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The EU, Russia and Ukraine: a double track with no end?

Anne Marie Le Gloannec

Summary

In March 2014, Russia took over the Crimean Peninsula by stealth. Having annexed it on 18 March, Russia made further forays in the eastern part of Ukraine, principally in Donetsk and Luhansk, where it provided secessionists with manpower and know-how, weapons (including heavy weapons), information technology and propaganda, as well as political support. Discarding the idea that territory or history alone can explain Russia's grab, we assume that, besides increases in gas prices and demands for changes in the constitution while stoking unrest and violating borders, the Kremlin has resorted to war in eastern Ukraine as a means to exert pressure on the Kyiv government. What matters for Moscow is probably to prevent democracy from taking root in Ukraine, or in Western Ukraine for that matter. To the Kremlin, a failed state would be preferable to a democratic state, divided or not.

If this interpretation is correct, to what extent can the conflict be resolved? Must the interests claimed by the Kremlin be taken into account in order to bring peace in Ukraine and reset EU–Russia relations? What can the EU – and the West otherwise, i.e. the United States – do?

This Policy Brief argues that a solution to the conflict is beyond reach, because the conflict concerns two opposing worlds. If the war is eventually a means for Vladimir Putin to stifle democracy in Ukraine and to strengthen his hold over Russia, there is no room for compromise. The history of EU–Russia relations and the structure that has characterized them since the demise of the USSR underline the how difficult it is for the EU to maintain, or indeed establish, a balanced relationship with an increasingly authoritarian and predatory regime based on one-man rule. The EU may have inadvertently played into the hand of the Kremlin – through lack of imagination and strategy, rather than contempt for a wounded power, as Putin has contended. Since the outbreak of the crisis in 2014, however, the EU has mustered the capacity to target sanctions at Russian individuals that bear responsibility for the war in Ukraine, and at specific sectors crucial to the Russian economy, all the while attempting to pursue political dialogue with the authorities – a ‘double-track approach’. But we must ask: What is the purpose of sanctions that do not bring about changes in the opponent's political behaviour? or of a dialogue that does not lead to a solution? And is there anything that the EU and its member states *can* do?

To fully grasp the breadth and depth of the conflict over Ukraine, we must look at the history of EU–Russia relations. The conflict over Ukraine encapsulates not what went wrong with these relations, but rather what was wrong all along, ever since the break-up of the Soviet Union. Two asymmetrical and incompatible worlds are sharing a continent, and it is this incompatibility that has flared up in Ukraine.

The title of this brief might suggest that there is an ‘EU policy’ and that we can treat the EU and Russia as two entities, albeit different in nature. That is not the case. EU treaties underline that foreign policies fall within the remit of the various member states, though national foreign policies are to be coordinated and solidarity respected, while instruments and institutions have been created to promote coordination and solidarity. EU member-state foreign policies, with regard to Russia for instance, have sometimes competed with one another and sometimes been coordinated, while the European Commission and the European Council have promoted sectorial projects and initiatives without much strategic purpose. After the demise of the Soviet Union, the EU and its member states have not managed to define a convincing and coherent policy vis-à-vis Russia. Since the outbreak of the conflict, the EU and its member states have managed to define the fine line between appeasement and war, mainly thanks to Chancellor Merkel's talent for compromise and inclusion. However, this will not bring an end to the war in Ukraine; it will not restore the country's sovereignty, nor contribute to a fruitful working relationship with an authoritarian Russian regime.

The twenty-year transition: 1990–2000s: the EU and member-state policies on Russia

Two decades of trial and error

Since the demise of the Soviet Union, the EU and its member states have struggled to define a policy vis-à-vis Russia, based on certain assumptions, and have employed specific instruments accordingly. Throughout these years, which fall into

two periods – the 1990s up to roughly 2004, when Vladimir Putin began tightening the screws, and then ensuing decade until the beginning of the war in Ukraine in 2014 – the EU and some of its member states have resorted to different approaches, even though all member states, gathered in the Council, have agreed to the Commission's designs.

From the early 1990s until around 2004, when it became increasingly obvious that once Putin had consolidated his power as head of state, the Moscow regime was deviating from democracy and the rule of law, the EU and individual member states assumed that Russia was a kind of bigger Poland, with immense promises and disturbing difficulties, that would become a full-fledged democracy in the foreseeable future. Accordingly, the instruments devised by the Commission were copy-pasted from EU Enlargement: TACIS, which offered programmes tailored for the regions, and the PCA. Even the ENP was offered – a major blunder, since the EU should never have treated the former empire as a mere 'neighbour'. Yet ENP inspired the Four Spaces, agreed upon in Saint Petersburg in 2004, although the notion of 'shared values' was discarded; likewise, what the EU likes to call 'convergence', but which actually refers to third-party adoption of EU rules and laws. A Common Strategy was adopted by the European Council in 1999, but proved to be a mere catalogue. In parallel, Berlin and Paris attempted to strike an alliance with Russia. Yet the Berlin–Paris–Moscow arrangement that seemed to bloom in 2004/2005 was more symbolic than substantial.

