimean Crisis, demonstrates its effort towards the inclusion of the Russian Federation within the European context, adopting sanctions and revoking them even if after gross breaches of the Statute, of the ECHR and of the obligations undertaken at the moment of accession. This passive attitude is in contrast with the strong reaction to Ukraine’s aggression, leading to the expulsion of the Federation from the Council. If on the one hand this decision is an honorable sign of solidarity, on the other hand it seems to definitely remove the Organization from the possibility to be a mediator in the

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<sup>572</sup> For more details see DZEHTSIAROUV & TZEVELEKO (2022), *The Aggression Against Ukraine and the Effectiveness of Inter-state Cases in Case of War*, in *European Convention on Human Rights Law Review*, vol. 3, no. 2, pp. 165-173, available online.

<sup>573</sup> *Supra*.

<sup>574</sup> *Georgia v Russia (ii)* [gc] 38263/08 (ECtHR, 21 January 2021).

situation. To summarize, in the past years, the Council has been prevented from taking a meaningful position by its questionable (and often acquiescent) behavior, while, today, the decision about the expulsion has cancelled the capability to perform a concrete intervention.

The following Organization considered is the Organization for Security and Cooperation in Europe (OSCE).

The OSCE could have potentially been, and it could still be, a major player in the situation involving Ukraine and Russia. In fact, it not only is the biggest security organization in terms of Member State, but also its original objective was to promote a constructive dialogue between Eastern and Western Europe during the Cold War (which seems to apply to the present standpoint).

A long debate is still open about its lack of legal personality and, perhaps, the most relevant consequence is that the OSCE's staff currently engaged in on-field operations do not possess a legal protection descending from being part of the OSCE but, instead, they must rely on the protection granted by their own government<sup>575</sup>. The counter argument, which validity must not be underestimated, underlines the nature of the Organization as being a platform for informal dialogue between diplomats and ministers which could be irreversibly damaged by the acquisition of such a personality<sup>576</sup>.

In these years the Organization has been criticized by the Russian Federation with the accusation of being aligned with the Western states, and so biased by the application of a 'double standard' (the same recalled in the case of the Council of Europe) damaging the Post-Soviet and Post-Yugoslav countries. It seems useful to remind that the size of the OSCE's membership and its consensus mechanism make it open to a debate in which every participant has an equal say regardless its individual capabilities and strength.

The consensus mechanism requires a little attention. In fact, even if, as mentioned, it provides that each State possess an equal voice, on the other hand it also burdens the decision-making process. This intrinsic difficulty to take meaningful (and so often confrontational) decisions was clearly displayed this year when the Special Monitoring Mission (SMM) in Ukraine was closed because of lack of consensus in a moment in which it could have had an important role, especially, in terms of civil population's safeguard.

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<sup>575</sup> See note 310.

<sup>576</sup> See note 311.

The other important limitation in Organization's work is its limited budget. As reported at the end of the third chapter, in 2021, the OSCE's total budget was around one third of the Council of Europe's one. This has certainly important consequences upon the capacity and effectiveness and its operations and, so, upon its capability to achieve meaningful results.

To sum up, the OSCE presents a number of positive sides, especially linked to its particular and extremely flexible nature, which are, however, counterbalanced by several obstacles that appear to be rather insuperable because intrinsically linked to the political will of its Participating States and their (often missing) willingness to effectively engage in a constructive dialogue as promoted by the original scope of the Organization itself.

For these reasons, also the second Organization presented did not seemed to be particularly effective neither in the years before the current conflict, nor in the present situation. However, in this case, the issue appears to lie not on the scope of the Organization or in its activities, but rather on its very limited instruments and on its internal structure and decision-making system.

The last chapter is dedicated to the European Union.

