

UKRAINE: HYBRID STATE / HYBRID WAR / HYBRID LAW

The conflict in Ukraine unravels in a hybrid space of public/private and inter-/intra-state orders that may not only be instrumentalized for oppression and exploitation, but also for positive change. The cycles of conflict and the shifting contours of the post-Soviet political and economic space serve as a painful reminder that the Western progress narrative and many of its structural givens—for instance, the sovereign state—do not wield global peace and justice.

The build-up to the crisis in Ukraine was not quick and spectacular but deep and diverse. The dire socioeconomic situation and the disappointments with political transition contributed to the fragility of social peace. The domestic constitutional order was a thin shell sitting on top of other, more robust layers of sociopolitical and economic control. The contestants in that order waged hybrid struggles, even hybrid conflicts, for years underneath a porous surface of a sovereign state. The fluidity of the Ukrainian political economy, reminiscent of Medieval city-states, defied the identification of its dividing lines, whether public or private, national or international. Sometimes national borders served to protect the interests of powerful actors. Sometimes they did better through their multinational networks, at times making use of formal law and, at others, informal means. Power was generated from the interface between public and private. Distribution of resources was decided at the private-state nexus. Actors operated in various guises through state-ness and private-ness strategically. State-capture was one of the alternating strategies. Rivalries or affiliations spanned over a number of issues but they also shifted on a case-by-case basis. Even if two or more interest groupings supported the same outcome—say, closer ties with the EU or with Russia—they went about them in very different ways, because of their internal rivalries, mutual interdependencies, and the channels of influence available to each.

As a soft, non-unitary, privatized, captured state, Ukraine was fragmented into political-economic-cultural clans defined as much through bloodlines as through cultural-historical affiliations within regions. The fragmentation of the state, corrupted and stripped of public assets, prevented it from acting efficiently and decisively. When we heard the President, an oligarch himself, a minister, or a regional governor speak on international relations, did we hear the voice of SCM, Interpipe, Privat or other groupings, or the voice of the Ukrainian people? Depending on their contingent political and private interests, these actors controlled the activation and deactivation of the state.

Such oligarchic competitive systems as sociopolitical phenomena are common under the circumstances of contemporary economic globalization. The interest groupings have overt agents and covert “sleepers” in public offices and within their businesses rivals’ groupings. In furthering their interests, they rely on non-transparent intermediaries from both sides of the public/private divide within and without. Some of them command armed battalions, some have hotlines to foreign peers and dignitaries, while others are connected to international crime syndicates. Their conflict and cooperation within the political, military, and economic arenas of Ukrainian hybrid state illustrate that our imaginary of unitary statehood—featuring a straightforward chain of command under the rule of law—is profoundly misconceived.

The softer the state, the further the balance tips in favour of private power. Internal and extraterritorial hybrid orderings produce contradictory state actions depending on who controls the site from which they emanate. Inconsistencies, corruption, and non-transparency are not remedied by appeals to the law since powerful groupings act in hybrid ways in activating the law, even being the law and the enforcement when needed. The oligarch can speak as President, as a CEO, as a shareholder, as a wealthy citizen, as Governor, as a charity leader, as judge or juror, as the head of local assembly, or as an NGO; he can be on the FBI’s most-wanted list and be the peace mediator building humanitarian corridors in the conflict zone. He can act in public, or private, or in both roles and his personal advantage translates into state interest the more quickly and easily the softer and more fluid the state is.

International legal analysis that strives to be useful —beyond moral outrage, the attribution of blame or catching media attention—must be performed in tandem with the understanding of the double hybridity of state and war. The hybrid war in Ukraine has adjusted to the morphology of the hybrid legal space. Sides struggle to control and subjugate their enemies through political, economic, informational, humanitarian, and other measures. While modern ICT does away with the spatial, temporal, and information gaps between the forces on the field, military command and state administration, it also does away with the distinctions between strategic, operational, and tactical levels and between offensive and defensive operations. Hybrid war destroys the idea of physical frontlines and, instead, extends hostilities to geographic and non-geographic theatres indistinguishable from civilian spaces and makes it absurd to suggest that armistice means positive peace. Condemning or even sanctioning illegal physical invasion fails to resolve the conflict, let alone stop the cycle of injustices and violence. The upholding of the legalistic binary between war and peace has a cost of freezing the adversarial positions,

the conflict and losing the fickle attention of the global media audiences.

Apart from the sociological, anthropological, historical, or comparative analyses, even the blunt standardized indicators of democracy, transparency, or investor security showed that the situation in Ukraine was getting alarming since the financial crisis. Various internal interests groupings competed against each other over economic resources while at the same time defending against the economic-industrial competition between Russia and the EU. They frustrated and circumvented the promises made by the state to open its markets in return for oil, gas, or both (to Russia) and export opportunities (to EU). Interested in monopolizing entire economic sectors and supply chains, the one common fear of the interest groupings was to fend off transparency and free competition, both from within and from without Ukraine. The hyper-competition in which they were engaged meant constant hostile takeover risk, political coercion through supply cuts or denial of market access, raiding practices, and violent crime. For them, every change—be it new presidential election, renegotiation of his constitutional powers or an international treaty (economic association with EU or customs union with Russia)—risked huge financial losses, the nationalization of assets, criminal prosecutions domestically or abroad, cancellations of exclusive licences to dominate economic fields, collection of fantastic back taxes, or a sudden influx of more competitive foreign products. The lack of property protection and investor security, the ability to buy verdicts, the corruption of state institutions meant the same insecurity for internal interest groupings as for outside business and investment. In addition to the global financial crisis and the percolating effects of the Orange revolution—the so-called “revolt of the millionaires against the billionaires”—they made up a precarious constellation of hybridity in the political economy.

To be persuasive to those who struggle on the ground and to productively address conflict drivers, one needs to unpack the actions and subjects that international law has traditionally pre-packed into sovereign states and inter-state wars. Hybrid law for hybrid states and wars does not mean succumbing to relativism. It requires situated analyses that do not stop at reified socio-legal categories (sovereignty, statehood, citizenship, borders) and address global struggles in ways that go beyond freezing, stabilizing, repressing and containing.