

A Call of Unity, Security and Credibility: Reforming EU policy to the Ukraine Crisis

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Executive summary

From Crimea to Donbass, and across the Azov Sea the European Union faces a challenge to its security and values unprecedented in the post-Cold War era. The annexation of sovereign Ukrainian territory, the destabilisation of the Ukrainian state in Donbass, and the flaunting of international law and custom at sea demonstrates the need for a firm reappraisal of the Union's policy to the question of the ongoing crisis in the region.

The EU's interests in the matter go beyond the protection of its core values and norms to include the direct security of its member states and lives of thousands of individuals now in the grip of the manner of armed conflict the Union was founded to remove from the European continent.

Present measures remain beholden to the Association Agreement and seek change through domestic reform, diplomatic solidarity and economic sanctions. As the arc of rising tensions and greater setbacks continues, these are demonstrably inadequate. The EU suffers a lack of coordination, a lack of security, and a lack of credibility. While present measures should be maintained, it is necessary to:

- Unify the foreign policy of member states with that of the Union, particularly with a view to bilateral agreements.
- Build and strengthen the infrastructure of the Ukrainian state to ensure its viability as an independent and whole nation, complimenting current domestic reform.
- Foster the defensive capabilities of Ukraine through the provision of expertise such that it can effectively apply the rule of law over its internationally recognised territory.
- Strengthen the defensive posture of the Union to reassure its easternmost members through the implementation of increased security cooperation.

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Background

The main objective of EU policy towards Ukraine remains the pursuit of closer economic relations, political ties and the promotion of shared values.¹ However, the EU's response to the crisis is marked by a lack of coordination between state and Union levels, and a significant level of overall fragmentation. This in part reflects the complexity of the situation, and the manner in which successive crises have prompted reformulation of previous policies.

The Association Agreement (AA) (entry into force 2017) remains the principal instrument of 'bringing the EU and Ukraine closer together'.² As such a number of measures towards economic assistance, institutional reform and anti-corruption have been pursued under the DCFTA.³ The AA however does not account for the new and unfortunate reality in the region, particularly the obstacle to closer ties presented by the tenuous security situation. In accordance with the objectives of the AA, EUAM has sought to support the reform of the civilian security sector since 2014.⁴

In response to the annexation of Crimea, the EU has adopted a policy of non-recognition.⁵ This has been reaffirmed twice since its adoption in 2014.⁶ While this has been maintained at the highest levels, it remains challenged by some political forces within the Union's member states.⁷ Sanctions have been enforced by the Union against the Russian Federation in response to the illegal annexation of Crimea, and Russian military/political involvement in Eastern Ukraine.⁸ These measures have had a demonstrable impact on the Russian economy,⁹ but have failed to bring about a negotiated solution to the conflict, nor the full implementation of the Minsk II Agreement.¹⁰

These policies are not in themselves counterproductive, and the recommendations made in the paper seek to build upon them in pursuit of the same objectives. Nevertheless, the continual escalation of tensions (most recently including provocation in the Azov Sea), lack of a solution to the conflict in Eastern Ukraine, and failure of sanctions

¹ EU External Action Service, EU-Ukraine Relations Factsheet (2019), 160127_00, [Accessed online: 14/04/19].

² Ibid.

³ European Council – Council of the European Union, EU restrictive measures in response to the crisis in Ukraine, [Accessed online 14/04/19].

⁴ EU External Action Service (2019), Military and Civilian missions and operations, [Accessed online: 18/04/2019].

⁵ EU External Action Service (2016), A Global Strategy for the EU's Foreign and Security Policy, p.33.

⁶ EU External Action Service, The EU non-recognition policy for Crimea and Sevastopol: Fact Sheet, 171215_24, [Accessed online: 14/04/19].

⁷ European Council on Foreign Relations (2016), Putin's Friends in Europe, [Accessed online: 18/04/2019].

