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Graduate School for East and South East European Studies

***The EU and the Ukrainian Crisis: Legal and Political Aspects***

*1. Introduction*

My research project on: *The EU and the Ukrainian Crisis* - formulated in January 2015 and developed at the Graduate School and the Institute on East and South East European Studies in Regensburg (IOS) - represents one development and a further deeper analysis of certain themes of the broader research on: *Relations between the EU, Ukraine and Russia: legal and political aspects*, launched in 2014<sup>1</sup>.

Matters concerning: *a)* EU relations with Eastern countries, *b)* EU relations with Russia, *c)* EU relations with Ukraine, with a focus in particular, on the objectives and implications of the new Association Agreement, *d)* the events in Ukraine of Autumn 2013 and the EU's position in the face of the changes that occurred, were in fact the subject of further analysis.

The analysis carried out of: *e)* the declaration of independence of the Crimea and its annexation to Russia, *f)* the conflict in the Eastern Regions of Ukraine, *g)* the EU position on the events in Crimea and in the oblast of Donetsk and Luhansk, and the economic sanctions against Russia, and *h)* the humanitarian intervention aspect of international cooperation in the Eastern Regions of Ukraine, on the other hand, was for the most part new.

I'd like, before illustrating the above-mentioned themes, to underline the fact that the Graduate School, where I was working in the period July - August 2015, is a very prestigious observatory on EU policies towards Ukraine and Eastern Countries; its primary objective is that of providing the very best facilities for research and doctoral work. In addition, a characterizing goal

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<sup>1</sup> In May 2014, I defined a Research Project on: *Relations between the EU, Ukraine and Russia: legal and political aspects*. Then, thanks to the STM Programme, from 18<sup>th</sup> November to 8<sup>th</sup> December 2014 I developed my research at the Graduate School for East and South East European Studies, and at the IOS - Institute for East and Southeast European Studies, in Regensburg (Bavaria, Germany). At the IOS, I also had the chance to present and discuss in an international environment the first findings of my research. The Institute in fact organized a *Forum* on the Association Agreement between the EU and Ukraine and asked me to be the speaker.

of the institution is the promotion of national and international networks; in fact, IOS carries out, in close cooperation with partners in Germany and abroad, transnational and comparative oriented research.

## 2. *The EU Relations with Eastern countries*

After the fall of the Berlin Wall in 1999, the EU reinforced its relations with the Newly Independent States (NIS) at its borders in the context of the European Neighbourhood Policy (ENP). Of course, conflicts in the neighbourhood, particularly in Georgia (Abkhazia and South Ossetia) and Moldova (Transnistria) posed a threat to regional stability and compelled the EU to deal with them.

The EU rejected the “referenda” in the breakaway entities and urged Russia to remain committed to the principle of the territorial integrity of the two countries. The EU also appointed Special Representatives to Moldova and to the South Caucasus, who have had a role in ensuring that various EU activities are addressed to the resolution of the conflicts. The EU has also two ongoing field activities that are relevant to the conflict resolution: the Border Support Team in Georgia, and the Border Assistance Mission to Ukraine and Moldova, both functioning since 2005.

In 2009, the EU launched the Eastern Partnership (EaP) - a joint initiative with 6 Eastern European partner countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. It covers the eastern dimension of the ENP, following two parallel and mutually reinforcing lines: the bilateral and the multilateral. The bilateral dimension aims to foster closer relations between the EU and each individual eastern partner country, while the multilateral dimension provides a forum for dialogue and exchange, through thematic platforms and flagship initiatives (it is broad-based and also involves the civil society).

Since its very beginning the EaP has been considered by Russia as an EU attempt to expand its “sphere of influence”<sup>2</sup>.

It seems opportune to highlight the fact that Ukraine has always been a priority partner within the framework of the EaP and, in 1998, the EU and Ukraine stipulated a *Partnership and Co-operation Agreement* (PCA).

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<sup>2</sup> *Russia was not interested in participating, along with other countries, in the EaP, because that scheme of contract was perceived asymmetric, while Russia was searching an equal economic relationship with the Union. Cfr. P. A. KALINICHENKO, The Development of Legal Framework for Russia - EU Relations. 2010 Results, in Baltic Region, 2011, 3, pp. 27-33.*

### 3. EU - Russia relations

Russia is the EU's largest neighbour and its third biggest trading partner. In June 1994, in Corfu, the EU and Russia signed a *Partnership and Cooperation Agreement (PCA)*, which grants to many Russian products the import conditions ensured by the “most favoured nation” clause. Ratification on the part of the EU was held up by the crisis in Chechnya. However, the PCA entered into force in December 1997, for a duration of ten years, with automatic annual renewals.

