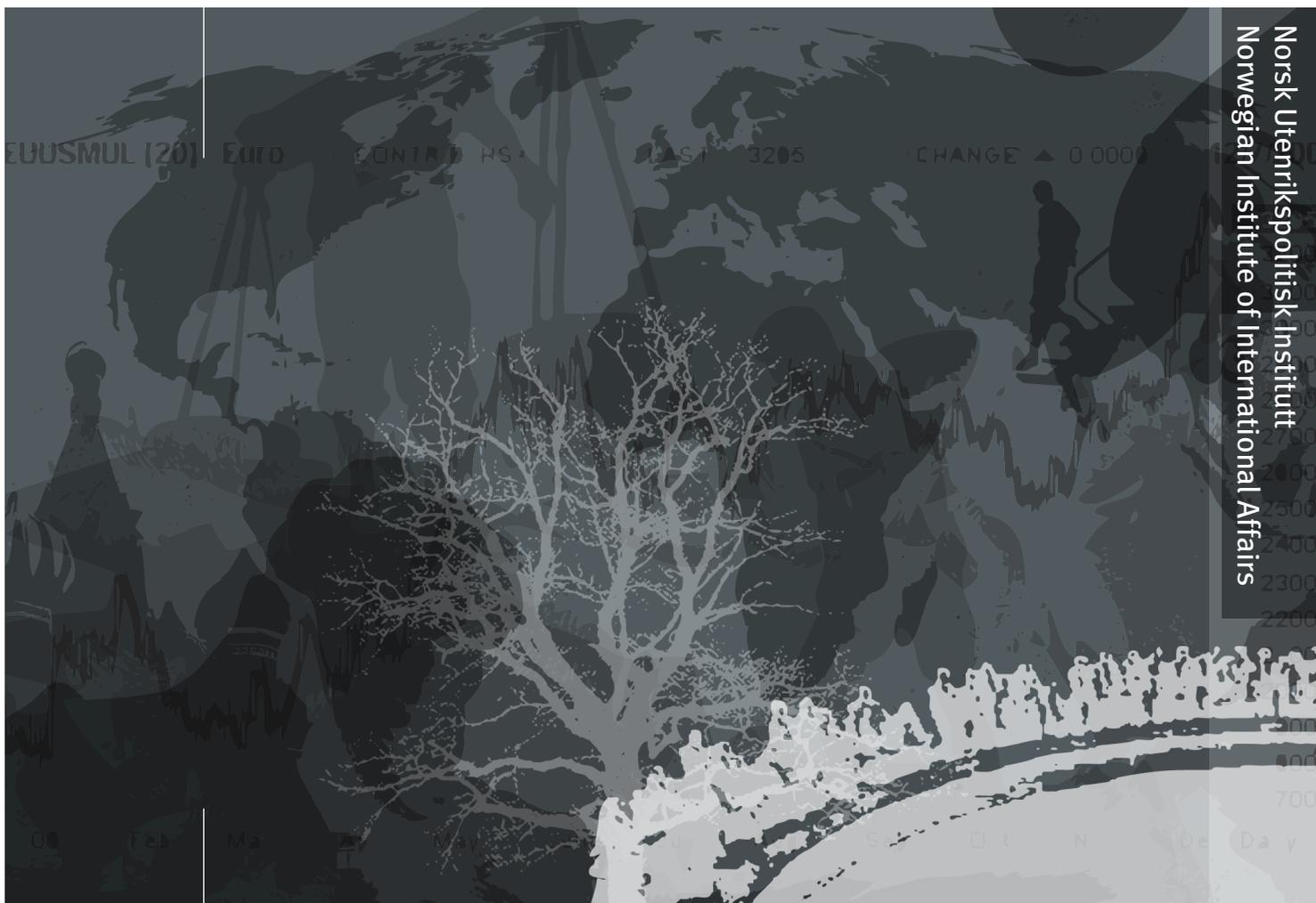


Ukraine in Europe – Europe in Ukraine

Geir Flikke (ed.)



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Preface

In March 2012, 20 years after Norway acknowledged Ukrainian independence, the Ukrainian Embassy in Oslo and the Norwegian Institute of Foreign Affairs (NUPI) co-hosted an event at NUPI to celebrate the date. Vice-ministers of Foreign Affairs Torgeir Larsen and Pavel Klimkin reminded us that our two countries had come a long way in developing bilateral relations in trade, politics and civil society contacts. All former Norwegian ambassadors to Ukraine and two former ambassadors of Ukraine to Oslo recalled a range of episodes and experiences to confirm the message.

