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### Key challenges in settling the Ukraine conflict: Territorial disposition and sovereignty

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An end to the Russo-Ukrainian war is, regrettably, not yet in sight. It is nonetheless useful and appropriate to think a little more systematically than has often been the case thus far about the two key challenges which will be fundamental to any eventual negotiated settlement: potential changes to Ukraine's recognised **sovereign territory**, and the country's future **security status**. This brief will focus on the first issue. It will be followed by a separate second paper, which will consider security status.

In a legally and institutionally state-based world order, territorial control is an essential basis of sovereign statehood. Nevertheless, there have been indications that Ukrainian state authorities headed by President Volodymyr Zelensky might be prepared to countenance territorial and border adjustments – permissible under international law<sup>1</sup> – as part of an eventual negotiated settlement. In an April 2022 interview for the US CBS network's *60 Minutes*, for example, Zelensky indicated that while the starting point would have to be Russian recognition of Ukraine's territorial integrity within its extant internationally-recognised borders, there could be scope for flexibility and compromise once negotiations were underway.<sup>2</sup> This can be understood against the backdrop of reluctance by

both Zelensky and his predecessor Petro Poroshenko, to implement agreements arrived at in the so-called 'Minsk process' in 2015. This was a diplomatic negotiation, brokered by France and Germany following the Russian annexation of Crimea and partial occupation of the Donbas. It nominally allowed for the restoration of Ukrainian sovereignty and border control in the eastern region (minus Crimea) in exchange for autonomy for ethnic Russian and Russian-speaking communities in the Donbas. Successive Ukrainian governments failed to seriously pursue implementation, however. Oleksiy Danilov, Ukraine's National Security Advisor, indeed suggested that fulfilment of the Minsk accords would result in "[our] country's destruction".<sup>3</sup>

This reticence might, on the face of it, appear strange given the apparently sacrosanct connectivities between territory, sovereignty and statehood. Yet in 2014, the Putin regime had successfully taken control of Crimea without having to fire a single shot – despite over 35,000 Ukrainian military personnel being based on the peninsula at that time. Invited by their new occupiers to either join the Russian military or be deported to mainland Ukraine, many Ukrainian forces opted for the former. The subsequent Donbas conflict began

when, as one commentator puts it, “a small group of middle-aged mercenaries [were] able to march 100 miles into Ukraine and capture a small city called Slovyansk”.<sup>4</sup> The Ukrainian state was effectively driven out of nearly a third of its Donbas region by the time that conflict settled into an armed stalemate from 2015.

### State weakness in 2014-15

By then, after nearly a quarter century of formal sovereignty, the Ukrainian state in Crimea and the Donbas had clearly failed to consolidate itself. Thus, it was unable to resist external subversion. The contrast with the 2022 conflict could scarcely be starker. Much has been made of the Putin regime’s hubris and naivete in assuming that its invasion in February would succeed in occupying Kyiv and overthrowing the Zelensky government within three days. It was not alone in this, however. The Biden administration in the US offered to help Zelensky flee into exile (prompting the famous rebuff “I need ammunition, not a ride”). Ex-president Poroshenko reported that ‘a four-star NATO general’ had told him to expect Kyiv to fall in 72 hours.<sup>5</sup> Even some of Zelensky’s own officials and commanders apparently doubted – with some initially considering fleeing themselves.<sup>6</sup>

The failings evident in 2014-15 suggested significant limitations in Ukrainian state capacity and national identity. The successes of 2022 have, in contrast, drawn from an extraordinary cohering of national identity in the face of an existential challenge. The ingredients of effective nationhood have been extensively debated but are still relatively poorly-understood by scholars. In academic debates the so-called ‘ontological school’ of security studies has argued persuasively that the essence of security lies in a shared sense of identity, with risks and threats being evaluated on the basis that they challenge this. President Vladimir Putin

and leading officials in his regime have denigrated in increasingly public and blunt terms Ukraine’s national identity, and indeed existence. In turn, the threat to Russia allegedly posed by ‘Ukrainian nationalism’ (automatically equated by the Putin regime and its spokespeople with Nazism) was the principal public rationale for the launching of the ‘special military operation’ in February 2022. It was a core theme in Putin’s major justificatory effort, delivered in an address three days before the invasion began, and was given greater prominence than threats to Russian security posed by NATO enlargement.<sup>7</sup> It was also dominant in a brutal tract issued by the *RIA Novosti* news agency in early April, evidently to provide cover for the military withdrawals (‘regrouping’) from the environs of Kyiv and elsewhere in northern Ukraine.<sup>8</sup> This proclaimed the goal as now being the ‘denazification’ and preparation of Ukraine’s eastern districts for incorporation into the Russian Federation. The rest of the country – the “nazified western catholic province”(sic) – would become a closely-controlled territorial rump.

