Special issue
Ukraine between a Constrained EU and Assertive Russia

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Abstract
The article analyzes three factors constraining EU power: its unwillingness to view Ukraine as a candidate for membership, a miscalculation of Ukrainian leaders and the ignoring of growing nationalism and xenophobia in Russia. These three factors constrained the EU in its ability to respond to the Russia–Ukraine crisis by ignoring past Russian support for separatist movements and invasion of Georgia and recognition of the independence of two separatist enclaves. The EU did not appreciate that Russia also viewed the EU (not just NATO) as a hostile actor intervening in what it views as its ‘zone of privileged interests’.

Keywords: Euromaidan Revolution; EU and Eastern Partnership; Russian Annexation of the Crimea; Minsk Accords and Sanctions; Vladimir Putin; Russian Foreign Policy

Introduction
Russia’s occupation and annexation of the Crimea in February–March 2014 and hybrid war in the Donbas (Donetsk and Luhansk oblasts) of Eastern Ukraine is Europe’s worst crisis since World War II because ‘events in Ukraine constitute a crisis of proportions Europe has not experienced since the fall of the Berlin wall’ (Rynning, 2015, p. 55). James Sherr (2015) compares the crisis to events in August 1914 that led to the outbreak of World War I. The conflict in the Donbas dwarfs earlier conflicts by Russian-backed separatists in the former Soviet republics of Georgia, Azerbaijan and Moldova, ‘in terms of battle theatre size, population numbers directly affected’ as well as ‘numbers of internally displaced persons and refugees (possibly ten times the combined numbers in those predecessor, unresolved cases), high-intensity firepower (heavy artillery, multiple-launcher missile systems), damage to fixed assets in Ukraine’s most heavily industrialized area, and Ukrainian battlefield casualties’ (Socor, 2015a, 2015b). The Russia–Ukraine crisis has led, according to the United Nations, to 10,000 civilian deaths and combined Ukrainian military, separatist and Russian casualties of 10–15,000, including as high as 2–3,000 Russian soldiers (Convoy 200 NGO, 2016). In April 2015 and December 2015, Russian President Vladimir Putin admitted that the ‘green men’ without country insignia in the Crimea were in fact Russian soldiers and he later admitted that Russian military forces are ‘resolving various issues’ in Eastern Ukraine (Walker, 2015).

Clearly, this is a low intensity war and conflict and not a terrorist operation of the kind experienced by Western European states in earlier decades. Over a much longer period of 37 years from 1969–2006 during a terrorist campaign in Britain’s province of Ulster, 1,879 civilians, 1,117 British security forces (army and police) and 561 Irish Republican and Loyalist paramilitaries were killed.
This paper is divided into two sections; the first analyzes factors constraining EU power and the second the policies that were implemented by the EU during the Russia–Ukraine crisis. The first of three constraints is that the EU has never supported Ukrainian membership which limits its ability to influence domestic reforms in Ukraine. Without the ‘carrot’ of membership the EU cannot impose the same degree of stringent conditionality as it could upon prospective members, particularly in the crucial field of the rule of law and corruption.

The second constraint was the EU’s miscalculation of Ukrainian leaders. EU and US policy-makers wanted strongly to believe the Ukrainian leadership was committed to European integration and these feelings overshadowed doubts they may have had towards Ukrainian leaders. Brussels believed they were the only show in town and faced no competition from alternative integration projects.

Third, Russia is a single actor and dominated by an authoritarian political system that is run by one popular leader whereas the EU is a union of 28 democratic states where reaching decisions and policy-making is more difficult and takes longer. The EU’s response to the Ukraine–Russia crisis was constrained because of an unwieldy structure and cumbersome procedures where decisions and policies were discussed and formulated through the High Commissioner, the Commissioner for Enlargement, European External Action Service, Director-General for Enlargement, European Council and Member States’ diplomats, governments and parliaments (Dragneva and Wolczuk, 2015, pp. 60, 109).

In addition, the EU ‘sleepwalked’ into the Russia–Ukraine crisis when it ignored important domestic changes in Russia after Putin was re-elected Russian President in 2012 on a platform of nationalism, ‘conservative values’ and anti-Western xenophobia (House of Lords, 2015). The EU failed to appreciate that a revisionist Russia would be more willing to flex its power into what it views as its ‘privileged zone of interests’. For Putin and Russian nationalists, Ukraine is more strategically important than it is for the EU.

The second section analyzes how these three factors combined to constrain the EU in its ability to respond to the Russia–Ukraine crisis. The EU and the US should not have been surprised by Russia’s policies as it had covertly and overtly supported separatist movements since 1991 in the former Soviet republics through the freezing of conflicts in Moscow’s favour. In 2008, Russia invaded Georgia and recognized the independence of the South Ossetian and Abkhaz separatist enclaves. The EU’s policies were additionally constrained by its failure to appreciate Russia no longer viewed the EU and NATO as different actors and that Russia was opposed to both of their enlargements into its ‘zone of privileged interests’ (Wawrzonek, 2014). The EU wrongly assumed Russia would not oppose ‘enlargement-lite’, that is, integration without membership (Popescu and Wilson, 2009).