When it became evident that Russia would not 'converge', a new rationale emerged to engage the country in a new way: *partnership through modernization*. Germany was the defining actor, for many reasons – economic, political, historical and ideational. The slogan the German government put forth, *Annäherung durch Verflechtung*, smacked of Ostpolitik's *Wandel durch Annäherung*. 'Regime change' vanished from 'rapprochement through cooperation'. Yet it was assumed that increasing and reciprocal commercial ties between Russia and the West, the EU, and Germany in particular, would promote political cooperation. In any case, as one French civil servant put it: 'Only the Germans connect the dots.' This policy inspired the European Commission, which made it its own in 2009.

Asymmetries

During these years, it was nonetheless obvious that relations between the EU and Russia were highly asymmetrical. Today several Russian officials contend that Russia was humiliated, and that the EU and the West were seeking to impose their values. On the other hand, if there was an EU policy, it lacked coherence – due to differences in approaches between the Commission and the member states, and divergences between the latter, with their differing histories and geographies, the desire of some countries to wrench themselves away from Russia's mighty shadow, or conversely the expectations nurtured by certain governments and companies when cultivating their Russian counterparts. While Russian authorities

ranted against what they saw as the disrespect of the West and the EU for the former empire, Gazprom nonetheless devised a systematic policy of gradually buying its way into the EU energy market(s), serving the Kremlin and its friends through a game of 'musical shares', as well described by two former energy ministers.¹

A series of asymmetries were compounding one another, without compensating each other. There is no room here to delve into the myth of broken promises, as to whether or not the West, the USA and the German Chancellor promised not to expand NATO. Nor is it necessary to recall all the doors that the West opened, from the G-7 to the Council of Europe, NATO, and the EU or the WTO. Certainly, all these institutions bore a Western imprint, but the counter-projects that Medvedev or Putin put on the table before and after the war against Georgia would have driven a wedge between the USA and the EU, consolidating Gazprom's monopoly on the EU market. And finally, both the nature of the Russian regime and the nature of the Kremlin's relations with its surroundings accentuated the lop-sidedness of EU–Russia relations. In the early 1990s, Russia might have appeared to be on the way towards democracy and the rule of law – but it was not. Suffice here to say that, according to various analysts, Vladimir Putin, more than Boris Yeltsin, relied (and relies) on the myth of the 'besieged fortress' to build and maintain his power: a fortress besieged from abroad. Conversely, while insisting on Russia's sovereignty, the Kremlin has shown disregard for the sovereignty of former Soviet republics and satellites. From the early 1990s till the present, there has been remarkable continuity here, as epitomized by the numerous embargoes imposed on these countries.

Ukraine: a strategy and no end?

Well before 2014, when Ukrainian sovereignty was grossly violated and a hybrid war launched in eastern Ukraine, relations between the EU and Russia – and, albeit differently, between the USA and Russia – had been structurally difficult and asymmetrical. The USA, the Atlantic Alliance and the EU recognized the right of former Soviet republics and satellites to choose their orientation, although not all agreed on including Ukraine in NATO. In particular, the German and the French governments opposed the latter, at the NATO summit held in Bucharest in May 2008, in order to placate the Russian authorities. However, that did not prevent Russia from waging a war against Georgia a few months later, using disproportionate violence against a small country whose president had been unwise enough to respond to provocations. Though successive Russian governments had failed to fulfil their commitments towards Tbilisi for years, the Kremlin violated Georgia's borders and gradually incorporated the two provinces of Abkhazia and South Ossetia into its own territory, trampling the European

¹ Boris Nemtsov and Vladimir Milov, 2008: *Putin: the Bottom Line*, posted on 21 March. Boris Nemtsov and Vladimir Milov, 2008: *Putin and Gazprom. An independent export report*, Moscow, http://www.europeanenergyreview.com/data/docs/Viewpoints/Putin%20and%20Gazprom_Nemtsov%20en%20Milov.pdf. Boris Nemtsov was assassinated in 2015.

order, the Helsinki Agreement and the Charter of Paris. The war in Georgia was a rehearsal for the war to come in Ukraine.