That same afternoon I sat down with Associate Professor Geir Flikke and NUPI colleagues to draft a concept for a follow-up in Kiev for the autumn of 2012. The intention was to continue where the Oslo event left off: that is, to bring the exchange of opinions from the descriptive and declaratory stage to a more analytical level, where scholars and observers could reflect on 20 years of relations between our two countries.

As we drafted the agenda it soon became clear that it would make little sense for the organizers or the contributors to view Norwegian–Ukrainian relations in isolation. Ukraine was and is, as this volume is being prepared, in the process of signing an association and free trade agreement with the European Union. This arrangement will be deeper and more comprehensive than any similar agreements previously offered by the EU to its partners, the exception being the EEA agreement signed with Norway in 1992. Should an agreement be signed at the Vilnius Summit of EU’s Eastern Partnership in November 2013, Norway will have considerable experience to offer Ukraine in the complex process of integrating with the EU as a non-member. A new chapter might begin.

It became clear that in order to make the autumn 2012 event relevant to the current situation, our two countries’ common interests in Europe would have to be at centre of attention. Hence the title of the seminar: *Ukraine in Europe – Europe in Ukraine: 20 years of Ukrainian – Norwegian relations*.

Of course, ‘Europe’ is a broader concept than just the EU and the interaction of non-members with this political entity. Of no less importance for Norway and Ukraine as *European* countries should be the principles to which we are committed in the Council of Europe, and

our efforts in the OSCE to promote a Europe not divided by political, human or cultural barriers.

In the summer of 2012 NUPI's plans were further assisted by the Kiev National Shevchenko University, which kindly offered to host and organize the event – and did so to perfection. The seminar, held on 25 September, attracted more than 100 participants.

This volume presents the main contributions to the first part of the seminar. In the second half, the focus was on more practical interventions on economic relations and perspectives for development. That part of the event could merit a separate volume, but falls outside the scope of commitments taken on by NUPI. And here, as so often, one might wish that the Q & A sessions as well as the comments from the audience might be heard by a wider public, as they gave us all food for thought.

The Embassy would like again to thank NUPI and the Kiev National Shevchenko University, as well as Professors Geir Flikke and Volodymyr Zaslavskyi, for their invaluable contributions to the event and the subsequent publication of the present volume.

Jon Fredriksen, Ambassador of Norway to Ukraine

Introductory Remarks

*Geir Flikke*¹

Is there a common EU policy on Ukraine? The question might seem unnecessary, considering the role that the EU has played in engaging Ukraine ever since 2004. The adoption of a European Neighbourhood Policy (ENP), the Eastern Partnership (EaP), and the regular bi-annual summits between the EU troika and the Ukrainian government – these add up to more than simply a rudimentary or improvised *ad hoc* approach to Ukrainian affairs. The EU has indeed engaged with Ukraine on a comprehensive scale. The tools and policies have been consistent, based on incentives and conditionality, and in line with the EU's neighbourhood criteria: to enhance security for the wider Europe by improving governance and assisting neighbouring countries in their often turbulent transformation from post-Communism.

The question might also seem irrelevant in view of the growing recognition of the problems that Ukraine faces. Ukraine was hard hit by the economic crisis in Europe, and its economy is recovering only slowly. This setback did not reduce the political awareness of developments in Ukraine, however: it made the EU more forward-leaning in its policies throughout 2010/2011. It seems that EU officials were clearly indicating that concluding the agreements with the EU *and* complying with the EU's normative demands would be beneficial for Ukraine, and might help to improve its dire economic conditions.

As of 2012, there were no easy fixes: The relationship between Ukraine and the EU had never been as *political* as in that year. In the lead-up to the European Championship in Soccer, several leaders of EU countries decided not to attend the Yalta conference on regional security, and EU officials, such as Stefan Füle, were clear in their warnings to Ukraine not to reverse the standards of democratic rule developed since 2004. An entourage of European politicians continued their engagement in August/September, urging Ukraine's leadership to hold free and fair elections in October. In sum, then, politics has featured heavily in the relationship, and the EU has repeatedly told Ukrainian leaders what to do in order not to disqualify for attaining the Association Agreement (AA).

¹ This chapter was written after the anniversary conference.