1. Constraints in EU Policies towards the Russia–Ukraine Crisis

The EU Does Not See Ukraine as a Member

The EU has been consistent in its closed door policy towards Ukraine and has never offered it membership. European Commission President Jean-Claude Juncker has said ‘Ukraine will definitely not be able to become a member of the EU in the next 20 to 25
years, and not of NATO either’ (RFERL, 2016). This is a product of enlargement fatigue, an unwillingness to confront Russian objections and in some quarters an inability to view Ukraine as belonging to the European club. Growing euroscepticism and Ukraine’s inability to fight corruption and introduce reforms decreases the pressure upon the EU to offer a membership perspective. Ukraine and Turkey are large countries and lying on the edge of Europe with civilizations, religions and national identities that are not necessarily viewed as ‘European’ by all 28 EU members. Added to this has been a deeply held faith in a supposed organic link between Russia and Ukraine that precludes one country joining the EU without the other, even though Russia has never sought to join the organization. The EU always therefore treated CIS members as Eurasian, not as European states.

The EU’s power and influence over Ukraine will therefore remain constrained by not offering it membership. NATO also turned down Ukraine and Georgia’s attempts at being invited into the MAP (Membership Action Plan) process (NATO, 2008). The EU wanted to have its cake and eat it; to assist Ukraine in becoming a democratic neighbour without the offer of membership and hoping that the halfway-house of the Eastern Partnership’s ‘enlargement-lite’ would not be overly provocative to Russia. Indeed, Ukraine’s Euromaidan leaders are tasked with implementing tough and unpopular structural reforms within the Association Agreement and DCFTA (Deep and Comprehensive Free Trade Agreement) without the ‘carrot’ of EU membership and the larger financial support that were important inducements for reformers in Central-Eastern Europe and the three Baltic States (Economist, 2015).

Until 2004 when President Leonid Kuchma ended his decade in office, Ukraine had extensive levels of co-operation with NATO’s Partnership for Peace Programme (PfP) and bilaterally with the US, Canada and UK, but only limited co-operation with the EU since 1998 under the PCA (Partnership and Cooperation Agreement). Following the accession of Hungary, Poland and Slovakia to the EU in 2004, Ukraine’s Western border became the new Eastern frontier of ‘Europe’. A breakthrough in Ukraine’s relations with the EU only came about in 2007–09, after Ukraine joined the WTO and the EU launched the Eastern Partnership. Championed by Poland and Sweden, the Eastern Partnership brought together six former Soviet republics of whom Ukraine was by far the largest and most geopolitically important. The Eastern Partnership offered integration in three areas: (1) political, through the Association Agreement; (2) economic, through the DCFTA; and (3) the ‘carrot’, a visa-free regime. The first went into effect in 2015; the second in 2016; and the third is due in 2017 (EU, 2015b).

In 2005–07, the Ukrainian parliament adopted legislation for Ukraine’s accession to membership of the WTO and laid the groundwork for Ukraine’s membership in May 2008. In March 2012, following four years of negotiations by the EU and Ukraine, the Association Agreement was initialled. Signing by the European Council and its recommendation for ratification was frozen by the European Parliament and the parliaments of Member States. The imprisonment of opposition leaders and selective use of justice overshadowed relations between Ukraine and the EU throughout Viktor Yanukovych’s presidency. Growing frustration was evident with President Yanukovych in the approach to the Vilnius summit (Bildt et al., 2012).

Ukraine and the EU held their twice-annual summit on 25 February 2013. Two months earlier the European Council had drafted benchmarks Kyiv needed to undertake to
unfreeze the Association Agreement. The three key reforms in the EU’s benchmarks for Ukraine were an end to selective use of justice, improvement in election legislation and judicial reforms or, as described by Sherr (2013), ‘a polite euphemism for severing the link between politics, business and crime’. The EU set a short-term deadline of May 2013 for Ukraine to show some progress in fulfilling the benchmarks with more substantial progress by November when the EU was set to hold an Eastern Partnership summit in Vilnius. The EU offered an inducement of 610 million euros in assistance that was conditional on Ukraine reaching an IMF agreement that would require it to gradually eliminate subsidies on household utilities, adopt a flexible exchange rate, and divide the state gas company Naftohaz Ukrainy into different entities. Yanukovych turned down all three conditions and continued to play off Russia and the EU.

The EU over-estimated the degree to which the medium- to long-term benefits for Ukrainian big business from a free trade zone with Europe was more important than short-term opportunities for rent seeking. ‘As a Eurocrat puts it, the Ukrainian president must choose between a rich Russian dinner with lots of vodka and with the risk of discovering that he has been captured and his car stolen; or a boring Brussels sandwich lunch that offers respectability and a solid job, but only in the longer term. The profound reforms demanded by the EU, moreover, risk breaking the very system that put Mr Yanukovych in power’ (Economist, 2013).

The Association Agreement and DCFTA were based on wrong assumptions about kleptocratic Eurasian elites. Integration without membership translates into costly, and electorally unpopular short-term policies in return for deferred economic benefits; that is, they were premised upon a long-term perspective. This was a naïve approach when coping with self-interested ruling elites who only cared about the short-term in what then opposition leader Viktor Yushchenko once described as a ‘momentocracy’ when referring to President Kuchma’s oligarchic regime (Dragneva and Wolczuk, 2015, pp. 92–93).

Following the 2013–14 Euromaidan revolution, Ukraine’s leaders re-focused towards the ideational goal of ‘returning to Europe’ through European integration. In addition to Ukraine’s communist and post-Soviet legacies, Euromaidan leaders inherited a bankrupted country which created a far more difficult environment for conducting reforms. Trade with Russia, important to the economy in Eastern-Southern Ukraine, has deteriorated. Russia has continued to impose trade and energy embargos and cancelled its free trade agreement with Ukraine from January 2016 in response to the coming into effect of the DCFTA. In December 2015, Ukraine refused to pay the US$ 3 billion ‘loan’ given by Russia two years earlier (as part of a US$ 15 billion ‘loan’ which in effect was a bribe to not sign the EU Association Agreement) and the dispute is now in the hands of a London court.