In this part the controversial attitude of the Union should be underlined. Indeed, regarding Ukraine, certain relevant steps have been done<sup>577</sup>, especially in the period after the Crimean Crisis and before the current conflict. Nonetheless, these efforts never led to the official beginning of the accession process considering that the Ukrainian official candidacy was submitted only after the beginning of the aggression. Consequently, the decision to grant the candidate status to the State (together with the Republic of Moldova and Georgia) could be interpreted as a sign of solidarity, but also as a formal and political stance against Russia.

Still, the evolution of the economic relations between the EU and the Federation following the annexation of Crimea will not facilitate the support of such a stance. A whole part of the chapter is, indeed, dedicated to the so-called 'energy issue' which, at least, partly explain the heavy reliance of the EU on Russia. The almost absent policy of energetic diversification pursue by the Union in the past years now results in massive economic costs to be sustained by the economies of the Member States and their citizens,

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<sup>577</sup> Recalling for example the ratification of the Association Agreement in 2017 (and its Deep and Comprehensive Free Trade Area), and the launch of the EU Advisory Mission Ukraine following the Euromaidan Protests.

which can provoke the retraction of some states from the already fragile common front built up in recent months.

Moreover, a reflection must be made upon the Five Guiding Principles of EU-Russia Relations<sup>578</sup>. These Principles designed the overall approach of the Union in relation to different fields and aspects (moving from the Minsk Agreements to the selective engagement with the Federation or the implementation of Russian civil society's support). These Principles were never formalized into a concrete common political strategy, leaving the possibility for the Member State to be adopt different attitudes towards Russia and, thus, making difficult the capability to reach agreement regarding the Federation, especially when unanimity is required<sup>579</sup>.

The final point of the discussion about the EU precisely regards the sanctions and the effectiveness. The debate is divided between one position claiming the inefficiency of such measures in damaging the Russian economy but conversely, extremely mining the Internal Market and burdening the European citizens. The other opinion defines the sanctions as a 'modern' coercive measure not involving the use of force and complementing the diplomatic tools. Additionally, they are seen not only as aimed to damage the Russian economy, but also to mine President Putin's reputation (and legitimacy) among his own supporters. The former position is supported by data which, however, must be carefully weighted and which, sometimes are contradictory and heavily depended to their source. The latter, instead, open a positive reflection upon what concretely the Union can do in the present moment, with the instruments in its possession, always reminding that only the end of the conflict could be define the official effectiveness of the Union's actions.

Leaving aside the concrete effectiveness of the EU sanctions against Moscow, these measures are demonstrating the willingness of the Organization to oppose the Federation in its campaign against Ukraine. Nonetheless, as mentioned, in the past years, the EU has continued to build its relationship with (and, in certain cases, dependency to) Russia, possibly overlooking its aggressive behavior, even if it was clearly demonstrated in 2014. Once again, this Regional Organization missed the possibility to play an active role in the

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<sup>578</sup> 3457th Council meeting Foreign Affairs, 14 March 2016, *Outcome of the Council Meeting*, Brussels, Presse 16 no. 7042/16

<sup>579</sup> For example, recalling the intense negotiations required for the approval of the Sixth Package of sanctions which was obstacle especially by Hungary.

preceding years, now experiencing important repercussion on its economy and on its population.

The main pillar upon which this research is funded is the evaluation of what these Organizations have done, or rather did not, in the period preceding the aggression. The acquiescence of the Council of Europe, the immobility of the OSCE and the controversy of the European Union have prevented them from playing an effective role as mediators between Ukraine and Russia and from having the ability to be prepared for the Russian's actions.

The hope is that this conflict could really be a turning point in the path of the European Regional Organizations, bringing to light the significance and the need to sustain their work in terms of unity promotion, human rights protections and conflict prevention by States and the people. In fact, it must not be forgotten, but encouraged, the capacity of these Entities to enhance cooperation between States, and to maintain a dialogue opened even between countries which are profoundly different from one another as based on their common belonging to the European continent. For unity, cooperation and acceptance can be the only response to conflict.

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## EXECUTIVE SUMMARY

Il 24 Febbraio 2022 è la data che ha segnato l'inizio dell'invasione dell'Ucraina da parte della Federazione Russa.