Today we must recognize that in 2011/2012, politics had to some extent overshadowed policies, if by ‘policies’ we mean concrete successes and results. This is also where the problem of *common* enters in. Ukraine’s importance is recognized, not least by its neighbours, who have no desire to see years of hard work jeopardized. While it cannot be denied that Ukraine has not yet shown sufficient readiness to comply with EU standards and expectations in the areas of societal freedom, human rights and democratic governance, there is still a concern that the EU – in the current economic crisis – may not be able to formulate a concise policy that outlines expectations and rewards for Ukraine if it desires closer approximation with the EU. As mentioned by James Sherr in this volume, the EU should not be blindfolded by a ‘now or never’ deadline in November 2013, but needs to think beyond also this benchmark. Moreover, as Olaf Osica holds, Ukraine is more than a question of politics: it is a neighbour and a people.

While numerous dilemmas surfaced in 2012, the year culminated in a specific sequencing of events that has reinforced EU policies and induced clarity into it. On the one hand, the current government in Ukraine has only partially heeded the EU’s consistent and repeated warnings about violating the rights of the Ukrainian opposition, as seen in the protracted and still pending release of its major front-figure opposition politicians. On the other hand, the EU has presented clear incentives through an Association Agreement (AA) and a Deep and Comprehensive Free Trade Agreement (DCFTA). Indeed, the diffuse policies of Ukraine have engendered further clarity from the EU: there will be no rewards or special relationship if the standards of such a privileged position are not adhered to.

This implies, however, that there *is* an EU policy on Ukraine – with a clear normative dimension, and unmistakable consequences for Ukraine. Indeed, Ukraine faces a problem of ‘Europeanization’, with Europeanization implying that the state has the capacity both to exercise sovereignty and pool it in discrete areas. As mentioned by Alexander Duleba in this volume, this is exactly what the EU offers. EU membership or association does not mean ‘an end to sovereign nations in Europe; rather, it means a new “integrative reading” of sovereignty that is shared by the states participating in the European project’ (p. 30). To embrace this ‘sovereignty’ stands out as a major problem in Ukraine’s current juggling of alternative integration projects, as well as in the deeply complex and entangled domestic policy dimension. And it also constitutes a major problem for the EU; EU approximation should not only help promote Europeanization – it should also be an incentive for it, and this is where the relationship currently falls short.

Three Reflections and an Occasion

In this volume, we do not seek to answer the questions above, at least not in any yes/no way. There are ambiguities, and these may in a sense be seen as a part of an on-going process of defining and redefining the EU's external–internal policy dimensions. What this volume seeks to do is to take stock of the relationship as seen from one particular angle, and as perceived in a specific context. It came about as a panel in a conference dedicated to the anniversary of 20 years of Ukrainian–Norwegian relations, and also of the year when the Porto Agreement was signed (1992), regulating Norwegian–EU relations. This may seem an accidental conflation of coincidences, but also coincidences can offer background for reflections. I will suggest three.

Reflection number one: Norway's position with regard to the EU's policies is not given. This may offer some measure of flexibility in the formulation of policies. On the one hand, as both an insider and an outsider to the European Union, Norway has a specific set of foreign policy tools, as well as a set of experiences that may prove useful for countries seeking approximation to EU standards, and also useful as a pathway towards free trade with the EU. Norway and the EFTA countries are not part of the EU's Customs Union, and the EFTA Free Trade Agreements are instruments regulated primarily by WTO.² This means that WTO members like Ukraine can enter into EFTA Free Trade Agreements, as Ukraine did in 2011. On the other hand, the EEA agreement was born out of a particular context, and may also, as underlined in a recent official Norwegian report (NOU) on Norway's relationship to the EU, be seen as a *unique* arrangement not directly replicable for other countries. As that report notes, Norway was the only country that in the early 1990s saw the EEA agreement as a second path and a viable alternative to EU membership.³ Indeed, there is nothing in the EFTA Free Trade Agreement as such to indicate it is a waiting room for further approximation with the EU, nor that it is intended as a reward for deep-reaching 'Europeanization' on the part of those countries that attain it. In essence, it does not impose normative predicaments onto states that enter into it, and it offers substantial incentives for trade. Still, state governance and economic performance are essential for creating a framework of trust, which is attractive for trading partners in Norway.

² 'Inside or Outside? Norway's Agreements with the EU', NOU no. 2, 2012 p. 749, henceforth: NOU, 2012. As noted in this NOU, the evolution of the EFTA Free Trade Agreements is evident in the fact that while trade agreements with third parties normally 'mirrored' EU Free Trade Agreements and followed the EU, in the last few years, EFTA Free Trade Agreements have been more of a separate tool for Norway. Major reasons are that these agreements are quick to negotiate, and that WTO negotiations have been stalling, thus making bilateral trade arrangements more of a priority for countries.