Miscalculating Ukrainian Leaders

The EU’s Cox–Kwasniewski mission visited Ukraine a staggering 27 times in 2012–13 to seek a resolution to the deadlock over Tymoshenko but failed to find a mutually acceptable compromise. Two factors explain why the mission failed. The first was because diplomats and policy-makers wanted so much for Ukraine to sign that they ignored reality on the ground. A Western Ambassador told me in Kyiv only two weeks before the Euromaidan events that he was convinced Yanukovych would sign (I never believed he would but did not attempt to dampen his enthusiasm). The second was because it never
fully understood the operating culture of President Yanukovych, the Party of Regions and the Donetsk clan. Serhiy Kudelia (2013) writes that the EU found it difficult to understand the significance of Tymoshenko’s jailing for Yanukovych’s operating culture which, in addition to removing her from politics:

‘also meant to demonstrate to a domestic audience (both ruling coalition members and the opposition) his capacity to repress his most prominent critic and then withstand international pressure to have her released. Her conviction and jailing established his credibility as the ultimate power wielder in the country and played a crucial role in his further successful consolidation of political and economic power and in preventing defections from within the regime’.

Kudelia (2013) continues:

‘Tymoshenko’s release would, hence, have imposed substantial political costs on Yanukovych by exposing his vulnerability to external pressure and, hence, undermining his power superiority. This could have threatened the cohesion of his ruling coalition, raised doubts about his relative strength among his core voters, and showed the West that pressure actually works. Tymoshenko’s release would have also shifted the power balance in favour of the opposition …’

If the EU had recognized Yanukovych’s motivations, it would have presumably also reached the conclusion that the Cox–Kwasniewski mission was futile. Reaching such a conclusion would have been an admission by the EU of its impotency in the face of an obstinate and thuggish Ukrainian President.

In the final analysis, the EU was willing to sign the Association Agreement in Vilnius with Ukraine irrespective of the fact Tymoshenko had not been released. For the EU the pragmatic importance of Ukraine to the success of the Eastern Partnership was because it’s population was greater in size than all of the other members combined. Alternatively, some EU members believed that integrating Ukraine would give Brussels greater leverage and influence over Kyiv. Better have Ukraine inside the tent rather than outside the tent.

The EU failed to appreciate the complicated inter-relationship between Yanukovych and Putin. Firstly, a tradition of violent political culture in the Donbas region of Eastern Ukraine and by the Party of Regions. Secondly, Russia’s political and security intervention during the Euromaidan in support of a violent suppression of the protesters (Kuzio, 2014). Warnings by EU leaders during and following their visits to Ukraine for the authorities to not use force against protesters was ignored by Ukrainian and Russian policy-makers. Members of the European Parliament, deputies Elmar Brok and Jacek Saryusz-Wolski with responsibility for policy towards the Eastern Partnership, warned Ukraine on 26 November 2013 not to use force against pro-European protestors ‘Otherwise, there will be serious consequences (EU, 2013b). What these consequences would have been is unclear. On 30 November 2013, following the brutal beatings of peaceful student protesters, Štefan Füle, European Commissioner for Enlargement and European Neighbourhood Policy, and EU High Representative Catherine Ashton released a joint statement condemning ‘the excessive use of force last night by the police in Kyiv to dispurse peaceful protesters, who over the last days in a strong and unprecedented manner have expressed their support for Ukraine’s political association and economic integration with the EU’ (EU, 2013a).
Ashton held meetings in Ukraine on 10 and 11 December 2013 ‘to support a way out of the political crisis’ meeting President Yanukovych, governmental officials, opposition figures and civil society leaders. The visit failed to end the crisis and took place at the same time as attempts by Berkut riot police to dismantle the Euromaidan, leading to further bloody clashes. That same month, Yanukovych’s lack of good faith in negotiating a compromise became evident in his unwillingness to heed opposition demands to replace Prime Minister Nikolai Azarov and Minister of Interior Vitaliy Zakharchenko. Brutal and widespread acts of political repression, kidnappings, torture and murders by the Berkut riot police and pro-regime vigilantes continued to grow. Parliament’s vote on ‘black Thursday’ (16 January 2014) to legislate draconian measures against protesters, a step that Yanukovych undertook after consulting with Putin, was viewed by the Euromaidan as the dismantling of Ukraine’s democracy, and escalated the crisis into bloodier and more violent confrontation (Kuzio, 2015a, p. 103).

With 28 Member States it would be always difficult to reach a consensus on foreign policy during the Russia–Ukraine crisis and the Euromaidan. In addition, the EU’s threat of ‘consequences’ if the authorities continued to use violence against protesters were not viewed as credible because of three factors: (1) flip flopping over deadlines it had issued to Ukraine to achieve benchmarks; (2) willingness to ignore Tymoshenko’s continued incarceration and sign the Association Agreement; and (3) Member States’ policy-makers and national leaders issuing different ‘red lines’ that were constantly changing or being contradicted by new ‘deadlines’.

Not Understanding How Putin and Russia Had Changed
The EU was constrained by continuing to assume Russia was a benevolent actor with benign views of the EU and it never understood Russia’s control over Yanukovych. In 2010–13, during Yanukovych’s presidency Russia had taken control of the Security Service of Ukraine (SBU) and the Ukrainian military (Kuzio, 2012). Russia had worked overtly and covertly since summer 2013 through trade blockades, financial inducements, and Russian intelligence operating alongside the SBU in providing training for anti-Euromaidan vigilantes (many of whom who would go on to become Donbas separatists) and supplying equipment and advice for the suppression of the Euromaidan protests (PBS Frontline, 2014, Kuzio, 2015a, pp. 77–116).