L'invasione su vasta scala da parte della Russia è stata preceduta dalla dichiarazione del Presidente Vladimir Putin, il quale ha descritto l'attacco come 'un'operazione speciale' volta a proteggere le comunità russe che vivono nel sud-est dell'Ucraina dalle presunte violenze perpetrate dal governo centrale.

L'evento ha scosso tutto il Continente Europeo, provocando ripercussioni a livello economico, politico, di sicurezza e in termini di protezione dei diritti umani. Per queste ragioni, gli ultimi mesi hanno visto non solo il coinvolgimento delle forze militari russe e ucraine, ma anche la partecipazione diretta o indiretta degli altri Stati europei.

In questo contesto, il risultato più drammatico si registra nei confronti dei civili presenti all'interno del Paese (tra i quali si contano migliaia di vittime e feriti) e nello sfollamento di oltre 13 milioni di cittadini ucraini, soprattutto donne e bambini, determinando la più grande crisi di rifugiati in Europa dalla Prima guerra mondiale.

La volontà di capire come sia stato possibile arrivare ad un tale scenario sta alla base di questo lavoro di tesi.

Tuttavia, poiché la risposta a questa domanda avrebbe potuto toccare diversi ambiti ed aspetti di ricerca, la decisione è stata quella di limitare geograficamente la portata del progetto solo al contesto europeo e ai suoi attori più importanti. Per questo motivo, il lavoro si concentra sulla definizione del ruolo assunto da parte delle più importanti organizzazioni regionali europee: il Consiglio d'Europa, l'Organizzazione per la Sicurezza e la Cooperazione in Europa (OSCE) e l'Unione Europea.

La tesi, infatti, intende spiegare i diversi approcci che queste Organizzazioni hanno adottato nei confronti dei due Stati, in particolare nel periodo posto tra l'annessione della Crimea avvenuta nel 2014 e le vicende odierne, in modo da fornire un'analisi dei risultati raggiunti e di quelli mancati e trarne una valutazione sulla loro concreta effettività.

Il primo capitolo è dedicato all'evoluzione storica dei rapporti fra l'Ucraina e la Federazione Russia ed i loro rapporti con l'Europa Occidentale.

La relazione tra Ucraina e Russia è di grande complessità e caratterizzato da diverse interpretazioni provenienti da entrambe le parti; dunque, per poterne valutare lo sviluppo, è utile considerare, innanzitutto, la forte interconnessione tra le reciproche popolazioni. All'interno di questo lavoro non è possibile svolgere un'indagine approfondita dei tratti

comuni tra ucraini e russi ed esplorare le ramificazioni di tali relazioni; tuttavia, si è deciso di menzionare due fattori culturali ritenuti di grande valore: lingua e religione.

Il ruolo del linguaggio nel plasmare l'identità è, al tempo stesso, vitale ed intricato: si trova alla base dello sviluppo di una coscienza comune e, successivamente, della nazionalità. L'interconnessione linguistica fra Ucraina e Russia negli ultimi due decenni è rimasta forte, basti pensare che i russi etnici sono la più grande minoranza nazionale rappresentando poco meno di un sesto della popolazione ucraina nel 2001. Il russo rimane una delle lingue più parlate con una grandissima incidenza nelle zone meridionali e orientali e, in particolare, negli oblasts (regioni) di Donetsk e Luhansk.

Passando alla religione, è innegabile che questa abbia una forte centralità sia nel contesto russo, sia in quello ucraino, infatti, all'incirca la stessa percentuale di popolazione nei due diversi Stati (con una leggera maggioranza per l'Ucraina) abbraccia la Chiesa Ortodossa. Questa similarità di fede è stata utilizzata a più riprese dal Presidente Putin, non ultima nell'articolo pubblicato nel 2021, sottolineando la comunanza di origini fra i popoli russo, bielorusso e ucraino provenienti dalla medesima 'fonte battesimale'. Se quindi, da un lato la religione viene utilizzata come strumento di aggregazione e comunanza fra le due nazioni, il panorama religioso ucraino si dimostra essere molto più articolato e non possa, quindi, essere ricondotto ad un unico credo. All'interno dello stato vi sono numerose minoranze, le quali si dimostrano fortemente radicate nel territorio, prima fra tutte quella della Chiesa Greco-Cattolica ma anche altri gruppi più piccoli come la comunità Musulmana (per lo più derivante dalla cultura Tatara di Crimea), i cristiani ebrei e protestanti.