³ NOU, 2012.

Reflection number two: Norway plays a specific role in wider Europe through its EEA Grant Mechanism. Today, the EU is still caught in a severe economic crisis, so the anniversary conference could perhaps not have come at a worse time. There is, as observed by Olaf Osica in this volume, a fatigue and disillusionment also among ‘new’ EU members that actively promote closer ties between the EU and Ukraine. Although former Minister of Foreign Affairs of Norway, Jonas Gahr Støre, adopted as his slogan to ‘make a difference’,⁴ Norway could perhaps make only small difference in this situation, as the relationship is first and foremost between Ukraine and the European Union. However, as he also remarked in an article in the quality daily *Aftenposten* (2011), Norway’s neighbourhood extends widely, and includes the neighbourhood of the ‘new’ member states of the EU.⁵ In terms of geography, this may seem hard to comprehend, but it should be recalled that Norway, through the EEA Grant Mechanism, donates funding to new EU members, explicitly for use in trans-border cooperation with EU neighbouring states. Slovakia alone received NOK 650 million for the next period. For the period 2009–2014, the EEA and the Norwegian Financial Mechanism distribute around EUR 1.8 billion for such projects, aimed at promoting social equality and effective cross-border cooperation between members of the EU and the EU neighbourhood.⁶

Reflection number three: Norway has unique experience as an insider-outsider that may be useful for countries that are not eligible for membership. Norway’s relationship with the EU is regulated mainly by the EEA agreement signed in Porto on 2 May 1992. This agreement has been both unique and evolutionary: *unique* in the sense that no other EFTA country chose the path of an EEA agreement with the EU and additional bilateral arrangements; *evolutionary* as it has become gradually more encompassing. At the start, the agreement consisted of a total of 1849 legal acts; in 2010 the total number of legal acts covered by the agreement reached 8311.⁷ As the NOU on Norway’s relationship to the EU concluded: ‘there has been a significant Europeanization of Norway in the last twenty years’. In all, Norway has adopted about $\frac{3}{4}$ of all EU legislation, without becoming a member of the EU.⁸ There is no doubt that the EEA agreement and the mechanisms for implementing EU regulations have solid and lasting effects on domestic policies and regulations in Norway.⁹ Indeed, this means that the

⁴ This is the title of the Minister’s autobiography and travel notes published in 2010.

⁵ Jonas Gahr Støre, ‘Vårt nye nærområde’, *Aftenposten*, 13 February, 2011.

⁶ NOU, 2012, p. 761.

⁷ *Ibid.*, p. 107.

⁸ *Ibid.*, p. 18.

⁹ Formally, Norway has a veto right over directives from the EU, and all EU legislative acts must be voted on by the Norwegian parliament. In the period 1992–2011, the Storting (Parliament) voted on 287 EU acts, and 265 of these were unanimously adopted. Thus, the policies of Europeanization have not produced political polarization. Of a total of 6000

EEA Agreement is a mechanism for *Europeanization*, a process urgently needed in Ukraine today.

What do these reflections imply for the bilateral relationship? To the extent that this volume was occasioned by a celebration of an anniversary, what we celebrated then is still in its beginning. As yet, relations between Ukraine and Norway are limited to certain specific areas of cooperation; and exports and imports are low after the 2008 economic crisis. In 2010, Ukraine exported chemical products, animal fodder and agricultural products for NOK 711 million (down 33 per cent from 2009) to Norway, and Norway exported products (mostly fishery) to the Ukrainian market for NOK 1.2 billion (down 11 per cent from 2009).¹⁰ As the EFTA free trade agreement entered into force in 2012, the potential for trade between Norway and Ukraine is still under-utilized. State visits have been irregular, with Norway's Minister of Foreign Affairs Gahr Støre visiting Ukraine the last time in 2006, and Ukraine's Minister of Foreign Affairs Hryshchenko in 2004. In 2011, however, Prime Minister Nikolai Azarov visited Oslo, and held a speech at the Norwegian–Ukrainian Chamber of Commerce. While Norway's perceptions of Ukraine do not seem to diverge fundamentally from those expressed by the EU, there is a desire to enhance the room for free trade, and there is a concern about political developments inside Ukraine. But there is also recognition of an under-used potential, one that could be put to better use. Can this be done?