The EU responded far later to the four month-long violent Euromaidan crisis than it had responded to the much shorter non-violent Orange Revolution (Pifer, 2007). During the Orange Revolution, the EU assisted in de-escalating the political crisis through brokering round tables between moderate opposition candidate Viktor Yushchenko and Prime Minister and presidential candidate Yanukovych.

The EU’s constrained response to the Euromaidan was compounded by the shock of Russia’s intervention and annexation of the Crimea, the first land grab in Europe since the 1930s. Russia’s aggression was an infringement of Ukraine’s territorial integrity by one of the signatories of the 1994 Budapest Memorandum that had provided security assurances to Ukraine in return for disarming the world’s third largest nuclear arsenal. Russia had also recognized its border with Ukraine in a 1997 inter-state treaty. The annexation of the Crimea contradicted everything stated in Russian rhetoric, statements and legislation since 1991 (Allison, 2014, p. 1267).
Fundamentally, the post-modern EU is constrained in approaching Eurasia where Russia pursues 19th century imperialism and fans primordial ethnic nationalism. In this the EU was not alone as a large number of Western scholars have downplayed Putin’s nationalism; Paul Chaisty and Stephen Whitefield (2015) argue for example, that ‘he is not a natural nationalist’. The EU’s constrained power was a product of (1) policy miscalculations; (2) ignoring past Russian aggression in the region; (3) not accepting at face value Putin’s aggressive and xenophobic threats and warnings; (4) wishful thinking about the future trajectory of Russia; and (5) downplaying or ignoring the influence of the growth of nationalism in Russia.

Putin has never hidden his intentions towards Ukraine and Georgia since 2007–08. In April 2008, Putin was very explicit in his nationalistic views of Ukraine when he told President George W. Bush at the NATO summit in Bucharest ‘You don’t understand, George, Ukraine is not even a state. What is Ukraine? Part of its territories is in Eastern Europe, but the greater part is a gift from us’ (Gaddy and Hill, 2015, p. 360). In 2008 Putin was already laying territorial claim to ‘New Russia’, a term briefly used by the Tsarist Russian Empire when referring to parts of Eastern and Southern Ukraine. Putin claimed erroneously that one third of Ukraine’s population is ‘ethnic Russian’, or 17 out of 45 million people living in Ukraine, by defining Russian speakers as ‘Russians’ and wrongly stating they were the majority of the population in Ukraine’s southern regions. Long before the 2014–15 crisis, President Putin had therefore outlined his views that Ukrainians and Russians are one people, the Ukrainian state is artificial and Russia had a duty to protect ‘Russians’ living in an allegedly failed state.

Putin’s inflammatory rhetoric towards the West and over Ukraine and Russia’s invasion of Georgia had not influenced Western policies to Russia and they continued with business as usual up to the crisis. Following the Russian invasion of Georgia, US President Obama ‘reset’ relations with Russia, the EU continued to pursue a ‘strategic partnership’ with Russia, and a company headed by former German Chancellor Gerhard Schröder headed the Gazprom Nord Stream project.

Not surprisingly, Russian leaders believed that the West would again largely ignore another intervention, this time into Ukraine’s Crimean region. Signals can be wrongly misinterpreted and lead to future crises. The EU and US imposed few sanctions against Russia following its invasion of Georgia and recognition of the independence of South Ossetia and Abkhazia. Russia threatened to invade eastern Ukraine at that time, according to Ben Judah (2013, p. 164). Roy Allison (2014) writes that the annexation of the Crimea was developed by Russia as far back as 2008. Clifford G. Gaddy and Fiona Hill (2015, p. 263) agree with Allison, stating that Putin was not charting new territory in the Crimea ‘He was circling around familiar territory’ because Georgia ‘became a reference point not just for the Russian military and the Kremlin but also for how the outside world could be expected to react’ (Freedman, 2014, p. 31). The Crimean operation relied on the Georgian template, Lawrence Freedman (2014, p. 31) believes (see also Kuzio, 2010).

Russian leaders and policy-makers had therefore been declaring long before the 2014 crisis that they do not desire to become a Western-style country and that Russia represents a unique and separate Eurasian civilization that is neither European nor Asian (Gaddy and Hill, 2015, p. 316). Russia believed it had a right to be a member of the G7 because it is a great power and not because it was in transition to a market democracy and would one day come to be part of the West. The UK House of Lords stated that EU–Russian
relations ‘for too long had been based on the optimistic premise that Russia has been on a trajectory towards becoming a democratic “European country” which ‘has not been the case’ (House of Lords, 2015). Russia’s move towards a more authoritarian and nationalist political system was known for over a decade by Western policy-makers ‘but the West found it easier at the time to disregard them and indulge in the fantasy that Russia was progressing toward a liberal-democratic model with which the West felt comfortable’ (Royal Institute of International Affairs, 2015). Consequently, ‘The war in Ukraine is, in part, the result of the West’s laissez-fair approach to Russia’ (Royal Institute of International Affairs, 2015).

The UK House of Lords correctly pointed out, if there are no shared values between the EU and Russia there cannot be a strategic partnership between them (House of Lords, 2015). Russia’s political system had increasingly evolved into a consolidated authoritarian state during the previous decade when the Freedom House think tank recorded declines in eight categories and defined Russia as ‘Not Free’ (Freedom House, 2015).