⁸ European Parliament – Policy Department, Russia's and the EU's sanctions, Directorate-General for External Policies, pp.4-5.

⁹ Observatory for Economic Complexity, Country profile – Russia, [Accessed online: 14/04/19].

¹⁰ European Parliament Research Service, A UN peacekeeping mission in eastern Ukraine?, [Accessed online: 16/04/2019].

to incentivise resolution of the violations of international law in Crimea point the urgent need of reforming the Union's policy to the crisis.

A state of manifest hostility with the Russian Federation remains now, as it always has been, deeply undesirable for the member states of the EU and individuals living throughout the continent. However, the development of cooperative security in Europe, with full respect to the edicts of international law, can only occur when all relevant parties are free to exercise sovereign control of their territory and disputes are resolved without the use of force. If Russian and indeed Ukrainian intentions are in the interests of peace and cooperation on the continent, the resolution of the conflict will not be impeded through the measures outlined above, which above all else seek the active protection of international law.

Analysis and Recommendations

Overview

The security and integrity of Ukraine is of vital importance to the EU's interests in the region not only due to the Union's commitment to its values and international law, but also the prospect of greater instability in on its eastern borders. Should the EU buckle in the face of Russian pressure, and adopt a mindset rooted the purported return of spheres of influence,¹¹ the very basis of its economic and security strategy will unravel. The crisis in Ukraine is then not only a challenge to the technical and diplomatic skills of the EU, but it's very foundational ideas. The deficiencies in the EU's current response may be surmised as a: lack of coordination, a lack of security, and a lack of credibility. The four measures recommend below seek to address these three areas.

Lack of coordination: The call for a united policy

The 'unwavering' policy of non-recognition towards the Crimean annexation remains the cornerstone of EU's official position towards Russian actions in Ukraine.¹² It is grounded in edicts of the UN Charter, which expressly forbids the acquisition of territory through the use of force.¹³ To this effect the General Assembly of the UN has adopted Resolution A/RES/68/262 on the Territorial Integrity of Ukraine, which notes the invalidity of the referendum of March 2014 as a basis of any change in status.¹⁴ Further, while non-binding, the Helsinki Final Act impresses upon its signatories and successor states the prin-

¹¹ Besier, G. Stoklosa, K. (2017), *Neighbourhood Perceptions of the Ukraine Crisis*, (New York: Routledge), pp.29-30.

¹² EU External Action Service, Speech on behalf of the High Representative/Vice-President at the European Parliament plenary debate on "Five years of the illegal occupation of Crimea by the Russian Federation" 26/03/19, 190327_4, [Accessed online: 14/04/19].

¹³ Sayapin, S. Tsybulenko, E. (2018), *The Use of Force against Ukraine and International Law*, (New York: Springer), pp.5-6.

¹⁴ United Nations General Assembly, Territorial Integrity of Ukraine, A/RES/68/262.

principles of the inviolability of frontiers and the territorial integrity of states.¹⁵ The policy of non-recognition entails the restriction of economic activity in Crimea and Sevastopol, a suite of asset freezes and visa bans, the suspension of all EU programmes within the peninsula, and the execution of bilateral agreements with the Russian Federation only within its internationally recognised territory.¹⁶

To compliment this, and in light of the ongoing destabilisation of Eastern Ukraine, a wide ranging body of sanction has been applied against Russia by the EU, most recently extended to July 2019 in response to the violation of international maritime law in the Kerch Strait.¹⁷ The aim of such sanctions is to influence policy, and their maintenance remains contingent on the implementation of Minsk Agreements.¹⁸ However, measuring the impact of these economic measures is particularly difficult, given the intervening role of global oil prices and general international market trends.¹⁹ While they certainly negatively affect the Russian economy, in more pessimistic estimations, the overall decline in GDP may result as much as 90% from the drop in oil prices and general global economic downturn.²⁰ Critically, the economic cost on Russia had been demonstrably inadequate in prompting a change in policy, given the continued failure of Russia to comply with the Minsk Agreements, the construction of the Kerch Strait Bridge, and the actions of the Russian Navy in the Azov Sea.