The grim prospectus outlined in such statements denied both Ukrainian identity and Ukrainian agency. In the face of full-scale military invasion, it is hardly surprising that Ukrainians would confound it by coming together to fight an overarching and overt threat to their national existence. As the historian Yuval Noah Harari wrote at the end of February, far from capitulating, Ukrainians have “proved to the entire world that Ukraine is a very real nation, that Ukrainians are a very real people, and that they definitely don’t want to live under a new Russian empire”.<sup>9</sup> President Joe Biden later reflected to US military leaders that, “they’re tougher and more proud than I thought. I’m amazed what they’re doing with your help in terms of providing advice and the weaponry”.<sup>10</sup>

### ***A stronger and more effective response in 2022***

The weaknesses in Ukrainian statehood – and cohesive nationhood – evident in Crimea and the Donbas in 2014-15 stood in marked contrast to their strength and effectiveness in the face of the more serious military challenge presented by the Putin regime eight years later. How to explain this? Although it has become somewhat unfashionable in contemporary academic circles, it is worth revisiting the American scholar Samuel Huntington's controversial 'Clash of Civilisations' thesis here. In the early 1990s Huntington suggested that potential for significant conflict lay in what he called 'civilisational faultlines', including those within states. Specifically, he identified Ukraine as a significant 'cleft country', lying on a faultline between US-led 'western' and Russian-led 'orthodox' civilisations.<sup>11</sup> Real-world consequences could be seen in the divisiveness evident in many presidential election campaigns from the 1990s, between candidates and supporters perceived to be 'pro-western' and 'pro-Russian' respectively. This polarisation helped engender the political contestation and instability behind the 'Orange Revolution' in 2004 and 'Revolution of Dignity' a decade later: events that also made the orientation of the Ukrainian state and society an increasing source of contention between the Putin regime and NATO and EU member states.

This is not to say that 'Russian' territories are per se a challenge to consolidated Ukrainian state- and nationhood. There has been little evidence suggesting that populations and fighters in the Donbas have been less resolute or committed in resisting Russian occupation and military advances in 2022 than those who helped repel the attacks on Kyiv and other northern towns and cities.<sup>12</sup> For their part, the Russian armed forces have made little distinction in practice between 'pro-western' and 'pro-

Russian' areas. The city of Mariupol has, for example, been subject to protracted attack and extensive destruction despite a third of its population previously identifying as Russian, and 92 per cent as Russian speakers.<sup>13</sup>

A rare opinion survey carried out in January 2022 in both government- and separatist-controlled areas of the Donbas, did not uncover strong evidence of either Ukrainian *or* Russian identity in the region. The evidence indicated that, as the researchers put it, "the social contract trumps national identity", with respondents' primary concerns being with securing a decent salary and good pension regardless of which state they lived under.<sup>14</sup>

### ***The way forward***

As part of negotiations to settle the conflict, the Ukrainian government could consider proposing internationally-supervised referendums in the Donbas (embracing the whole of the Donetsk and Luhansk oblasts) on their constitutional futures. There is a suitable framework for managing these: the Organisation for Security and Co-operation in Europe (OSCE). Since the early 1990s, the OSCE (which includes all interested parties as members – Ukraine, Russia and the NATO and EU states), has developed extensive experience in election supervision and monitoring. Its officials are also familiar with the Donbas, having deployed an observer mission there from 2014.

The referendum question could be binary, asking voters to choose between full administrative reincorporation into Ukraine or incorporation into the Russian Federation (the polling evidence cited above uncovered limited support for independence or autonomy). Creating the conditions for free and fair voting would require demilitarisation: most particularly the drawing down, if not complete withdrawal, of Russian

occupation forces. This could be monitored by a multinational UN mission (the Putin regime being certain to reject NATO involvement). The Russian side could be incentivised to agree by western sanctions relief (with a 'snapback' mechanism to deter potential backsliding). This approach could end the 'frozen conflict' which has existed in the Donbas region since 2014. As events in 2021-22 have shown, such unresolved standoffs have the enduring potential to be stirred up by a hostile Russian regime to destabilise the target state or as justification for military intervention.

As part of any territorial compromise, the Putin regime should be brought to agree to withdraw unconditionally from occupied areas outside the Donbas (and perhaps a negotiated 'land corridor' linking it with Crimea). Continued Russian occupation of Ukraine's Black Sea coastline will seriously impede the latter's economy and commerce, and therefore state capacity. It could also serve as a springboard for possible destabilisation in Moldova (through stoking the frozen conflict in Transdniestria), or to trigger enhanced tensions between Moldova and Ukraine. The US and EU could again exert pressure by refusing significant relaxation of sanctions until the Putin regime agreed to verifiable and permanent withdrawals.

### ***The thorny issue of Crimea***

Any negotiation over Crimea is highly uncertain, given the Putin regime's assertion that its 2014 incorporation into the Russian Federation is a closed issue. A reported Ukrainian suggestion for a 15-year 'pause' before attempting a final diplomatic settlement seems to have gone nowhere. Deferring thorny problems in any event has a poor track record in Ukrainian-Russian relations. When this approach was taken in the 1990s regarding the disposition of the Soviet Black Sea Fleet, headquartered in Sevastopol, it produced years of Russo-

Ukrainian disputes, a Russian military foothold in Crimea, and part of the rationale fashioned by the Putin regime to justify its intervention and annexation in 2014.