The EU’s reaction to the Ukraine–Russia crisis was additionally constrained by continuing to assume Russia remained opposed to only NATO enlargement and that it was still benignly disposed towards the EU. Although the Eastern Partnership does not offer membership this important nuance was lost on Moscow. Russian policy-makers believe the EU is not a benign actor and that it is seeking to foment democratic revolution in Eurasia. One of the five ‘guiding principles’ of EU policy towards Russia is to support civil society, policies which Putin views as interference in Russian domestic affairs (EU, 2016). Putin’s opposition to EU policies was deepened by the Russian protests of 2011–12 that he, like many Russian leaders believed were part of a nefarious European and US-backed plot to unseat him from power. Conspiracy mind-sets run deep in Russia, Eastern Ukraine and other regions of the former USSR (Kuzio, 2011). Russia does not therefore view the EU as an independent actor but as operating under the influence of the ‘US diktat’ which has pressured the EU to pursue sanctions (Malinova, 2014).

2. The EU’s Constrained Policies towards the Russia–Ukraine Crisis

The coming to power of the Euromaidan revolutionaries in February 2014 led to the unblocking of the Association Agreement that was quickly signed in March and July 2014. The DCFTA was signed in June 2014, just after Ukraine elected a new president, and at the same time as for Moldova and Georgia. The EU, IMF and US have focused on supporting government reforms in Ukraine by the governments of Prime Minister Arsen Yatsenyuk and Volodymyr Hroisman and negotiating a ceasefire to the Donbas conflict, culminating in two Minsk agreements in September 2014 and February 2015.

The EU’s response to Russia’s annexation of the Crimea and hybrid war in the Donbas came about slowly in the form of sanctions, diplomatic protests and closing of co-operation in international forums, such as the G8. The sanctions have never been as tough as those imposed against Iran to halt its nuclear weapons programme. More stringent sanctions were introduced only after the shooting down by Russian armed forces of Malaysian Airlines MH17 by a BUK missile brought into Ukraine from Russia (Bellingcat, 2016). The EU and US can never recognize Russia’s annexation of the Crimea ‘just as they could not recognize the Soviet occupation of the Baltic States during the Cold War’ (Krastev and Leonard, 2015, p. 56). One the EU’s five guiding principles for its policy towards Russia is
the non-recognition of the annexation of the Crimea. The US and particularly Japan (Kramer, 2016) have adopted tougher positions than the EU on the Crimea.

A second EU guiding principle is the ‘full implementation of the Minsk agreements as a key element for any substantial change in our relations’ (EU, 2016). Neither are possible while Putin remains Russian president and an understanding of Russian politics points to the strong likelihood he will be in power for the indefinite future. The annexation of the Crimea is highly popular in Russia (including among the embattled democratic opposition) and returning the Crimea to Ukraine would spell the end of Putin’s regime and could provoke a nationalist rebellion. The full implementation of the Minsk agreement would require returning control of the border to Ukraine and the withdrawal of Russian occupation forces. If implemented, these two steps would make it impossible for Putin to continue to provide a security guarantee to the Donbas separatists of not permitting Ukraine to retake the enclaves.

The divided EU was rallied around the imposition of sanctions by Germany, a country that has traditionally pursued close political, economic and energy ties with Russia and whose foreign policy had not prioritized Ukraine. Germany has always been strongly opposed to NATO and EU enlargement into the CIS (Pew Research Center, 2015). In 2009, the high levels of distrust of Germany was evidenced in the views of Ukrainian National Security adviser Volodymyr Horbulin who told US Ambassador to Ukraine William Taylor ‘there are two Russian embassies in Kyiv – only one speaks German’ (WikiLeaks, 2009).

Germany was forced to change its policies because it viewed Russia’s military actions as undermining the European Post-Cold War order based on the November 1990 Paris Charter of Europe that had locked the German nation-state into the EU and NATO and maintained peace and stability on the European continent. German Chancellor Angela Merkel’s negative views of Putin’s policies and his attempts to undermine Europe have grown in response to Russia’s callous disregard for civilian lives in its bombing campaigns in Syria that have increased the flow of refugees to Europe. The Ukrainian crisis has consequently led to a fundamental reappraisal of German–Russian relations (Economist, 2016).

Some European countries have opposed the use of sanctions because of historical ties to Russia (Greece, Cyprus) whilst in other countries pro-Putin nationalist-populists are in power (Hungary, Czech Republic, Bulgaria) or these political forces receive large numbers of votes (Netherlands, Finland, Denmark, Italy). France, Austria, Italy and Germany have powerful business, financial and energy interests and long-term ties to Russia. Russian propaganda and public relations operations have been most successful in Austria, the Czech Republic and Hungary (Frankfurter Allgemeine, 2016). The Netherlands held a referendum backed by the extreme right and extreme left in April 2016 on the EU–Ukraine Association Agreement that won a ‘No’ vote.

The two rounds of ceasefire negotiations in Minsk in September 2014 and February 2015 have led to unstable peace agreements because neither Russia nor Ukraine achieved their strategic objectives, the subjugation of Ukraine and regime change by the former or the retaking of separatist controlled territory by the latter. Therefore, the Donbas is best described as an unresolved conflict rather than a frozen conflict commonly found in Moldova’s Transdniestr, Georgia’s South Ossetia and Abkhazia and Azerbaijan’s Nagorno-Karabakh where Russian-backed separatists defeated central governments and
froze their victories on the ground. Military and civilian deaths in Ukraine’s Donbas region continued after Minsk-II when over 100 Ukrainian soldiers were killed.