Pertanto, nonostante le somiglianze, la composizione sociale e culturale ucraina presenta delle proprie caratteristiche nazionali forti che la rendono unica. Pertanto, nella valutazione delle relazioni fra i due stati, la coesistenza di etnia russa e ucraina, specialmente nella regione orientale del Paese, deve essere considerata di vitale importanza.

Dopo una brevissima panoramica storica sulle antiche divisioni territoriali dell'Europa orientale, il lavoro si concentra principalmente sugli eventi successivi alla dissoluzione dell'Unione Sovietica. Per ragioni di brevità, l'intero capitolo ha una forte attenzione alla componente europea: infatti, ad esempio, solo un paragrafo è dedicato alla NATO, anche se, sicuramente, essa ha avuto un ruolo centrale nello sviluppo dei rapporti tra i due Paesi.

La scelta, inoltre, è quella di dedicare più attenzione alla storia recente, analizzando più a fondo gli eventi dell'ultimo decennio, con un focus particolare sulle relazioni Russia-Ucraina e Ucraina-UE e, infine, concludendo con l'inizio del conflitto in corso.

Il secondo capitolo presenta il ruolo svolto dalla prima organizzazione regionale: il Consiglio d'Europa.

L'analisi presentata in questo capitolo mira a portare alla luce l'atteggiamento ambivalente adottato sia dal Consiglio d'Europa, sia dalla Corte europea dei diritti dell'uomo nei confronti della Federazione Russa.

Inizialmente vi è un breve *excursus* sulla storia del Consiglio mentre, in seguito, sono presentati i processi di ammissione di Ucraina e Russia come membri del Consiglio, e il loro ruolo all'interno dell'Organizzazione.

Innanzitutto, è bene sottolineare che, sin dal momento dell'ammissione, si sono presentati diversi dubbi sulla capacità (e sulla volontà) della Russia di rispettare gli standard e gli obblighi derivanti dall'adesione al Consiglio d'Europa. Ciò è reso visibile *in primis* dalla quantità di ricorsi pendenti presentati contro la Federazione di fronte alla Corte Europea dei diritti dell'uomo, i quali, a fine 2021, si attestavano a circa un quarto del totale. Inoltre, la decisione di ripristinare i diritti di voto della Russia, che erano stati inizialmente sospesi dal Consiglio dopo l'annessione illegale della Crimea, potrebbe essere vista come un'ulteriore concessione alla Federazione. In merito a questa questione, all'interno del testo viene citata l'opinione del professore ed ex giudice della Corte Europea dei Diritti Umani Paulo Pinto de Albuquerque, durante una conferenza tenuta dal Centro per gli Studi Internazionali e Strategici dell'Università Luiss. In quell'occasione, il Professore ha *sostenuto* che la reintegrazione del voto della Russia subito dopo la crisi di Crimea possa essere interpretata come un'accettazione dell'annessione del territorio, anche se avvenuta in violazione di numerose norme del diritto internazionale e dei principi della Convenzione.

Per riassumere, il tentativo fatto dal Consiglio di trovare un equilibrio tra la necessità di mantenere la Russia nello spazio europeo e la difesa della credibilità dell'Organizzazione in termini di protezione e promozione dei diritti umani e degli standard democratici, sembra aver portato all'incapacità del Consiglio di dimostrarsi un veicolo di mediazione tra Russia e Ucraina e una barriera contro le violazioni e l'aggressività della prima.