In this volume, panel participants were invited to share their ideas on Ukraine's place in Europe, but also the relationship between the EU and Ukraine. As such, this volume mirrors a larger *political* context, but also a sequence of engagements undertaken partly by the Embassy of Ukraine in Oslo, the Royal Norwegian Embassy in Kiev, and the Norwegian Institute of International Affairs (NUPI) in the course of 2012. As noted, the formal occasion for this sequence was the fact that in that year, Ukrainian–Norwegian relations celebrated their 20th anniversary, as the Royal Norwegian Embassy in Kiev had opened in 1992. Moreover, in 2012 Norway was also celebrating the 20th anniversary of the Porto Agreement (2 May 1992) and the creation of the EEA agreement with the EU. Against this backdrop, there emerged the idea of a bilateral arrangement on the larger context of EU–Ukraine relations. To this end, a seminar was held in Kiev on 25 September 2012 – the same date as the opening of the Royal Norwegian Embassy in Kiev twenty years earlier. Predating this was a similar

legislative acts adopted through the EEA agreement, there was discussion of using the veto right in only 17.

¹⁰ Statistics from the Norwegian MFA, available at: <http://www.landsider.no/land/ukraina/fakta/bilaterale/>

seminar held in Oslo at NUPI in March 2012, thanks to an initiative from the Ukrainian Embassy in Oslo.¹¹

Anniversaries certainly matter as milestones in a bilateral relationship, and perhaps also as occasions when timing and context are brought to bear simultaneously. By the sometimes successful approximation of diplomacy, anniversaries can be understood as a backdrop for formulating policies, or taking stock of relations. We do so in this volume, aware that stocktaking involves more than mere reiteration of diplomatic relations: seminars need to *address* the issues, and move beyond the simple matter of ‘concepts’ that may create impressions about similarity and policy convergence. That forms the deeper context for this volume. The anniversary conference took stock of relations by drawing on contributions from recognized experts. Below, a brief outline of the major arguments of the participants is given.

Panel Participants and Contributions

According to *James Sherr* (Chatham House, UK), Ukrainian officials define Ukraine as a European state, and one facing a European choice. Indeed, Ukraine is both European and Slavic, and any attempt to suggest that these are antagonistic does not make sense. But there is a sense of an impasse, Sherr continues. First, Ukraine is a part of the EFTA network, but this is not a pathway to EU membership, he holds. Outlining the differences between the EFTA and the EU (intergovernmental organization versus political union), Sherr notes that the EU has a higher standard for its policy of association, but also that the EFTA’s free trade agreement with Ukraine is not an instance of ‘double standards’. Indeed, the EFTA free trade agreements are more ‘lax’ in their provisions, and also used as a tool to promote global trade, but this does not imply that the agreement is void of any normative conditionality. Second, Sherr suggests that the relationship between the EU and Ukraine has been deteriorating throughout 2011/2012. There are three main sources for this impasse: Ukraine’s civic and political inheritance, a post-Soviet economic culture, and obstacles placed on Ukraine’s way to Europe by Ukraine’s own government. As Sherr contends, these factors have contributed to state-building in Ukraine, at least in the first phase of Ukrainian independence. However, they fail utterly as vehicles for securing approximation with EU standards.

Can the current impasse be surmounted? Sherr offers no easy fix here. He stresses the need to stop the ‘integration by declaration’ policy, and start to address the proposals and demands of the EU. Moreover, he clearly dismisses the view that the EU has not made serious efforts

¹¹ For the speech of the Norwegian State Secretary (vice-minister) from this seminar, see: http://www.regjeringen.no/nb/dep/ud/aktuelt/taler_artikler/taler_og_artikler_av_ovrig_politisk_lede/taler_torgeir_larsen/2012/ukraine_norway.html?id=674979

at making the relationship work. Indeed, as he notes, ‘negotiations [on the Association Agreement] have been reinforced by an intensity of diplomatic activity and high-level engagements that should cast no doubt on the EU’s seriousness’ (p. 26). Moreover, only tangible progress in this realm before the Eastern Partnership summit in November 2013 will produce rewards. The EU’s incentive system is a strong one, and Ukrainian leaders know it, writes Sherr. On the other hand, he does not suggest that this benchmark should be the last opportunity for the current administration to achieve the agreements that have been negotiated for such a long time. True, the EU is an economic and political union, an entity which has the promotion of the human rights and good practices in governance and economics as its main goal. The best business practices are codified to strengthen connections between member states. In Ukraine, however, business practices diverge from EU standards; its business culture can be described as subordination of law to power rather than the other way around. In sum, there is a need to work towards harmonization of legislation and business practices in Ukraine and the EU, and Sherr holds that realism obliges us to admit that negotiations over this matter will remain at a dead end until there is a clear decision towards making the necessary changes in the business culture and protection of human rights. But even if this is not within reach, the EU should be able to provide new incentives and explanations *beyond* 2013, he suggests: any country aspiring for an agreement should have the right to know what is yet to be done, and the EU should provide this.