Since the PCA doesn't reflect the increasing breadth of EU - Russia relations, in 2003 the EU and Russia agreed to reinforce their cooperation by creating in the long term four ‘common spaces’:

- *economic, covering also the environment* - the goal was the integration of the Russian and European markets to promote the mobility of capital and services<sup>3</sup>;
- *freedom, security and justice*;
- *external security, including crisis management and non-proliferation* - the goal was to strengthen multilateralism and the role of the UN, especially in relation to some shared priorities
- *research and education, including cultural aspects*.

However, after the Orange Revolution of 2004, the principal Ukrainian issue has become the balance of relations between the EU and Russia.

Negotiations between the EU and Russia on a new agreement providing a more comprehensive framework were launched in 2008, but the war between Russia and Georgia has prevented the continuation of these negotiations.

In relation to this new crisis, the EU strongly condemned the Russian manoeuvres in South Ossetia, while maintaining an open political dialogue, trying to assume the role of mediator. The dialogue between the two Parties was clearly made more difficult by the differences of opinion on regional security and the critical attitude of the EU on the state of democracy in Russia.

In 2009, as noted above, the EU launched the EaP and it was clear that contacts were weighed down with competing integration projects in the post-Soviet area.

Furthermore, it is worth noting that during the same years that saw the expansion of the political and economic influence of the EU on the Eastern Countries, there were also enlargements of the NATO (North Atlantic Treaty Organization), which passed from 16 Member States at the end

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<sup>3</sup> To that end, the EU was committed to facilitate the entry of Russia into the WTO, which took place only in 2012, at the end of a negotiation that lasted 18 years.

of the Cold War<sup>4</sup> to the current 28 members. In spite of the debate within NATO over continued expansion eastward after the German reunification in 1990, in 1999, Poland, Hungary, and the Czech Republic joined the organization; in 2004, Estonia, Latvia, Lithuania, Slovenia, Slovakia, Bulgaria, and Romania; in 2009, Albania and Croatia<sup>5</sup>.

Undoubtedly, the incorporation of these countries, formerly within the Soviet sphere of influence, into NATO has been another, parallel cause of the increasing tension between Russia and EU / NATO countries.

In 2010, the *EU-Russia Partnership for Modernisation* was launched, but it didn't bring about any significant change in the regional situation. In 2011, President Putin launched the Eurasian Economic Union with Armenia, Belarus, Kazakhstan, Kyrgyzstan, providing for its enlargement and empowerment by 2016<sup>6</sup>.

Since the Autumn of 2013, the crisis which erupted in Ukraine has become the prominent feature of the regional scenario<sup>7</sup>, and a few months after the Maidan episode, in March 2014, Russia's annexation of the Crimea definitely changed the course of EU - Russia relationships.

With regard to the AA and the DFCTA between the EU and Ukraine, which apparently lay at the root of the crisis, Russia had on several occasions observed that it would have negative effects on Russia, modifying trade and investment conditions in the Ukrainian market and trade flow between Ukraine and Russia.

It must be noted that only after the signing of the Agreement did the Presidents of the European Commission, Russia and Ukraine agreed to hold Trilateral Consultations on its possible negative effects on Russia. During the first round of consultations held in Brussels on 11<sup>th</sup> July 2014, the Parties recognized that the implementation of the Agreement would modify trade and investment conditions in the Ukrainian market with possible negative consequences for trade between Ukraine and Russia.

#### 4. *EU - Ukraine relations: objectives of the new Association Agreement*

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<sup>4</sup> The 12 Founder Member States - Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the UK and the US - were joined by Greece and Turkey in 1952, West Germany in 1955, Spain in 1982.

<sup>5</sup> Future expansion is currently a topic of debate in many countries: Cyprus and Macedonia are stalled from accession by, respectively, Turkey and Greece, pending the resolution of disputes between them. Other countries which have a stated goal of eventually joining include Bosnia and Herzegovina, Montenegro, and Georgia.

<sup>6</sup> *La Russia nel puzzle euroasiatico*, in *Italianieuropei*, 4, 2014, pp. 145-176.

<sup>7</sup> See *EU-Ukraine-Russia Relations: Problems and Prospects*, Razmkov Centre, National Security and Defence, no. 4-5, 2012.

The innovative *Association Agreement* between the EU and Ukraine, negotiated between 2007 and 2012<sup>8</sup>, was finally signed on 27<sup>th</sup> June 2014. It replaces the 1994 *Partnership and Cooperation Agreement* and may be considered the last result of a cooperation under development since the beginning of the 90's, within the framework, first of the ENP, then of the EaP.