While Putin was using the Minsk breathing space to supply separatist forces with military equipment, Germany and France opposed the sending of defensive military equipment to Ukraine. In the US, Republicans and Democrats in both houses of the US Congress have supported the sending of defensive military equipment which President Barack Obama had opposed (Pew Research Center, 2015).

EU members Germany and France played a leading role in the Minsk negotiations and sought reassurances from the US that it would not send defensive military equipment to Ukraine while the February 2015 Minsk-II Accords remained in place. The next US president, who will take office in January 2017, may be more assertive towards Russia and therefore willing to support the US Congress in the sending of military equipment to Ukraine. Eight countries (US, Canada, UK, Poland, Georgia, Turkey, Lithuania and Israel) train Ukrainian military and National Guard units and these programmes, already greater than those undertaken under NATO’s PfP programme, could also be expanded. This could include democratic control over the security forces and reform and de-Sovietization of the Border Guards, prosecutor-general’s office and SBU that are corrupt, over-manned and in the latter case may continue to be penetrated by Russia.

Testifying before the Senate Foreign Relations Committee, US Secretary of State John Kerry said Russia had repeatedly lied to him and other Western leaders over their countries intervention in Eastern Ukraine. Western diplomats have practiced diplomatic obfuscation themselves by describing a world at odds with reality on the ground. Speaking before the US House Committee on Foreign Affairs, US Assistant Secretary of State Victoria Nuland was asked if Russia’s intervention was tantamount to an invasion to which she replied in the affirmative; nevertheless, Kerry or Nuland did not include the ‘I’ word in their prepared testimonies (Miller et al., 2015). Although President Poroshenko (BBC Russian Service, 2015) has stated, ‘This is a real war with Russia’, Ukraine’s military action against separatists is defined under Ukraine’s legislation as an ‘Anti-Terrorist Operation’ rather than a war. Declaring the conflict a war, which in terms of military and civilian casualties it is, would require full-scale mobilization, a state of emergency and the possible suspension of democratic institutions. These steps would end Western financial assistance to Ukraine as the IMF does not lend to countries at war.

Diplomatic obfuscation has played up the success of the February 2015 Minsk-II Accords ceasefire that in reality was rushed and pandered to Putin’s demands. France and Germany, working on behalf of the EU, acted as though they were hoping the Ukrainian problem would be quickly resolved and therefore not require the introduction of tougher sanctions.

The absence of the US and UK from the Minsk negotiations is striking; after all, they had signed the Budapest Memorandum providing Ukraine with security assurances. In earlier frozen conflicts, the US and the EU participated in the 5+2 format on Moldova’s Transdniestr, the Geneva Discussions relating to Georgia’s Abkhazia and South Ossetia and the US is a co-chair of the Minsk Group on the Armenia–Azerbaijan conflict over Nagorno-Karabakh. Ukraine’s most popular political party, Batkivshchina (Fatherland) led by Yulia Tymoshenko, has outlined proposals to expand the Normandy into a ‘Budapest’ format by including the US and UK and for the expanded format to discuss the Crimea as well as the Donbas (Batkivshchina, 2016).
The EU has pressured the Ukrainian parliament to vote for a special status for the Donbas and to hold elections in the DNR and LNR (Donetsk and Luhansk People’s Republics, respectively), ahead of Russia fulfilling its commitments under the February 2015 Minsk-II Accords. But, how can free elections be held if Russian occupation troops remain in the Donbas? If Ukraine heeded to EU pressure this would merely build up future crises because:

‘Western powers, as a rule, are eager to reduce their engagement soon after the prerequisites to conflict-conservation have been laid. Higher priorities elsewhere absorb far larger shares of Western resources and attention. Those higher interests can supposedly be advanced with Russia’s cooperation; the “We need Russia” mentality (whether on Afghanistan, Iran, anti-terrorism, Syria) takes over, as seen recurrently in the last 10 to 15 years. With the passage of time, the conserved conflicts are relegated to ever-lower rungs on the scale of Western priorities. This sets the stage for an undeclared acceptance of what Russia declares to be “new realities” on the ground’. (Socor, 2015a, 2015b)

Minsk-II imposed more obligations upon Ukraine than upon the separatists, accepting Putin’s proposals for a special status to be granted to the separatist enclaves and local elections, which would legitimize the DNR and LNR. In acquiescing to Putin’s demands ‘it is difficult to avoid the conclusion that Russian armed suasion was effective in persuading the West to factor in Russian interests’ (Dragneva and Wolczuk, 2015, p. 110). The March 2015 ENP review sought to accommodate the EU’s neighbours in a grand bargain with Russia ahead of the Riga summit (EU, 2015a). Dragneva and Wolczuk (2015, p. 121) believe that this willingness to appease an aggressor ‘tarnished the EU’s image as a value-based community’. The Ukraine–Russia crisis exposed the EU’s lack of coherent vision for the Eastern Partnership and its construction as a technical instrument that was never designed to cope with political instability, regime change and violent conflict.

Germany and France jointly pressured Ukraine to accept the Minsk accords that suited Russia’s strategic interests and ‘there is no structured process or legitimate international forum to deal with Russia’s aggression against Ukraine’ (Socor, 2015a). The ‘Normandy Four’ group often produces a consensus among Russia, Germany and France operating against Ukraine’s interests while Ukraine is isolated in the Minsk Contact Group where it faces Russia, the Organisation for Security and Cooperation in Europe (OSCE), and separatist representatives (Socor, 2015a, 2015b).