To address this deficiency, more robust sanctions are a poor option, given the fact their burden will be felt principally by the citizens of the Russian Federation, and Russia's ongoing commitment to circumvent their impact through increased focus on bilateral agreements with EU member states.²¹ Such countermeasures exploit the lack of coordination between member states and the EU as a whole. Bilateral projects, perhaps most notably Nordstream II, undermine the basis of collective effort. Economic measures in the name of the Union are of little use if their spirit is selectively interpreted by member states. Nordstream II is explicitly counterproductive in its forecast economic impact.²² Further, the separation of energy from security policy does much to limit the feasibility

¹⁵ See: Conference of Security and Co-operation in Europe Final Act (1975), 1. (a) III.-IV.

¹⁶ EU External Action Service, The EU non-recognition policy for Crimea and Sevastopol: Fact Sheet, 171215_24, [Accessed online: 14/04/19].

¹⁷ European Council – Council of the European Union, EU restrictive measures in response to the crisis in Ukraine, [Accessed online 14/04/19].

¹⁸ EU External Action Service, Speech on behalf of the High Representative/Vice-President at the European Parliament plenary debate on “Five years of the illegal occupation of Crimea by the Russian Federation” 26/03/19, 190327_4, [Accessed online: 14/04/19].

¹⁹ CSS ETZ Zurich, Time to Ease Sanctions on Russia, Policy Perspectives 6:4, pp.2-3.

²⁰ Korhonen, Simola and Solanko, Sanctions, counter-sanctions and Russia – Effects on economy, trade and finance, Bank of Finland Policy Brief, 4/2018, pp.7-9.

²¹ CSS ETZ Zurich, Time to Ease Sanctions on Russia, Policy Perspectives 6:4, p.1

²² European Council on Foreign Relations (2019), Negative Energy: Berlin's Trumpian turn on Nord Stream 2, [Accessed online: 21/04/2019]; Litkov, D. Freudenstein, R. (2018), The Case Against Nord Stream 2, Wilfred Marten Centre, p.11.

of executing the EU's Global Foreign and Security Policy. It is imperative therefore that through the External Action Service and the Office of the High Representative of Foreign and Security Policy, a concerted effort is made to prevent and reverse the selective deviation of member states' foreign policy from that of the Union. The integration of energy into the EU's overall conception of security, as outlined in the Foreign and Security Strategy must be reflected at the state level.²³ Projects that undermine the overall policy on Ukraine crisis must be curtailed, lest uncoordinated action completely degrade the Union's capability to respond to violations of its common values and international law on its very doorstep. Such measures will require solidarity from member states and may call on them to put principles before immediate profit. The 2015 cancellation of Mistral Carrier sales to Russia is an exemplar of this very mindset.²⁴

Lack of Security: The need for increased cooperation within and without

The tenuous security situation in Ukraine is multifaceted. In its relation to the policy of the EU, it encompasses the threefold need to support Ukrainian infrastructure development, assistance in the reform of the armed forces, and improving the defensive posture of the EU internally.

The current programme of economic support in Ukraine is of impressive breath and demonstrates the depth of technical capability at the Union's command, as well as the resilience and commitment of Ukraine to reform. Nevertheless, steps must be taken to improve certain elements of key infrastructure if Ukraine is to modernise in accordance with the AA,²⁵ and reduce the vulnerability of its economy to Russian pressure. The Reform Contract for Investment and the European Fund for Sustainable Development are important steps to this effect.²⁶ However, in light of recent action in the Azov Sea, an accelerated move to assist Ukraine in improving its road and rail links to the EU is needed to prevent further degradation of Ukraine's export capacity. While Mariupol and other Azov ports do not handle the majority of overall Ukrainian maritime exports,²⁷ Russian challenges to Ukraine's freedom of navigation is particularly significant for the long term prospects of the countries eastern regions.²⁸ To this effect, upcoming feasibility studies for increased support to cities around the Azov Sea are an appropriate starting point.²⁹

²³ EU External Action Service (2016), A Global Strategy for the EU's Foreign and Security Policy, p.22.