The Agreement is characterized by three specific features: comprehensiveness, complexity and conditionality, and is unprecedented in its breadth (number of areas covered) and depth (detail of commitments and timelines). It aims to strengthen political and economic relations between the EU and Ukraine, and to integrate Ukraine gradually into the EU internal market. It lays strong emphasis on democracy and the rule of law, human rights and fundamental freedoms, good governance, a well-functioning market economy and sustainable development.

It also contains numerous provisions affirming in particular the principles of independence, sovereignty, territorial integrity and the inviolability of borders. The Parties declare their commitment to the promotion of these principles in the Preamble, and to the promotion of their observation in Article 2 (Title I, *General Principles*)<sup>9</sup>.

Furthermore, the strengthening of political dialogue between the Parties in all areas of mutual interest should “promote gradual convergence on foreign and security matters with the aim of Ukraine's ever-deeper involvement in the European security area” (Article 4, *Aims of Political Dialogue*).

The provisional application of some parts of the Agreement began on 1<sup>st</sup> November, while the provisional application of the *Deep and Comprehensive Free Trade Area* (DCFTA) was delayed until 1<sup>st</sup> January 2016, in order to facilitate the common efforts towards a peace process<sup>10</sup>.

I have analysed in depth – comparing them also with those of the *brother* Agreements with Georgia and Moldova - the legal and political background of this Association Agreement<sup>11</sup>, its main

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<sup>8</sup> The Joint Declaration on the EU - Ukraine Association Agreement adopted by the EU - Ukraine Summit held in Paris in September 2008 recognized that Ukraine, as a European country, shares a common history and common values with the countries of the EU.

<sup>9</sup> The promotion of the principles of independence, sovereignty, territorial integrity and the inviolability of borders, is among the principal aims of the political dialogue (Article 4, 2, g).

<sup>10</sup> The EU continued to apply autonomous trade measures for the benefit of Ukraine, granting Ukrainian exporters preferential access to EU markets without awaiting entry into force of the trade provisions under the Association Agreement. It is opportune to note that Ukraine also benefited from the preferences of the CIS (Commonwealth of Independent States) free trade zone until the end of 2015.

features and characters (including issues concerning its legal basis<sup>12</sup>, the provisional application of some rules<sup>13</sup>, the territorial scope of application and the implications of the EU non-recognition of its annexation by Russia<sup>14</sup>, the main principles it states, the principal issues concerning its implementation<sup>15</sup>; as well as the position and fears of Russia regarding the strengthening of the political and economic relationships between the EU and Ukraine<sup>16</sup>.

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<sup>11</sup> According to Herman Van Rompuy, it is “the most advanced agreement of its kind ever negotiated by the EU” and served to a large extent as a template for the agreements with Moldova and Georgia. Reforms are foreseen in a number of key areas: public governance, justice, law enforcement, consumer protection, and economic sectors such as: energy, transport, environmental protection, industrial development, social development and protection, education, youth, culture.

<sup>12</sup> The comprehensive and complex nature of the Association Agreement is reflected in the choice of legal basis. The Council Decision on the signing and provisional application of the political provisions, adopted on 17<sup>th</sup> March 2014, combines the legal basis for EU action in the area of CFSP (Articles 31,1, and 37, *Treaty on the EU*) with the traditional provision on association (Article 217, *Treaty on the Functioning of the EU*). According to some authors, the Decision doesn't refer to Article 8 (*The Union and Its Neighbours*) of the Treaty on the EU, introduced by the Treaty of Lisbon, because anything less than formal association based on Article 217 TFEU would have been perceived by the Eastern neighbours as an enhancement of their existing treaty relations; see R. PETROV, *Association Agreements with Ukraine, Moldova and Georgia through the Lens of Consistency*, report presented at the International Workshop on: “The EU and Its Values in Its Neighbourhood - Contestation and Consistency”, Pisa, 3<sup>rd</sup> October 2014.

<sup>13</sup> Treaty provisions in areas including the respect for human rights, fundamental freedoms and rule of law; political dialogue and reform; justice, freedom and security; economic and financial cooperation have been provisionally applied since 1<sup>st</sup> November 2014.

<sup>14</sup> While the Association Agreements with Georgia and Moldova include a specific general provision on the “territorial application”, the EU - Ukraine Association Agreement doesn't address the issue. In the Final Act containing the Association Agreement, EU and Ukraine agreed that *the AA shall apply to the entire territory of Ukraine as recognized under international law* and they “shall engage in consultations with a view to determine the effects of the Agreement with regard to the illegally annexed territory of the Autonomous Republic of Crimea and the City of Sevastopol in which the Ukraine Government does not exercise effective control”.