It is difficult to understand how EU institutions and member states could be so sanguine, in autumn 2013, when they expected the Ukrainian Prime Minister Viktor Yanukovich to sign the Association Agreement (AA) and the related Deep and Comprehensive Free Trade Agreement (DCFTA), at the summit to be held in Vilnius in December. To be fair, we should firstly recall that successive Ukrainian governments, including that of Yanukovich, who supposedly had close ties and connections with the Kremlin, were keen on reaching agreements with the EU and wary of joining the Eurasian Economic Union (EEU), and later the Eurasian Union. Secondly, negotiations between the EU and Ukraine had been going on for years without stirring protest in Moscow. An upgrade in EU–UA relations had been envisaged before and after the Orange Revolution. Negotiations had begun after Ukraine joined the WTO in 2008 and an agreement was initialled in March 2012 – again without much protest.² However, in the summer of 2013, the Kremlin started to exert enormous pressure on Ukraine. It imposed an embargo on multiple Russian goods and later said it would cancel the free trade agreement with Ukraine. Several bilateral meetings between Putin and Yanukovich were held in November, prior to the Vilnius summit. After ignoring the significance of a DCFTA, after, in a second phase, putting on the table a counter-plan to the EU and the AA, the Kremlin started playing hardball.

It is the policy, stupid:

The association agreement and the DCFTA with Ukraine had two sides, a technical one and a political one, closely intertwined. Technically, agreeing to both the DCFTA and the Eurasian Customs Union of Belarus, Kazakhstan and Russia that came into existence in 2010 as part of the EEU, would have been difficult because of differences in external tariffs, which are higher at the EEU borders than the case with EU and WTO tariffs. According to several experts, however, a DCFTA and the Eurasian Customs Union would not have been theoretically incompatible, if rules of origins had been respected.³ However, Russia showed little interest in resolving the technical problems within the WTO framework, especially as some EEU members are not party to it.⁴ It was only from a position of strength that Russia entered trilateral ministerial discussions on implementation of the AA and DCFTA, in September 2014 – this was after it had launched its bid over Ukraine, and had threatened to discard the free trade agreement with Kyiv and after the EU had agreed to delay implementation of the DCFTA until December 2015.⁵ Politically, commitments

to both the EU and the EEU were incompatible. The methods and the rationale underlying them were at loggerheads. For the President of the Commission and the President of the Council, coercion was excluded: ‘the European Union will not force Ukraine, or any other partner, to choose between the European Union or any other regional entity.’⁶ By contrast, the Kremlin resorted to trade embargoes, bilateral pressures, rewards and coercion, before and after Maidan, and Yanukovich’s flight.

With the benefit of hindsight, Western and European analysts have tried to understand the significance of Ukraine for Russia and the Russian regime. Much has been read into it: history and the ‘ties that bind’, economic intercourse and strategic value, some of which are overrated. When, in 2013, Vladimir Putin recalled with passion the blood ties linking Russians and Ukrainians, a sombre-looking Ukrainian president – albeit an official ally of the Kremlin – stood by. Opinion polls conducted by the Razumkov Centre in 2014, before the annexation of Crimea, showed that a majority of Ukrainians cherished their independence. The importance of Ukraine as a gas transit route (one which Gazprom and the Kremlin had earlier sought to bypass), the gas fields off the Crimean Peninsula, the port of Sevastopol – all these reasons have been put forward to explain the Kremlin’s policy.

However, a *democratic* regime would have heeded international law and international commitments and searched for peaceful arrangements. Hence, we can assume that the perspective of an EU and potentially democratic Ukraine irked the Kremlin most. If so, territory as such matters less than how it can be employed to pressure, coerce and bleed Kyiv.

What kinds of EU responses?

As the Kremlin tightened its grip on Kyiv, in the summer of 2013 the Commission grasped the upcoming difficulties, although devising a strategy did not fall within its ambit.⁷ The member states should have been thinking strategically, but abstained from this instead of anticipating the Kremlin’s reactions. However, in 2014, they devised a coherent, double-track approach, bearing a strong German imprint and owing to Angela Merkel’s political shrewdness. On the one hand, the member states, in small formats or collectively, have pursued discussions – albeit difficult and often fruitless – with the Kremlin, including two Minsk agreements, Minsk I in September 2014, and Minsk II in February 2015; trilateral talks regarding the DCFTA – AA, which started in July 2014 and resumed in April 2015 (coinciding in both cases with the two Minsk agreements); and, in January 2015, in Davos, Chancellor Merkel offered to conclude a free trade agreement with Russia, picking up on a rather vague proposal that President Putin had made in 2010 when criticiz-

2 House of Lords, European Union Committee 2008: *The European Union and Russia*, London, The Stationery Office Ltd, May.