²⁴ Defence News (2015), Mistral Dispute with Russia Settled, France Eyes Exports, [Accessed online: 20/04/2019].

²⁵ Chatham House (2018), Rebuilding Ukraine: An assessment of EU Assistance, p.26

²⁶ Ibid. pp.26-27.

²⁷ German Advisory Group Ukraine (2018), Impact of the new Kerch Strait bridge of Ukraine's trade, Policy Briefing Series, [Accessed online: 17/04/2019].

²⁸ European Council on Foreign Relations (2018), Ukraine's new front is Europe's Big Challenge, [Accessed online: 17/04/2019]; European Council on Foreign Relations (2018), Strait to war? Russia and Ukraine's clash in the Sea of Azov, [Accessed online: 17/04/2019].

²⁹ EU External Action Service, EU-Ukraine Relations Factsheet (2019), 160127_00, [Accessed online: 16/04/19].

They must be followed by a general effort to improve Ukraine's infrastructure such that the prospective frozen conflict in the east does not create a frozen state.

A second area of needed improvement is the support of Ukrainian defence and security. The EU has stated its commitment to the 'territorial integrity and independence of Ukraine' and its preparedness to increase support in light of provocations.³⁰ Integrity and independence are contingent not only on the respect of international law by all involved states, but also on the ability of the Ukrainian government to legitimately exercise rule of law over its territory. While the Minsk agreement remains the EU's preferred and promoted starting point to the resolution of the conflict, the Ukrainian security forces are in need of expertise and support in preventing further creeping provocation. The presence of pro-government militias in the conflict in eastern Ukraine was testament to the severe shortcomings in administration and command in the early stages of the crisis.³¹ Although progress has been made in their disarmament and integration into legitimate state-controlled defence forces, the EU's policy of support for economic and civilian security reform, must be mirrored in the military sector. Of vital importance is the need for an effective joint-command structure and (complementing anti-corruption reform) expertise on improving procurement, supply and logistics.³²

Here fragmented support for the Ukrainian armed forces by the US and select EU/NATO members shows the way.³³ The improvement of EU defence remains a core objective of the Global Strategy, including the ability to build partner capacities.³⁴ In Ukraine, measures such as tactical leadership training by the UK and US, the provision of material support by Poland, Slovakia and the Baltic States are piecemeal and stop-gap until such a time as they are integrated into an overall strategy. In this respect, the foundations are in place. As stated above the EU's commitments and thus objectives vis-à-vis the security of the Ukrainian state are abundantly clear. The programmes of reform in place in other sectors provide a template for further action. What is required is the will of member states to act upon the unity so central to the overall security strategy.³⁵ Unity in response must in turn produce unity in measures.

The third and final measure in pursuit of security looks inwards, to the defence of the Union. The development of the EU as an independent security community is in a state of relative infancy, and NATO remains the principle instrument of collective defence in

³⁰ Council of the EU, European Council conclusions 13-14 December 2018, [Accessed online: 16/01/19].

³¹ Akimenko, V. (2018), Ukraine's Toughest Fight: The Challenge of Military Reform, Carnegie Endowment for International Peace. [Accessed online: 20/04/2019].

³² Wezeman, S. Kuimova, A. (2018), Ukraine and Black Sea Security, SIPRI Background Paper, pp.10-11.

³³ European Council on Foreign Relations (2019), After Crimea: Does NATO have the means to defend Europe?, [Accessed online: 16/04/2019].

³⁴ EU External Action Service (2016), A Global Strategy for the EU's Foreign and Security Policy p.11.