Ukraine regards the territory of Crimea as a “temporary occupied territory”, see *Law on Protection of Rights and Freedoms of Nationals and Legal Regime on the Temporary Occupied Territory of Ukraine*, 15.4.2014, no. 1207

<sup>15</sup> The implementation of the Association Agreement will require a broad and detailed work of approximation of the Ukrainian laws to the EU regulations. It is also opportune to observe that, according to Article 9 of the 1996 Constitution of Ukraine, the conclusion of international treaties that contravene the Constitution is possible only after introducing relevant amendments to the Constitution itself. Some of the AA provisions impose commitments on Ukraine that might be argued directly contradict the national constitution.

<sup>16</sup> Russia in fact reacted to the signing of the Agreement asking various countries of the EaP to join the Eurasian Economic, which includes Belarus and Kazakhstan. Furthermore, at the second round of the Trilateral Consultations on the possible negative effects of the AA, held in Brussels on 12<sup>th</sup> September 2014, Moscow - in order to minimize the costs to the Russian economy of its coming into force - presented a document containing proposals to amend it.

Daily exchanges of views with the staff of the Graduate School and of the IOS, as well as with other visiting scholars, confirmed my doubts on recurrent affirmations according to which this Agreement (and those with Georgia and Moldova) would be not just another agreements - but a milestone in the history of Europe as a whole. An evaluation of the historical importance of the EU - Ukraine AA (and of the similar AAs with Georgia and Moldova) requires some caution, considering the risks involved and the uncertainties as to their effectiveness and implications.

### 5. Maidan 2013 and the EU's position in the face of changes occurred

In November 2013, when the Ukrainian President in Office, V. Yanukovich, who until then had followed an ambiguous policy, left the signing of the EU-Ukraine Association Agreement 'in the air', there were huge protest demonstrations. A series of exceptional events followed: the government was accused of corruption; the Maidan protests led to early presidential and general elections; Ukraine signed the AA with the hope of giving "a new direction" to its own institutional system.

The Maidan was considered a revolution by a large number of Western governments and mass media, while Russia considered it *a coup d'état*. While the EU immediately supported the new leading forces, tensions arose in other regions of the country, far from Kiev.

Crimea's declaration of independence, and the conflict in the Lugansk and Donetsk regions created a potentially explosive situation<sup>17</sup>. The subsequent annexation of Crimea to Russia (by the Duma on 20<sup>th</sup> March 2014) and the referendum on the autonomy of the Eastern Regions of Donetsk and Lugansk, held in May, made the scenario even more complex<sup>18</sup>.

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<sup>17</sup> See Menon, R, Rumer, E., *Conflict in Ukraine. The Unwinding of the Post-Cold War Order*, Massachusetts Institute of Technology, 2015; Di Rienzo, E., *Il conflitto russo-ucraino: geopolitica del nuovo (dis)ordine mondiale ?* Rubbettino, 2015.

<sup>18</sup> See *Affari Esteri*, 174, spring 2014. Articles by A. ALBONETTI, *L'Ucraina e la pace, il TNP e l'epoca nucleare*; F. MOGHERINI, *Alle violazioni di Mosca occorre reagire*; H. A. KISSINGER, *Quel ponte di Kiev tra Est e Ovest*; B.-H. LÉY, *La lezione di Kiev all'Occidente*; F. SALLEO, *La crisi dell'Ucraina*; G. B. VERDERAME, *L'annessione della Crimea alla Russia*; P. MIGLIAVACCA, *Su Mosca soffia il vento dell'Est*; M. DE MEDICI, *L'Ucraina e il nuovo bipolarismo*; M. GIACONI, *Il Grande Gioco dell'Ucraina*.

See also M. ARCARI, M. ROSCINI, *International Law and the 'Crimean Conundrum': Legal issues arising from the 2014 Russia/Ukraine crisis*, May 11, 2014.

In this regard, we may observe that the EU has strongly condemned the illegal annexation of Crimea and Sevastopol to the Russian Federation, for the violation of the sovereignty and territorial integrity of Ukraine and has stated that it will not recognize it<sup>19</sup>.

Legal literature has already analysed issues like the legal value of Crimea's declaration of independence and the current status of Crimea in international law<sup>20</sup>; but no reasonable solution acceptable to both the parties involved has been found.