3 Bill Krist and Samuel Benka, 2014, ‘Trade Agreements and the Russia–Ukraine Conflict’, Washington DC: America’s Trade Policy, 21 March. America’s Trade Policy is the blog of the Washington International Trade Association. See also European Commission 2014: Myths about the EU–Ukraine Association Agreement. Setting the facts straight, 22 January.

4 Both the President of the Commission, José Manuel Barroso, and Russia warned that entering the Eurasian Customs Union (part of EEU) ECU would be incompatible with a potential DCFTA.

5 Andrew Rettman, 2014. ‘Russia seeks new veto on EU–Ukraine pact’, Brussels, *euobserver*, 10 July.

6 European Commission 2013: ‘Joint statement by the President of the European Commission José Manuel Barroso and the President of the European Council Herman Van Rompuy on Ukraine’, Brussels, 25 November.

7 Štefan Füle, European Commissioner for Enlargement and Neighbourhood Policy, 2013: Statement on the pressure exercised by Russia on countries of the Eastern Partnership, European Commission, European Parliament Plenary, in Strasbourg, 11 September.

ing the emergence of a European energy market. On the other hand, the EU and its member states have taken three series of targeted sanctions, reinforcing some of them over time.⁸

Sanctions against Russia are almost unheard-of. In 1994, when the first war against Chechnya was launched, the EU merely delayed the implementation of the PCA. In 1999, when the second Chechnya war began, a few, limited sanctions were agreed, only to be rescinded a few months later, after Putin's election as president. After the Russia–Georgia war, Bernard Kouchner, the French foreign minister whose government was then in charge of the rotating EU Presidency, dismissed any sanctions against Russia. It has been said that the EU goes in for economic sanctions more than military intervention. However, up to 2014 – aside from sanctions against China after the Tiananmen massacre – the EU had targeted its economic sanctions against small states.

What is the purpose of sanctions? EU institutions and the member states do not do regime change – but they want a change in Russian policy towards Ukraine. This has not been achieved, despite temporary lulls after Minsk I and, especially, Minsk II – which grants eastern Ukrainian secessionists important rights, does not contribute to controlling the Ukrainian-Russian border except on paper, and leaves Kyiv to subsidize Donetsk and Luhansk. Sanctions do not even dent the legitimacy of the regime. On the contrary, a majority of Russians increasingly believe that the EU is targeting the population – moreover, a huge majority stand behind the Russian president.⁹ Sanctions may be politically counter-productive, at least in the short term; although, compounded with lower energy prices and a skewed economic structure they impact the country's finances.

Eventually, however, sanctions are necessary, for three reasons. Firstly, business as usual will not do. The year 2014 marked a major change in Europe's continental order. Secondly, sanctions are the main instrument that the EU member states can agree on, as part of a package deal that includes discussions and negotiations. The double track concerns the member states as much as it does Moscow. It is an attempt, especially on the part of powerful Germany, to assuage and embrace all, sometimes through (peer) pressure, sometimes through persuasion. Thirdly, sanctions may have an impact on Russia's policies and polity in the long run. This is a gamble, and the effects themselves are unknown. Sanctions may foster change for the worse, accentuating the process of 'Weimarization', to use the vocabulary former Prime Minister Mikhail M. Kasyanov.

There is a competition between the short term and the long term, and between those EU member states that seek to maintain sanctions and those that want to opt out, hurt as they are by EU sanctions against Russia – and by Russian counter-sanctions. Since the conflict over Ukraine and in Ukraine seems set to continue as long as the Kremlin deems it necessary to stoke it, what can the EU and its member states do? Firstly, they will have to put their house in order: they must maintain a relatively coherent position regarding Russia, through incentives, cajoling and pressures for those member states tempted to get their own way with the Kremlin, while defending and upholding EU values. Here the Commission plays a primary role in overseeing the implementation of rules, regarding legal tenders, the interdiction to swap shares etc. in the EU energy market. This undercuts the spread of corruption in the EU, from inside and outside its borders. Secondly, one obvious piece that is missing is strategy and political contingency planning, in particular in the run-up to the Vilnius summit. The EU has never had proper strategies. Strategies and contingency planning will have to be devised if the EU is to be able to foresee Russian moves.

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8 Sabine Fischer, 2015: 'European Union Sanctions Against Russia. Objectives, Impacts and Next Steps', Berlin SWP Comments 17, March.

9 Ibid. p. 5.



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