The Minsk negotiations have led towards international acceptance of separatist authorities in Russian-controlled territories as de facto interlocutors and:

‘The goal of conflict-conservation necessitates those authorities’ cooperation as well as Russia’s: at first, for de-escalation and creation of buffer zones; eventually, for seeking a political settlement with Russia and its local protégés. The political settlement is an elusive process, long-term at best. To advance it, Western powers and Russia promote confidence-building measures (military, economic, political) between the country’s central government and Russia’s local protégés. This endeavour tends to equalize the legitimate government and those unrecognized local authorities in practical terms as parties to the conflict-resolution process’. (Socor, 2015a, 2015b)

Russia adopted a two-track approach of participating in peace negotiations and at the same time expanding its economic, financial and security control over the separatist
enclaves. The Parliamentary Assembly of the Council of Europe (2016) described Russia as having undertaken ‘hybrid annexation’ of the DNR and LNR following its hybrid war. Following the Minsk-I accords, Putin established Russia’s complete dominance over the economic, financial and security aspects of the DNR and LNR which are dependent upon Russia for 70–90 percent of their financing. The Russian shadow government was formed only four months after the September 2014 Minsk-I accords and only two months after the signing of the Minsk-II accords, Russia introduced rubles as the main currency of the DNR and LNR. ‘The regions are being treated as parts of Russia’s sovereign territory’ and the DNR and LNR have become a ‘satellite state of Russia’ (Ropcke, 2016a). ‘Rather than envisaging a reintegration of the regions in Ukraine over the medium term, this plan aims to secure its long-term existence under complete Russian control’ (Ropcke, 2016a)

The annual cost to Russia of subsidizing the DNR and LNR satellite states is close to 1 billion euros or 0.6 per cent of the Russian state budget on top of which should be added its large military expenditure (Ropcke, 2016a, 2016b). Russia’s economic and military policies towards the Donbas point to a disinterest in complying with the Minsk accords.

Russia’s additional policy was to supply Donbas separatists with sophisticated military equipment, training and command and control. The rag tag separatists of 2014 became an army of 40,000 a year later, larger in size than 15 out of 28 NATO members. Such a large security force will make it very difficult to reintegrate the separatist regions into Ukraine. Russia has transferred to the combined separatist forces of the DNR and LNR, heavy artillery, multiple-launcher missile systems and combat armour where it has been reflagged. Russia has built up Donbas separatist forces to a far greater extent than it did in Abkhazia and South Ossetia, Transdniestr or Nagorno-Karabakh and these forces can hold Ukraine continually under the threat of military action (Reuters, 2015). There are six reasons why Germany and France’s negotiation of the Minsk-II accords reflect the EU’s constrained power and are unlikely to resolve the Russia-Ukraine crisis.

Firstly, unlike in earlier frozen conflicts where this was not stipulated, Ukraine is required to change its constitution to provide a form of ‘autonomy’ for the separatist regions, hold local elections and pay for subsidies and the rebuilding of the Donbas conflict zone. Russia’s seeks to use the separatist ‘autonomous’ region as a source of influence and pressure upon Kyiv to change its domestic and foreign policies. The OSCE does not have sufficient resources to ensure free and fair elections in the separatist enclaves which are one-party pseudo states while Ukraine, reliant on Western financial assistance, does not possess the financial resources to rebuild the Donbas. The demands placed upon Ukraine are tantamount to insistence that Kyiv pay reparations for war damages created by the aggression of a foreign power.

Secondly, there remain 12,000 Russian troops in Eastern Ukraine according to US Army Europe Commander Ben Hodges that Russia is refusing to withdraw (Reuters, 2015). There is ample evidence provided by NATO, investigative journalists and think tanks of the separatists being trained, funded and armed by Russia. Russian officers have instituted command and control over the separatist forces and they are not therefore an indigenous force led by local officers (The XX Committee, 2015).

Thirdly, EU members have not responded to the extensive war crimes committed in the Crimea and Donbas region by Russian, Crimean and separatist forces that could be placed under the jurisdiction of the ICC (International Criminal Court). Evidence of war crimes have been extensively documented by European politicians (Helsinki
Foundation for Human Rights and Justice for Peace in Donbas, 2015), international human rights organizations (Amnesty International, 2015), the United Nations office of the High Commission on Human Rights, the US Helsinki Commission (Klymenko, 2015; US Helsinki Commission, 2015), and Ukrainian NGO’s (Helsinki Foundation for Human Rights and Justice for Peace in Donbas, 2015). Nearly 90 per cent of Ukrainian military prisoners and half of the civilians taken prisoner by Russian and separatist forces have been subjected to torture and inhumane treatment. In 40 per cent of investigated cases, key roles were played by Russian soldiers or Russian nationalist volunteers (Coynash, 2015). Prominent Russian separatist leader ‘Motorola’ bragged he had personally executed 15 Ukrainian prisoners of war (Kyiv Post, 2015).

Fourthly, Russia refuses to allow Ukraine to regain control over its border, an important stipulation of the Minsk-II accords. Russian control of the border facilitates the continued flow of weapons, Russian intelligence and special forces and nationalist volunteers into the Donbas (RFERL, 2015). In authoritarian Russia, the Federal Security Service (FSB) and GRU (Russian military intelligence) are omnipresent and nationalist volunteers are permitted to openly recruit, raise funds, train and travel to Eastern Ukraine (Koreneva, 2015). Russia continues to send ‘humanitarian’ convoys that are used to supply cash, troops, volunteers and military equipment into Eastern Ukraine. The convoys are undertaken without Kyiv’s official permission and without prior consultation with the OSCE monitoring mission in the Donbas.