The European Council has also condemned the violation of the sovereignty and territorial integrity of Ukraine and doesn't recognize any legal value to the declaration of independence of the Republics of Donetsk and Lugansk<sup>21</sup>.

Despite a fragile ceasefire announced on 5<sup>th</sup> September 2014<sup>22</sup> - and reaffirmed in the "Package of Measures for the Implementation of the Minsk Agreements", adopted and signed on 12<sup>th</sup> February 2015<sup>23</sup> - artillery, tank and small arms exchanges continue on a daily basis and civilians continue to die in those Regions.

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<sup>19</sup> European Council, Conclusions, Brussels, 20/21 March 2014. See A. FERRARI (ed.), *Oltre la Crimea - Russia contro l'Europa ?*, ISPI - Istituto di Studi di politica internazionale, Milano, 2014, Preface by P. MAGRI; Articles by: A. FERRARI, *Crimea: una svolta per la politica estera russa ?*; T. PENKOVA, *La strategia del Cremlino in Ucraina*; G. RINALDI, *Mosca e Kiev: i vincoli dell'economia*; A. VITALE, *Il potere in Russia: continuità e trasformazioni*; S. GIUSTI, *Europa - Russia/1: perché è così difficile capirsi*; M. VERDA, *Europa - Russia /2: una convivenza energetica*; M. DEL PERO, *Usa - Russia: dal "reset" a una nuova Guerra fredda ?*.

Also the General Assembly of the United Nations has not recognized the declaration of independence of the Crimea and its annexation to Russia, cf. UNGA Resolution 68/262. SEE VILLANI, U., *L'Unione europea e le Nazioni Unite di fronte alla crisi della Crimea*, in *SudinEuropa*, May 2014.

<sup>20</sup> See P. DE SENA, L. GRADONI, *Crimea: le ragioni del torto (russo) e il torto delle ragioni (occidentali)*, <http://www.sidi-isil.org/sidiblog/?p=773>, 21st March 2014; E. MILANO, *The Non-Recognition of Russia's Annexation of Crimea: Three different legal approaches and one unanswered question*, May 11, 2014; A. TANCREDI, *The Russian Annexation of the Crimea: Questions relating to the use of force*, May 11, 2014.

<sup>21</sup> On the Donbass situation, see SCERESINI, A., GIROFFI, L., *Ucraina - La guerra che non c'è*, Milan, 2015; MILETITCH, N., *Ukraine's 'frozen conflict' has gone on for one year*, Business Insider UK, Politics, 4th April 2015 (<http://uk.businessinsider.com/afp-from-rebellion-to-stalemate-a-year-of-war-in-east-ukraine-2015-4?r=US&IR=T>); JENS MALLING, J., *Ukraine's impossible future. The value of a frozen conflict*, Le Monde diplomatique, March 2015 (<http://mondediplo.com/2015/03/04transnistria>).

<sup>22</sup> On 5<sup>th</sup> September 2014, representatives of Ukraine, the Donetsk People's Republic, the Lugansk People's Republic, and the Russian Federation signed the Minsk Protocol to halt the war in the Donbass region (<http://mfa.gov.ua/en/news-feeds/foreign-offices-news/27596-protocolon-the-results-of-consultations-of-the-trilateral-contact-group-minsk-05092014>).

<sup>23</sup> UN Security Council Resolution 2202, adopted on 17<sup>th</sup> February 2015, *Annex I, Package of Measures for the Implementation of the Minsk Agreements*.

This situation might be considered as a new *frozen conflict*<sup>24</sup> and this already finds echoes in various political documents and in the legal literature; some first, possible constitutional models to be taken into consideration for solving some of the political issues have been proposed, but the legal nature of the conflict between the Kyiv Government, and the status of the self-proclaimed Republics of Donetsk and Lugansk have not been seriously investigated.

One year on from the holding of the “referendum” and the subsequent annexation of Crimea and Sevastopol by the Russian Federation, the EU remains firmly committed to supporting Ukraine's sovereignty and territorial integrity. The EU does not recognise and continues to condemn this act of violation of international law, also through the use of restrictive measures.

In particular, the EU has adopted some sanctions towards Russia<sup>25</sup>: suspension of preparations for the G8 Summit scheduled for June in Sochi and of a bilateral colloquium on visas; cancellation of the planned EU-Russia Summit; suspension of negotiations for Russia's accession to the OECD (Organization for Economic Cooperation and Development) and the IEA (International Energy Agency); *suspension of long-term loans to the five state-controlled banks* (Sberbank, VTB, Gazprombank, Vnesheconombank (VEB), Rosselkhozbank); restrictions on the energy sector (Rosneft, Transneft, Gazprom Neft); restrictions on the importation of goods produced by the defence industry.