Dr Alexander Duleba (Slovak Foreign Policy Association, Slovakia) takes a different approach from that of Sherr. He agrees that the crisis within the EU has further dimmed Ukraine’s prospects of membership. Still, he holds that Ukraine is part of an ‘idealistic’ European project, and that the Eastern Partnership should evolve into an ‘umbrella’ for sectoral approximation, mirroring the EEA agreement that Norway has with the EU. Duleba argues that ‘sooner or later, Ukraine will be able to comply with the EU’s norms and standards’ (p. 29), and induces a sense of optimism for Ukraine, based on the ability of both the EU and Ukraine to work on practical issues. Drawing on his vast experience in extending and explaining the incentive system of the Eastern Partnership (EaP) for Ukrainian officials, Duleba suggests that rather than wait until a country meets all the criteria of the *acquis communautaire*, the EU should ‘check’ whether these criteria are met for separate sectors; and, for each sector, provide incentives in the form of observer status, and a separate sectoral agreement. In this original contribution, Duleba turns the terms ‘idealism’ and ‘realism’ upside-down. The idealistic view, he suggests, holds that EU culture can influence Ukrainian society only *after* there is an Association Agreement up and running, whereas a realistic view dictates that

moves should be made even before this, and the hitherto unused potential of sector-based negotiation should be used to deepen sector-based approximation.

Taking as his point of departure that the Association Agreement between the EU and Ukraine is quite similar to the EEA with Norway, Duleba notes that the energy sector presents a unique field of cooperation between the EU and Ukraine, in terms of scope and institutional shape. As yet, it is the only sector to be regulated by binding contractual relations (via the accession Protocol to the Energy Community), aimed at harmonizing Ukraine's national legislation with that of the EU. To be sure, Duleba also recognizes that there are many obstacles created by both sides. The EU is a legal space with unified standards; and a state aspiring to become an associate member must comply with the standards in 31 sectors without having any influence on the framework for cooperation. Still, in this context, step-by-step harmonization is a more appropriate path for cooperation than an Association Agreement that obliges states to implement all changes at once, or else lose everything.

Dr Olaf Osica (Centre for Eastern Studies) focuses explicitly on the normative dimension of governance and elections, arguing that Ukraine is still more than its laggard domestic politics, and definitely more than its government. The EU–Ukraine relationship is, he contends, characterized by an ever-growing uncertainty in and around Ukraine about the direction of its foreign policies, but the benefits of cooperation with the EU are evident. Osica notes that the DCFTA would provide Ukraine access to a market of 500 million consumers valued to USD 17.6 trillion, compared to the domestic Ukrainian market of 50 million consumers and a mere USD 165 billion. It would improve conditions for Ukrainian companies operating in the EU, as there would be a common legislative, technical and procedural framework for trade and investment and solution of trade disputes. In a long-term perspective, this would also facilitate the dialogue on visa liberalization and on access to the labour and educational market of the EU for ordinary Ukrainian citizens. However, EU officials today have serious doubts about the reliability of Ukraine as a partner. Only stronger commitment to free media and a viable emphasis on true – not selective – justice can improve this. The most important fact remains, he notes, that ‘Yanukovich’s political tactics of having his cake and eating it too’ has proven ‘self-defeating’ (p. 44). Dr Osica concludes: ‘the politicization of the judiciary system and the abuse of administrative resources in violation of the rules of the democratic game must lead to a halt in the process of EU integration’ (p. 44).