Successivamente alla questione della crisi di Crimea, si arriva al momento dell'aggressione nei confronti dell'Ucraina e alla decisione in merito all'espulsione.

Relativamente a quest'ultima misura è stata inserita una riflessione sulla legittimità delle modalità con cui la Commissione Ministeriale del Consiglio, in accordo con l'Assemblea Parlamentare, è arrivata all'adozione di tale decisione. Al riguardo, sono state presentate visioni discordanti basate sull'interpretazione delle previsioni poste all'interno dello Statuto del Consiglio d'Europa relative alle procedure di sospensione e di espulsione.

Il lavoro analizza, quindi, il ruolo della Corte europea dei diritti dell'uomo in materia, nonché il livello di conformità della legislazione Ucraina e, soprattutto, di quella Russa con i principi della Convenzione Europea dei Diritti dell'Uomo. In particolare, è presentato lo strumento del 'Ricorso Interstatale' che sarà uno strumento cardine utilizzato dalla Corte nella sua attività sia durante la crisi di Crimea, sia durante l'attuale conflitto.

Concentrandosi sulla Corte europea dei diritti dell'uomo, sembra l'efficacia del suo ruolo sia limitata da ostacoli pratici e giuridici. In effetti, l'uso dei Ricorsi Interstatali riguardanti l'Ucraina e la Russia presenta molte difficoltà circa il lavoro della Corte. Da un lato, questo tipo di ricorso prevede un confronto diretto tra i due Stati in merito a gravi violazioni dei diritti umani, pertanto esso è caratterizzato da un alto grado di sensibilità. La Corte, infatti, nel prendere decisioni, può essere accusata di utilizzare parametri di valutazione differenti a seconda di quale sia lo Stato richiedente e quale sia il convenuto (il famoso 'doppio standard' ripetutamente denunciato dalle autorità russe). Inoltre, l'attuazione delle sentenze conseguenti a questo tipo di ricorso è complessa e ogni sentenza che non trova piena esecuzione potrebbe danneggiare la posizione della Corte. Considerando il basso livello di conformità della Federazione Russa e il fatto che, a causa dell'espulsione, lo Stato cesserà di essere un'Alta Parte Contraente della CEDU a partire dal 16 settembre 2022, non è certo se le sentenze della Corte europea dei diritti umani avranno un impatto concreto sullo Stato e, soprattutto, sulla sua popolazione. Tale situazione è inoltre aggravata dal fatto che la Corte abbia stabilito l'impossibilità di pronunciarsi in situazioni di conflitto attivo tra le parti, con la conseguenza di limitare ulteriormente la sua capacità di intervento nelle presenti circostanze.

Il terzo paragrafo presenta l'Organizzazione per la Sicurezza e la Cooperazione in Europa (nota anche come OSCE). Ancora una volta, per chiarezza, la prima parte è dedicata ad una breve analisi delle strutture interne dell'Organizzazione, seguita da alcune considerazioni sulla sua mancanza di personalità giuridica internazionale.



Ad oggi, infatti, rimane ancora aperto un lungo dibattito sulla sua mancanza di personalità giuridica da parte dell'OSCE: se da un lato si sostiene la necessità di adottare gli strumenti che possano portare all'acquisizione di tale personalità, dall'altro si difende la natura attuale dell'Organizzazione. Relativamente alla prima posizione, l'argomentazione principale si basa sul fatto che la conseguenza più rilevante dell'assenza di personalità giuridica è che il personale attualmente impegnato in operazioni sul campo non possieda una protezione giuridica derivante dall'essere parte dell'OSCE ma, altresì, debba fare affidamento sulla protezione concessa dal proprio governo. L'argomentazione contraria, la cui validità non deve essere sottovalutata, riprende l'importanza della natura dell'Organizzazione, la quale nasce come piattaforma per il dialogo informale tra diplomatici e ministri dei Paesi Membri, e che potrebbe essere irreversibilmente danneggiato dall'acquisizione di tale personalità. La questione, dunque, sembra ben lontana dall'essere risolta.