The EU also drew up, with Decision no. 2014/145/ CFSP of 17<sup>th</sup> March 2014 and the implementing Commission Regulation no. 269/2014, a list of 21 persons held responsible for actions that have undermined or threatened the territorial integrity, sovereignty and independence of Ukraine, and affirmed that *Member States shall take the necessary measures to prevent the entry into or transit through their territory of such persons; freezing their funds and resources.*

Russia reacted by adopting some measures of 'embargo': on 7<sup>th</sup> August 2014, it adopted restrictions on the importations of agricultural products from the EU (but also from the USA, Norway, Canada and Australia); on 25<sup>th</sup> June, it declared that these measures will remain in force until 5<sup>th</sup> August 2016.

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<sup>24</sup> On “frozen conflicts” in post-soviet republics, see JAAP ORA, *Frozen Conflicts and the EU - A Search for a Positive Agenda*, in *Estonian Ministry of Foreign Affairs Yearbook*, 2006, pp. 50-58; KAPITONENKO, M., *Resolving Post-Soviet “Frozen Conflicts”: Is Regional Integration Helpful?*, in *Caucasian Review of International Affairs*, 3, winter 2009, pp. 37-44; RONZITTI, N., *Il conflitto del Nagorno-Karabakh e il diritto internazionale*, Torino, 2014.

<sup>25</sup> Conclusions of the Foreign Affairs Council of 3<sup>rd</sup> March 2014; Statement by the Heads of State or Government of 6<sup>th</sup> March 2014; European Parliament Resolution of 13<sup>th</sup> March 2015

Alongside the economic embargo, Russia has also adopted individual sanctions similar to those applied by the EU. This occurred as a result of the failed attempt of certain Members of the European Parliament to enter Russian territory in May 2015. Russia justified this by explaining that it has a “stop list”: a list containing the names of 89 EU citizens, mostly politicians and representatives of European institutions, against whom Russia has issued an entry ban.

### *7. The humanitarian international cooperation in the Eastern Regions of Ukraine*

The fighting in the Eastern Regions of Ukraine has had a significant impact on the economy, primarily in the cities and the oblasts of Donetsk and Luhansk (Donbass region). Industrial and agricultural production and processing have been disrupted, affecting both income (cash availability) and local supply chains. As highlighted by the World Food Programme (WFP), the armed conflict that escalated between the government forces and armed groups “has resulted in displacement, deterioration of the humanitarian situation, and disruption of critical infrastructure (gas, power and water supply). Access to basic services (like health and market) has been affected”<sup>26</sup>.

While many remained, thousands of families fled from their homes at short notice, often without means to undertake the journey<sup>27</sup>. As of 3<sup>rd</sup> October 2014 it was estimated that there were some 379,059 IDPs (including, according to the Government of Ukraine, about 17,000 from Crimea)<sup>28</sup>. The three neighbouring *oblasts* of Dnipropetrovsk, Kharkiv and Zaporizhia have also been affected by the conflict as they received the bulk of the IDPs<sup>29</sup>.

The State Emergency Services (SES), which heads the Inter-agency Coordination Unit for IDPs, together with the Ministry of Social Policy (MoSP), is the designated authority for coordinating humanitarian assistance in Ukraine, including humanitarian aid from the international community. Under its mandate, the SES is directly responsible for civil protection in emergency situations and deals principally with life-saving and rescue activities.

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<sup>26</sup> See WFP Ukraine, *Food Security Assessment*, January 2015.

<sup>27</sup> According to the OCHA (Office for Coordination of Humanitarian Affairs) *Situation Report* (3<sup>rd</sup> October 2014), 426,995 people fled to neighbouring countries.

<sup>28</sup> Due to the lack of a centralized or consistent registration system, the number of IDPs is likely to be two or three times higher, see UNCHR, *Report on the Situation of Human Rights in Ukraine*, UN GA A/HRC/27/75, 19th September 2014.

<sup>29</sup> The total combined population of all five conflict affected *oblasts* is 14.4 million, of which 85-89 % live in urban areas. 5.1 million people live in the conflict affected areas, see OCHA *Situation Report*, cit.

Since early July 2014, the SES has been coordinating and implementing humanitarian response operations in the country relating to the conflict in the east. However, the capacity of the SES at regional and local levels is limited. In addition, it does not have its own resources to provide the humanitarian aid to IDPs and the affected population and, therefore, seeks to mobilize resources from other ministries/government agencies. But compounding structural and financial limitations, and the lack of ad hoc legislation on IDPs, pose some barriers to allocating necessary resources from various ministries to meet the needs of the affected population. As a consequence, the assistance provided by the authorities is sporadic and lacks a systematic approach.