Rounding off is *Dr Grigory Perepelytsia* (Institute of International Relations, Diplomatic Academy, Kiev). His contribution offers a strong argument for Ukraine to leave the conundrum of a *dual periphery* between the EU and Russia, but seems less optimistic as to whether this will happen. Carving his argument in the rocks of geopolitics, he notes that the pace of European integration for Ukraine has been difficult and slow, and that a critical examination of processes in Ukrainian society is needed. He sees the main obstacle to European integration in the assumed failure of the Wider Europe project, but also Ukraine's strategy of 'dual integration'. At present, the Ukrainian government seems to harbour a principle of 'double asymmetric integration' (p. 58) which is dangerous for the sovereignty of the nation and the state. If pursued, this strategy would leave Ukraine as a divided peripheral country serving as a buffer zone. Moreover, it would lose sovereignty to both the EU *and* Russia, without gaining anything from either of them. Hence, he indicates, geography will prevail – also in the sense that Ukraine is a part of 'Europe' only in geographical terms, and that this is the main cause of Ukraine's problems in establishing a national state and promoting democracy.

Concluding Remarks

Anniversaries have contexts, and contexts do not always call for big celebrations. As mentioned, this volume emerged as a result of a bilateral conference held in the midst of the severance of relations between Brussels and Kiev, and was explicitly designed to discuss the relationship between Norway and Ukraine in this larger setting. The major conclusion from the conference is clear: the lucrative deal offered by the EU to Ukraine suffers from lack of meeting standards of government on the part of Ukraine. The year 2012 had been set to be a year of significant 'European' events, domestic as well as internationally. Instead, it proved to be a year in which politics returned to Wider Europe, curtailing the prospects for integration efforts in the EU neighbourhood.

This does not mean that anniversaries are events void of meaning or purpose. The purpose of the seminar held at Taras Shevchenko University in Kiev was to take stock of the bilateral relationship, and its wider context, politically as well as practically. There is indeed a relationship between the EU and Ukraine, and there is an EFTA Agreement between the EFTA countries and Ukraine. The EU Foreign Affairs Council concluded in December 2012 by reaffirming the EU's engagement with Ukraine, but underlined that 'a political association and economic integration [should be] based on the respect for com-

mon values'.¹² This, with the engagement of a third party like Norway, should build on a clear understanding of the implications of Norway's relationship to the EU; and second, not what this could mean for Ukraine, but rather the meaning of Ukraine's current relationship with the EU. Norway's EU relationship involves both foreign and domestic politics; it guides how we exercise our sovereignty; it secures a deeper integration between EU standards and national legislation; it makes us part and parcel of the normative dimensions in the EU Charter on Human Rights (2000).¹³ For Ukraine, the relationship remains far more problematic – but the potential rewards are substantial indeed.

It is my hope that this small volume can provide some advice and indicate some pathways out of what has become an impasse. I would like to express gratitude to the Royal Norwegian Embassy in Kiev, the University of Nordland; and the Taras Shevchenko University for collaboration and invaluable facilitation in arranging the seminar. Thanks also to numerous practitioners with long-standing experience in trade and in academic research, many of whom also know Ukraine very well. This helped to give the conference a practical dimension. The many participants could offer valuable insights into processes and challenges facing Ukraine today, also in the wider European context – a process which, let us hope, will not be one of *ad calendas graecas*.

¹² Council conclusions on Ukraine, 3209th Foreign Affairs Council, Brussels, 10 December 2012.

¹³ Norway has been doing well: In the period 1992–2011, GDP rose by 60% and employment by 25%, and in 2011, unemployment rates were at 2.4% only. About 2/3 of Norway's trade and private investments are with the EU, and 50% of the Norwegian State Oil Fund's investments are in European portfolios. Labour migration from EU countries tops the list of migrants: 87% of all labour migration to Norway in 2009 was from the EU.

Ukraine and Europe: Surmounting an Impasse

James Sherr

Since declaring independence in 1991, Ukraine has defined itself as a European state. At the same time, Ukrainians are a Slavic people. To every Ukrainian president from Kravchuk to Yanukovych there has been no contradiction between these two identities. That is also true for the member states of the EU. In the UK and Norway, not to say Poland and Slovakia, anyone who characterized the Slavs as a ‘non-European’ people would be regarded as uneducated.

Yet, increasingly in the East Slavic world, there is a political line of argument to the effect that Slavic and European identities are somehow different. The Kremlin and its ideologists have invested considerable energy in articulating this ‘civilizational’ difference between Europe and *russskiy mir*, which in the Russian mind includes Ukraine. In some parts of Ukraine, this soft-power project has resonance, and the reasons are not difficult to find. Over twenty years since independence, the majority of Ukrainians are not happy with the quality of their lives, the quality of their leaders, or the character of their relationship with the rest of Europe. All these things have brought disappointment, disillusionment and, in some quarters, feelings of betrayal. Moreover, Europe – the EU in particular – finds itself in crisis.