In one sense any successful agreement will be, as the historian and commentator Max Hastings has aptly put it, a "sordid bargain".<sup>15</sup> Success will almost certainly involve Ukraine making territorial and other concessions and this can be faulted on moral and legal grounds. Given the illegality of the military operation – a 'crime against peace' under international law – Ukraine, as with all sovereign states, has the inherent right of individual and collective self-defence to restore its sovereignty, territorial integrity, and political independence. These are core principles of the system of collective security embodied in the UN Charter since 1945.

However, as UN Secretary-General Antonio Guterres candidly acknowledged when meeting Zelensky in Kyiv in April 2022, the UN has "categorically failed" to safeguard these rights for Ukraine,<sup>16</sup> owing to the Putin regime's ability through the Russian power of veto to paralyse the Security Council, its principal operating agency. This leaves a choice between protracted conflict, with continued Russian military occupation and depredation, or a potential negotiated outcome based on what diplomatic historians sometimes politely refer to as *realpolitik* (or as one American commentator puts it, "pursuing moral ends though a cascade of compromises that [are] morally ambiguous at best").<sup>17</sup> In diplomatic history *realpolitik* is often discussed with reference to 19<sup>th</sup> century Europe and, in particular, the diplomatic processes that developed between the self-styled Great Powers of that period within the framework of the so-called 'Concert of Europe'. This had the laudable aim of preventing tensions and disputes from developing to the level of potential

Great Power conflict. Less laudably, perhaps, Great Powers claimed the right to regulate the policies and affiliations – and sometimes even the existence – of smaller states on their peripheries.

The Ukrainian state and nation today, through their unexpected and extraordinary strength of resistance to the Putin regime's violent challenge to their existence, have earned the right of agency. Ukrainian representatives must be pivotally involved in determining the nature and extent of any territorial adjustments made to settle the conflict. Ukraine's international friends and supporters

should, for their part, be actively engaged in assisting with the restoration and long-term security and sustainability of the Ukrainian state and society that emerges from this conflict.

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### Notes:

<sup>1</sup> Oona Hathaway & Scott Shapiro, [Putin Can't Destroy the International Order by Himself](#), *Lawfare*, 24 February 2022

<sup>2</sup> [Ukrainian President Volodymyr Zelenskyy: The 60 Minutes Interview](#), 10 April 2022

<sup>3</sup> [Ukraine security chief: Minsk peace deal may create chaos](#), *AP News*, 31 January 2022

<sup>4</sup> Keith Gessen, [Was it inevitable? A short history of Russia's war on Ukraine](#), *The Guardian*, 11 March 2022

<sup>5</sup> Larisa Brown, [UK forces are hailed by former president for preparing Ukraine to meet foe](#), *The Times*, 19 March 2022

<sup>6</sup> Simon Shuster, [Inside Zelensky's World](#), *Time*, 28 April 2022

<sup>7</sup> [Address by the President of the Russian Federation](#), The Kremlin Moscow, 21 February 2022

<sup>8</sup> [What Russia should do with Ukraine?](#), RIA Novosti, 4 April 2022

<sup>9</sup> Yuval Noah Harari, [Why Vladimir Putin has already lost this war](#), *The Guardian*, 28 February 2022

<sup>10</sup> [Biden 'amazed' at Ukraine's resistance, says 'they're tougher and more proud than I thought'](#), *New York Post*, 20 April 2022

<sup>11</sup> Samuel P. Huntington, *The Clash of Civilisations and the Remaking of World Order*, New York: Simon & Schuster, 1996, pp. 165-68.

<sup>12</sup> Anatol Lieven, Sarang Shidore and Marcus Stanley, [Avoiding the Dangers of a Protracted Conflict in Ukraine](#), Quincy Institute for Responsible Statecraft, March 2022; and Allan Little, [Ukraine war: Putin has redrawn the world – but not the way he wanted](#), *BBC News*, 19 March 2022

<sup>13</sup> [Public Opinion Survey of Residents of Ukraine](#), 9 June – 7 July 2017, Center for Insights in Survey Research

<sup>14</sup> [Public Opinion in the Divided Donbas: Results of a January 2022 Survey on Both Sides of the Contact Line](#), February 2022, The Wilson Center

<sup>15</sup> Max Hastings, [Only a sordid bargain will end Ukraine's war](#), *The Times*, 11 April 2022

<sup>16</sup> ['The world sees you' UN chief tells Ukrainians, pledging to boost support](#), *UN News*, 28 April 2022

<sup>17</sup> Matt Bai, [Our cause in Ukraine is inspiring. It probably won't stay that way](#), *Washington Post*, 13 March 2022