Recognizing the unmet humanitarian needs, the Government launched an appeal to the international community for humanitarian assistance on 12<sup>th</sup> September 2014<sup>30</sup>. In addition, on 2<sup>nd</sup> October 2014 the WFP received a letter from the Ukrainian Embassy in Italy requesting humanitarian, financial and technical support from the WFP<sup>31</sup>. In fact, the WFP, various other international organizations, the EU and some National Development Cooperations (the Italian Development Cooperation included), were already operating - in the field of food aid security and safety<sup>32</sup> - to face the critical situation in the Eastern Regions.

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<sup>30</sup> The UN Country Team (UNCT) in Ukraine, comprising amongst others, UNHCR, UNICEF, WHO, IOM (International Organization for Migration) and UNDP, has been active in the country since the mid-1990s, mainly focusing on development assistance. Following the crisis, the OCHA has established its presence in the country and has taken up the humanitarian coordination role. The key element of the coordination is harmonizing preliminary and ad hoc assessments to establish the numbers and needs of displaced individuals. The UN has also established the Ukraine Humanitarian Country Team (HCT) to ensure that the activities of humanitarian actors are coordinated, and that humanitarian action in-country is principled, timely, effective and efficient, and contributes to longer-term recovery.

<sup>31</sup> The WFP set up its office in Ukraine in March 2014 to assess and monitor emerging food security needs through an immediate response preparedness activity.

<sup>32</sup> Thanks to the abundance of fertile soil, Ukraine has a long history in the agricultural and food processing industries and consequently has not in the past had need of external intervention. However, it has some legislation on humanitarian aid, which essentially consists of the 1997 *Law on Charity and Charitable Organizations*, replaced in 2012 by Law no. 5073-VI, and the 1999 *Law on Humanitarian Aid*.

The Ukrainian food safety control system differs from the respective EU system, because it is based on the testing the end-products by state agencies, while the EU system is based on the primary responsibility of ‘producers’. The 1998 *PCA* foresaw the approximation of Ukrainian food safety standards to the respective EU standards (Article 60); Ukraine was to adopt the principle of the primary responsibility of ‘producers’. In spite of the *PCA* commitments, regulatory convergence with EU and international food standards hasn’t made much progress, because the threat to the health of Ukraine’s citizens from poor food safety standards has been underestimated, and adaptation would have implied high domestic costs.

Following the request from the SES, the WFP launched an Immediate Response EMOP (IR-EMOP) for the period 15<sup>th</sup> August to 14<sup>th</sup> November 2014, valued at US \$ 1.4 million, to provide life-saving, time-critical food assistance to the most vulnerable groups among the IDPs, returnees, host families and those trapped in conflict hotspots, mainly controlled by anti-government entities<sup>33</sup>. IR-EMOP targeted 28,000 IDPs with a mixture of food and vouchers<sup>34</sup>.

After that, an Emergency Operation (EMOP) was launched. The initial planning period of the EMOP was six months, from 1<sup>st</sup> November 2014 to 30<sup>th</sup> April 2015. The Operational Plan was aimed at providing food assistance to 120,000 among the most vulnerable IDPs, returnees, host families and those trapped in conflict hotspots, for the most part controlled by anti-government entities: 40,000 people were assisted with a one-off in-kind food distribution in insecure areas, while 80,000 people received three rounds of cash and vouchers assistance in calmer and more secure IDP hosting areas.

The EMOP was extended by 2 months, taking it up to the end of June 2015, maintaining food needs as a priority concern. Given that the supply and quality of food were dwindling, the WFP considered the provision of in-kind food assistance as the most appropriate delivery mechanism in non-Government controlled areas and planned to increase the number of rations from 40,000 to 108,000.

The WFP also decided to establish itself in the east of the country by opening new offices. It is now aiming to reach 387,000 additional people, thus scaling up its activity in eastern Ukraine to provide 500,000 conflict-affected people in the region with food assistance by the end of the year (period July - December 2015).

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<sup>33</sup> The WFP's intervention strategy varies in different geographical areas among the various population groups, depending on security and on who is primarily in control of the area (*i.e.*, Government of Ukraine or anti-government groups). Focusing on the five conflict-affected eastern *oblasts*, the following three main contexts have been identified posing different challenges to food security: *context A* - calm areas, accessible, fully controlled by the Government of Ukraine, no fighting or destruction; food supplies consistent and regular, markets and prices stable; *context B* - tense areas, formerly sites of active conflict but currently controlled by the Government, some home and infrastructure destruction; improvement to regular supplies, quick recovery of markets; and *context C* - areas under active conflict, poor humanitarian access, ongoing infrastructure and market destruction/disruption.