Conformemente a ciò che è stato fatto in precedenza, i paragrafi successivi trattano la partecipazione della Federazione Russa e dell'Ucraina e al loro ruolo all'interno dell'OSCE.

Successivamente, la discussione si sposta sul ruolo dell'OSCE durante la crisi di Crimea e su ciò che è accaduto tra il 2014 e l'inizio dell'aggressione russa.

Dall'analisi presentata viene sottolineato come, seguendo le sue caratteristiche intrinseche, l'OSCE potrebbe essere individuata come la piattaforma potenzialmente più efficace per affrontare l'attuale situazione tra Ucraina e Russia. L'Organizzazione, infatti, non solo nasce come *forum* di dialogo su di una vasta gamma di questioni regionali, ma anche si attesta l'essere la più ampia organizzazione regionale attualmente comprendente la partecipazione della Russia. Tuttavia, l'OSCE presenta anche molti vincoli critici che limitano la sua capacità di funzionare in modo efficace. Il risultato è che la considerazione del possibile ruolo dell'OSCE nel prossimo futuro dimostra sia punti positivi che negativi. Sul lato positivo, l'obiettivo originario dell'Organizzazione sembra essere appropriato alla situazione attuale, in quanto essa è stata creata proprio al fine di promuovere un dialogo costruttivo tra l'Europa orientale e occidentale durante la Guerra Fredda, avendo come criterio di adesione solo quello geografico. In secondo luogo, il meccanismo interno basato sul consenso permette a ciascuno Stato partecipante di avere pari voce in capitolo in ogni decisione. In terzo luogo, considerando le recenti azioni della Federazione Russa, così come la sua richiesta di una riorganizzazione dello spazio di sicurezza europeo,

l'OSCE sembra essere la piattaforma più appropriata per la discussione tale questione (soprattutto se si pensa che la Russia ha ratificato le dichiarazioni fondamentali dell'OSCE contenenti i principi fondamentali della sicurezza europea). Infine, a livello diplomatico, l'Organizzazione ha le competenze e la capacità tecnica necessarie per promuovere una discussione sulla riduzione delle tensioni attraverso una comunicazione rafforzata e l'accettazione di restrizioni reciproche.

Sul lato negativo, alcuni punti devono essere considerati. Innanzitutto, quello del bilancio: l'OSCE è una delle Organizzazioni con il budget più basso, nel 2021 il bilancio unificato totale dell'OSCE è stato pari a circa un terzo e mezzo quello del Consiglio d'Europa. Ciò, ovviamente, ha un impatto sull'efficienza e sulla portata dell'operazione che l'OSCE può eseguire.

Successivamente, l'avviamento delle sue attività è irreversibilmente legato alla volontà dei suoi Stati partecipanti. Questo ha risvolti pratici importanti: per esempio, nonostante la presenza di osservatori internazionali dell'OSCE lungo le linee di contatto russo-ucraine sia stata estremamente produttiva in termini di rispetto dei cessate il fuoco locali o di garanzia dell'accesso all'acqua, all'elettricità e ad altri servizi ai civili, il loro lavoro è stato spesso bloccato dalle autorità russe negando loro l'accesso a determinate regioni o siti e limitandone la loro libertà di movimento. Questa intrinseca difficoltà nel prendere decisioni significative (e, dunque spesso conflittuali) è stata chiaramente mostrata anche quest'anno quando la Missione Speciale di Monitoraggio in Ucraina (*SMM Ukraine*) è stata chiusa a causa del mancato raggiungimento del consenso di tutti gli Stati Partecipanti in un momento in cui avrebbe potuto avere un ruolo importante, in particolare, in termini di salvaguardia della popolazione civile.