Fifthly, Russia continues to promote a terrorist campaign inside Ukraine outside the Donbas with attacks taking place in Kharkiv, Odesa and elsewhere. Captured terrorists have admitted to being trained by Russian intelligence officers in the Crimea, Russian Federation and Transdniestr (Kuzio, 2015b).

Sixthly, ignoring numerous international appeals, Russia continues to illegally imprison 21 Ukrainians while the separatists are refusing to release hundreds of Ukrainian military prisoners, one of the conditions laid out in the Minsk-II agreement. Ukrainian pilot Nadiya Savchenko, who was released in May 2016, ‘become a symbol of resistance to Russia in her home country’ (BBC, 2015).

Conclusions

This article has argued the EU has been constrained in its policies towards Ukraine in three ways. The first manner in which the EU is constrained is in its inability to have overbearing influence on Ukraine’s reform process because it only offers ‘enlargement-lite’ without membership. The EU’s power would become enabled if a membership perspective was offered to Ukraine thereby providing Brussels with leverage to press Kyiv to introduce structural reforms, fight corruption and reduce the power and influence of oligarchs (Aslund, 2015). In addition to a membership perspective the EU is providing lower levels of financial assistance to Ukraine than was provided to prospective EU members. The second factor is the EU miscalculated the motivations of Ukrainian leaders and have found it difficult to understand the goals behind President Yanukovych’s imprisonment of opposition leaders.

The third factor that has constrained EU power was because it had not understood and appreciated changes in Putin’s domestic and foreign policies. The EU remained under the
illusion that Putin only opposed NATO enlargement and thereby continued to assume that the Russian President remained benign to the EU ignoring the growth of nationalism and anti-Western xenophobia in Russia. The EU assumed that its Eastern neighbours could freely decide their integration paths and therefore never viewed the Eastern Partnership as embroiled in a geopolitical battle with Russia. The EU failed to understand Russia’s approach to international relations as a zero-sum game where the EU’s gain was Russia’s loss. The EU ‘does not care enough about Ukraine’s pro-European choice – and Russia cares too much’ (Dragneva and Wolczuk, 2015, p. 128). Through to the Vilnius summit, the EU believed Russia was benignly disposed towards EU enlargement ‘despite all the evidence to the contrary’ (Dragneva and Wolczuk, 2015, p. 108). In Russian eyes, the EU had become ‘securitized’ and was consequently considered to be a geopolitical threat to Putin’s plans for a Eurasian Union and part of a Western conspiracy to weaken Russia (Dragneva and Wolczuk, 2015, p. 108).

The EU therefore ‘sleepwalked’ into the crisis when it did not factor into account that Russia had become a more nationalistic, revisionist and aggressive country under President Putin. Ultimately, the post-modern EU is constrained in its ability to come to grips with Putin’s primordial nationalism and chauvinism towards Ukrainians, its demands for spheres of influence, recognition as a great power and its penchant for territorial expansionism.

These three factors contributed to constraining the EU’s intervention in Ukraine to halt Euromaidan’s slide to violent crisis and its ability to respond to Russia’s aggression in the Crimea and Donbas. The EU intervened in the early stages of the Euromaidan when it called for restraint and compromise but these pleas were ignored by Yanukovych. By the time the EU intervened more forcefully in February 2014 in seeking to negotiate a peaceful resolution to the political crisis it severely misjudged the popular mood following the murder of unarmed protesters when it agreed to Yanukovych remaining in power until the end of that year. Initially ill-prepared to cope with political instability and taken by surprise, the round-table compromise gave a perception of the EU seeking to prop up Yanukovych and resembled the EU’s cautious approach to the Arab Spring where it had supported continuity and stability and preferred to deal with governments rather than revolutionaries. The EU’s record of dealing with conflicts in neighbouring states is one of ‘hesitation’ (Dragneva and Wolczuk, 2015, p. 97).

The following month the EU responded weakly to Russia’s annexation of the Crimea and hybrid war in the Donbas, in a similar manner to its weak response to Russia’s invasion of Georgia six years earlier. The EU adopted tougher sanctions in the energy, defence and financial sectors only after the shooting down of Malaysian airliner MH17 in July 2014 and in response to growing evidence of Russian military intervention inside Ukraine (Larrabee et al., 2015, p.18).

Germany and France’s approach to the Minsk-I and Minsk-II negotiations was too willing to accommodate Putin’s demands and sought to quickly file away the ‘Ukrainian problem’. The resultant outcome was two weak ceasefires that were used as diplomatic cover by Russia for ‘hybrid annexation’ and to train, supply and organize separatist forces to become one of the most powerful armies in Europe. The Donbas conflict is not frozen, it is unresolved and continuing on a daily basis with civilian and military casualties. Meanwhile, the Ukrainian question will not go away as long as Putin remains
Russian President – and that will be for a long time to come – because he cannot agree to return the Crimea to Ukraine or implement crucial articles in the Minsk-II agreement.

The EU is therefore faced with formulating difficult policies towards a recalcitrant Russia that will not agree to pursue the policies that would permit the removal of sanctions. Donald Tusk, President of the European Council, said ‘Either by military or economic or other tools, I am afraid that Russia wants to rebuild control over the whole of Ukraine’ (Kanter and Higgins, 2015). It is therefore incumbent upon the EU to forge policies towards Russia for the medium to long terms that ditch its earlier illusions and to accept far tougher realities on the ground.

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