<sup>34</sup> Distributions of either in-kind food parcels, or food vouchers started in the first week of September. The mostly ready-to-eat food parcels for 18,000 individuals, valued at US \$ 291,112, were locally - procured. They were distributed in transit centres and public shelters in Donetsk and Luhansk. The total value of the food vouchers, for 10,000 IDPs, has been valued at approximately US \$ 450,000.

## 11. *Final remarks*

Following the proclamation of independence of the Crimea and its accession to Russia, and in the presence of the (frozen) conflict between the Kyiv Government and the self-proclaimed Republics of Donetsk and Luhansk, the issue of EU relations with Ukraine and Russia has become one of the hottest political issues at a global level.

In the period from 6<sup>th</sup> July to 3<sup>rd</sup> August 2015, I carried out my research at the IOS, focusing on the causes of the Ukrainian “Crisis” and the possible responsibilities of the EU in relation to it, on the EU position with regard to the Maidan events, the declaration of independence of Crimea and its annexation by Russia, and the declaration of independence of the Republics of Donetsk and Lugansk.

I would like to underline once more that at IOS I found an excellent, multi-cultural environment, which represents, without doubt, a high quality observatory on challenges and perspectives in Eastern Europe. This helped me in analysing in depth, in the light of international law and in the context of the EU's foreign policy, in particular: (a) the development of the legal and political relations between the EU and Ukraine between 2013 and 2015; (b) the scope, the aims and the characterizing elements of the Association Agreement; (c) the legal and political issues concerning the status of Crimea in international law.

Moving now to some final remarks, first, it seems that the current, problematic state of affairs has among its strongest contributing causes some ideological contrasts between the Western Countries and Russia, which at the beginning of the nineties were considered largely obsolete, but which – in the absence of any real European foreign policy – reappeared and were dangerously reinforced by the arrival of some Central and Eastern European Countries as new Members of the EU (and of NATO).

The reasons behind the above mentioned “frozen conflicts” in Georgia and Moldova are similar, nor must we underestimate the influence of other factors such as economic competition.

In my opinion, the absence of trilateral agreements between the EU, Ukraine and Russia too, expresses a lack of vision on the part of the EU.

With regard to the new EU - Ukraine Association Agreement, which - as already noted - is unprecedented in its breadth and depth, a question arises: is this an innovative legal instrument

providing for a new type of integration without membership ? <sup>35</sup>. And if so, what does this mean ? Or is it rather the result of a persistent ambiguity on the part of the EU towards its relations with Ukraine (and Georgia and Moldova) ?

The adoption of economic sanctions towards Russia and the Russian people, and Russia's reaction to those sanctions represent a new obstacle to finding a common solution to the issues at stake. The prospects of relations between the EU and Ukraine, as well as the prospects of the relations between the EU and Russia are uncertain.

The EU should seriously re-consider its potential role as mediator, and put forward new, well founded and viable proposals for the solution of the Crimean conundrum and the effective implementation of the Minsk II Agreements. But regional stability and the solution of the crisis do not depend exclusively or even mainly on the EU's and Russia's foreign policies and competition games; the health of the relations between the USA and Russia, and the overcoming of the political and military competition between Western Countries, NATO in the front line, appear to be even more decisive factors influencing the dynamics of the Ukrainian crisis.

This makes further comprehensive research on the evolving global and regional geo-political scenario which lies behind the legal, economic and political framework of the relations between the EU, its Member States, Ukraine, the other Eastern Countries and Russia, indispensable.

Finally, I would like to mention that the themes of this research and my first findings have aroused the interest of numerous colleagues and institutions, both in Italy and abroad. At my own Institute (ISGI – CNR, Rome), a new research project on the theme of *EU Foreign Relations: the Eastern Partnership, the Ukrainian crisis and the relations with Russia* has been launched. Abroad, at the Taras Shevchenko National University of Kyiv, an optional Course on *EU Foreign Relations: The Eastern Partnership and the New Associations Agreements* has been activated.

Rome, 12<sup>th</sup> February 2016



Gianfranco Tamburelli

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<sup>35</sup> G. VAN DER LOO, P. VAN ELSUWEGE, R. PETROV, *The EU - Ukraine Association Agreement: Assessment of an Innovative Legal Instrument*, European University Institute, EU Working Papers, 9, 2014.