Come è successo per il Consiglio d'Europa, anche l'OSCE è stato accusato dai rappresentanti russi di assumere un diverso atteggiamento relativamente a questioni riguardanti i Paesi occidentali rispetto a quelli appartenenti all'ex blocco sovietico, con la conseguenza di minare la credibilità dell'OSCE all'interno dell'opinione pubblica e giustificare la propria inosservanza (o addirittura ostruzione) di molte decisioni e risoluzioni.

In definitiva, ancora una volta, il futuro e l'incisività dell'OSCE sulle relazioni tra Ucraina e Russia (ma anche tra Europa orientale e occidentale) è legata alla volontà politica degli Stati partecipanti, nella loro capacità di impegnarsi in un dialogo costruttivo, nella loro disponibilità di rispettare le Dichiarazioni e le Risoluzioni adottate dall'Organizzazione e

nel loro riconoscimento dell'OSCE come piattaforma diplomatica e geopolitica di dialogo definitiva e inclusiva.

Infine, il quarto capitolo è dedicato all'Unione europea.

Questa parte mira a sottolineare come l'UE abbia promosso, negli ultimi anni, relazioni più strette con l'Ucraina, ma anche una più forte dipendenza dalla Russia, in particolare in termini di commercio di gas naturale ed altre risorse energetiche.

In questo caso, al fine di ottenere una maggiore coerenza e chiarezza, il capitolo si apre con un focus sulle relazioni storiche tra l'UE e la Federazione Russa. In effetti, questo argomento non è presente nella prima parte (che, invece, descrive gli sviluppi tra l'UE e l'Ucraina), ma è stato collocato in questo contesto poiché si ritiene che esso crei un quadro migliore per quanto descritto in seguito. Successivamente, vengono illustrate le azioni intraprese dall'UE durante la crisi di Crimea e viene prestata particolare attenzione alle politiche promosse nel periodo compreso tra il 2014 e il 2022. Inoltre, una sezione indipendente è dedicata alla questione energetica. In effetti, questo tema è stato uno dei più dibattuti sia a livello nazionale, sia comunitario e sta attualmente interessando tutti i Paesi dell'UE acquisendo un ruolo centrale nello scenario internazionale.

Il periodo tra il 2013/2014 e oggi ha visto un approfondimento delle relazioni tra l'Ucraina e l'UE, in particolare in termini di assistenza economica (per esempio attraverso l'Accordo di Associazione e l'istituzione della *Deep and Comprehensive Free Trade Area*), e di assistenza nel processo di *State-building* (ricordando la missione consultiva dell'UE in Ucraina). Tutte queste attività, tuttavia, non hanno mai portato all'apertura ufficiale del processo di adesione. La candidatura ufficiale ucraina, infatti, è stata presentata solo dopo l'inizio dell'aggressione. Di conseguenza, la decisione di concedere lo *status* di candidato allo Stato (insieme alla Repubblica di Moldova e alla Georgia) potrebbe essere interpretata come un segno di solidarietà, ma anche come una posizione formale e politica contro la Russia.

Cionondimeno, l'evoluzione delle relazioni economiche tra l'UE e la Federazione a seguito dell'annessione della Crimea non sembra facilitare il sostegno di tale posizione. La 'questione energetica' che è presentata all'interno del capitolo mira a rendere chiaro, almeno in parte, la forte dipendenza dell'UE dalla Russia. La politica di diversificazione energetica quasi assente perseguita dall'Unione negli ultimi anni si è tradotta nel contesto attuale in enormi costi sostenuti dalle economie degli Stati membri e dei loro cittadini,

che possono provocare il ritiro di alcuni Stati dal già fragile fronte comune costruito negli ultimi mesi.

Questo scenario è cambiato con l'ultima aggressione russa dell'Ucraina, che ha innescato una risposta senza precedenti da parte dell'Unione.

L'inizio del conflitto, però, sembrerebbe almeno aver innescato un processo volto al superamento della distanza tra gli Stati dell'Europa centrale e occidentale che, per lungo tempo, ha influenzato la discussione sul ruolo dell'Unione nel campo della sicurezza. Questo nuovo approccio si è tradotto in politiche, ma anche in sanzioni, che sono state di portata senza precedenti sia per la velocità di adozione, sia per il loro *range* di applicazione.