³⁵ EU External Action Service (2016), A Global Strategy for the EU's Foreign and Security Policy, p.16.

point of both fact and policy.³⁶ Nevertheless, the crisis in Ukraine proffers both a challenge and opportunity. The stated goal of an independent capacity to react to crisis and produce security from within the union will require increased technical and strategic cooperation.³⁷ Reliance on the Enhanced Forward Presence and increased air patrols leaves European security partly in the hands of allies beyond the continent. However, rather than attempting to 'double-up' on the likes of the EFP or the Very High Readiness Joint Task Force, the EU would be best served by using programmes such as the EU Battlegroup to supplement and augment the defence provided by the Alliance.

In particular, this may be achieved through the expansion of capability sharing initiatives to address the shortfalls that have been identified in the EU's capacity to independently conduct operations and mobilise its military resources.³⁸ Readiness is reassurance, to both the Union's more exposed eastern members and its NATO allies. Further, coordination in the key areas of cyber and information security, particularly in light of the use of disinformation in the Ukraine and its prospective use in regions such as the Baltics,³⁹ must remain a priority area for EU efforts. Here existing policy is strongest, and the greatest threat is backsliding on the considerable progress already underway.⁴⁰

Conclusion: Creating credibility

The EU has been far from idle in its response to the Ukrainian crisis. The wide-ranging measures adopted, and the depth of technical and material resources already committed to Ukraine, is a testament to the strength of the Union in its ability to respond proactively to pressure in its wider neighbourhood. Nevertheless, the fragmentation of security measures and a lack of unity in the wider context of the Ukrainian crisis threatens to undermine the progress made towards preventing the illegal use of force from destroying the prospects of a stable Europe based on predictable relations and respect for international law.

The four policy measures outlined above directly engage with the need for greater unity, and greater security. These problems are not exclusively felt in the Ukrainian context, but it is there they are perhaps most sharply outlined. It is through these measures that the EU may build credibility. The situation in Ukraine is dynamic. Credibility will be therefore the most reliable currency in engaging with all parties to the crisis, as well as a cohesive factor in the Union's internal relations.

³⁶ EU External Action Service (2018), Speech by High Representative/Vice-President Federica Mogherini on EU-NATO relations at the European Parliament plenary session, 180612_18, [Accessed online: 19/04/2019].

³⁷ EU External Action Service (2016), A Global Strategy for the EU's Foreign and Security Policy, p.44.

³⁸ International Centre for Defence and Security (2017), Building Capacity for the EU Global Strategy, Republic of Estonia Government Office, p.1.

³⁹ Kristek, M. (2017), The nature of Russia's threat to NATO's Enhanced Forward Presence in the Baltic States, Progressive Management, pp.22-26.

⁴⁰ EU External Action Service, Towards a stronger EU on Security and Defence, [Accessed online: 18/04/2019].

These measures, as well as existing policy, are co-dependent. Without improving support for Ukrainian infrastructure and military reform, closer ties to a viable independent Ukraine will be difficult. Without further reassurances to member states through increased defence cooperation, unity will be hard to achieve. Without unity, the EU cannot act meaningfully in Ukraine, or indeed on the international stage. The shadow of conflict in eastern Ukraine must not stunt the growth of a Ukraine of common values. In this regard, the EU must recognise its limitations; it cannot unilaterally resolve the crisis. However, by looking first the means and capabilities at its disposal, the Union can help foster a situation where violations of international law fail to disrupt the development of a stable and predictable Europe.

As a final word, much depends on Ukraine itself, and a collective will for further reform from its government. Particularly in light of recent elections, the EU should not sit idly by. The projection of normative strength and the offer of technical support remains the best option for the Union to show an example to the Ukrainian state and the region. In doing so, the Union not only stands by its values, but may also make bold and assertive steps towards the resolution of the Ukrainian crisis, and a more prosperous and secure Europe for all.

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