Innanzitutto, va sottolineata la rapidità con cui sono state approvate le sanzioni.

È importante ricordare che tali misure sono adottate all'unanimità del Consiglio, pertanto, la combinazione fra le modalità di approvazione e la rapidità di quest'ultima, ha dimostrato una forte coesione tra gli Stati membri e una volontà comune di contrastare le violazioni russe. In secondo luogo, è bene ricordare che la portata delle misure è stata estesa non solo al campo economico, ma anche a quello finanziario e di sicurezza, prendendo di mira non solo il governo russo in maniera diretta, ma anche enti privati e individui.

In questo senso, è stato aperto un dibattito sulla loro efficacia e sul loro costo per l'economia dell'UE e dei suoi Stati membri.

Anche in questo caso, il dibattito generale si è diviso tra una posizione che, da un lato, accusa tali misure di essere fondamentalmente inefficienti nel danneggiare l'economia russa e dall'altro, di essere altresì lesive per il mercato interno dell'Unione con importanti risvolti per i suoi cittadini. La posizione contraria, invece, definisce le sanzioni come una misura coercitiva 'moderna', la quale non comporta l'uso della forza ma, anzi, viene integrata con gli strumenti diplomatici. Inoltre, si sottolinea come le sanzioni non debbano essere interpretate solo come strumenti volti a danneggiare l'economia russa, ma anche a minare la reputazione (e la legittimità) del presidente Putin tra i suoi stessi sostenitori. La prima posizione sembra supportata da dati che, tuttavia, devono essere attentamente ponderati in quanto talvolta si dimostrano contraddittori e fortemente dipendenti dalla loro fonte. La seconda visione invece, si rivolge a riflessione positiva su ciò che concretamente l'Unione può fare nel momento presente con gli strumenti in suo possesso,

ricordando sempre che solamente con fine del conflitto potrà essere definita l'efficacia concreta dell'azione dell'Unione.

In ogni caso, anche tralasciando l'effettività di tali sanzioni dell'UE contro Mosca, queste misure stanno dimostrando l'intenzione dell'Organizzazione di opporsi alla Federazione nella sua campagna contro l'Ucraina.

La volontà finale di questo lavoro è quella di fornire una descrizione e una valutazione completa di ciò che queste tre Organizzazioni Regionali hanno fatto concretamente, specialmente nel periodo che copre l'annessione russa della Penisola di Crimea fino all'esplosione del conflitto nello scorso febbraio.

Questa descrizione non ha lo scopo di indurre un giudizio *in toto* sull'efficacia e la validità delle Organizzazioni in quanto tali, ma, piuttosto, di capire quali siano state le loro difficoltà e i fallimenti nel raggiungere i rispettivi obiettivi nel contesto delle relazioni tra l'Ucraina e la Federazione Russa.

L'acquiescenza del Consiglio d'Europa, l'immobilità dell'OSCE e l'atteggiamento ambivalente dell'Unione Europea hanno impedito loro di svolgere un ruolo efficace di mediatori tra Ucraina e Russia e di avere la capacità di essere preparati nei confronti delle azioni di Mosca.

L'auspicio è che questo conflitto possa davvero essere un punto di svolta nel percorso delle Organizzazioni Regionali Europee, sottolineando una volta per tutte quanto il corretto lavoro di queste Organizzazioni possa essere fondamentale e determinante in termini di promozione dell'unità e della cooperazione fra Stati, della tutela dei diritti umani e della prevenzione dei conflitti. Non va infatti dimenticata, bensì incoraggiata, la capacità di questi Enti di rafforzare la collaborazione tra gli Stati e di mantenere un dialogo aperto anche tra Paesi profondamente diversi tra loro, ma accomunati dall'appartenenza al Continente Europeo.

Poiché l'unità, il reciproco aiuto e l'accettazione possono essere l'unica risposta al conflitto.