This is not the first time that many are asking ‘what is Ukraine?’ But it is the first time in a considerable while that many are asking ‘what is Europe?’ Take Norway, for instance. It is in every sense a part of Europe, not only geographically, historically and culturally, but also in its institutions, standards and mode of governance. However, it is not a member of the EU, although it could be. It fully conforms to EU standards of governance, economic management and business culture. It also incorporates the majority of EU regulations and normative acts into its own national legislation. Yet it has opted to join the European Free Trade Association, EFTA. EFTA defines itself as an *intergovernmental* organization devoted to free trade and economic integration. To this end, it has a worldwide network of Free Trade Agreements, not confined to the European Economic Area – and this network now includes Ukraine.

The European Union is something more ambitious than EFTA. It is an economic and political *union* of states that have freely chosen to ‘pool’ (i.e. combine) specific elements of their national sovereignty. It is also a values-based organization. As stated on the official EU website, ‘one of [its] main goals [is] to promote human rights, both internally and throughout the world’.¹ It codifies standards of law, governance and best business practice, and these standards are reflected in nearly every relationship it pursues and every agreement it signs. The EU makes no secret of the fact that it sees the key to integration in harmonization of the *internal* policies of aspirant states and, with that, a transformation in the way in which institutions and economies work. This certainly applies to the Association Agreement (and Deep and Comprehensive Free Trade Area) that it has negotiated, but not signed, with Ukraine.

The fact that Ukraine has a Free Trade Agreement with EFTA and not with the EU is a reflection not of double standards, but of different goals and visions, a point which the members of these two organizations understand and accept. Ukraine’s Free Trade Agreement with EFTA is good in itself. But no one should regard it as a path to an EU Association Agreement (to which the DCFTA is linked), let alone EU membership.

Given the ambitions of the EU and the standards it upholds in the association and accession process, the current Euro crisis is not merely an economic crisis. Its dynamic has revealed that, in some domains, adherence to EU disciplines and standards has been surprisingly lax – critically so regarding members of the single currency, who undertook more stringent convergence requirements than those who chose to maintain their own currencies. Not only is it plain that several states of the Eurozone have failed to live up to their commitments, but that a number of other members have chosen to ignore that fact. For years, several Eurozone countries failed to observe ‘best practice’ in fiscal and economic management, the transparency and oversight of key institutions, as well as their accountability and probity. Thus, the EU’s crisis has been political and psychological as well as economic, and it has diminished the moral authority of the EU in Europe as a whole.

However, it is important to maintain a sense of perspective – and, despite much Russian prodding, Ukraine has done this. Despite the rigours of the EU *troika*’s programmes and conditionalities, not even the most afflicted members of the Eurozone have sought to leave the zone, let alone the EU as a whole. As of this writing, there are still six designated candidates for membership and three ‘potential candi-

¹ http://europa.eu/about-eu/index_en.htm

dates'. With every utterance, Ukraine's state leadership has reaffirmed EU integration as the country's highest foreign policy priority.

Yet, despite this official priority, there are serious obstacles between the EU and Ukraine, and the 25 February 2013 summit did virtually nothing to reverse the deteriorating dynamic. The most immediate problems arise from Ukraine's failure to give serious attention to the three key issues raised by the European Council in May 2012: electoral standards and practice, impartial justice and fundamental (judicial, constitutional and economic) reform. But the obstacles are more far-reaching. Assessments of the present impasse will lack realism if they ignore the legacies of the past.

Tenacious Legacies

EU–Ukraine relations have been a source of frustration to both parties since 1991, despite the EU's two enlargements of 2004 and 2007 and a significant intensification of the relationship. In the 1990s, the EU was a reserved and reluctant partner, and NATO led the field. Today this is no longer the case. It is now NATO's approach to Ukraine that has become *pro forma* (not that Ukraine's official non-bloc status has left it much choice); it is the European Commission and External Action Service that are proactive, energized and engaged – and this despite the greatest economic crisis in EU history. The EU–Ukraine Association Agreement, finalized in December 2011 but left unsigned, is a framework for *de facto* integration, and the recent summit provided a fresh opportunity for the President of the European Commission, José Manuel Barroso, to express his hope that Ukraine would achieve *de jure* integration (i.e. membership) in the fullness of time.

Today the obstacles no longer derive from EU reticence. They arise from three sources: from Ukraine's civic and political inheritance, from the political *cum* economic culture that arose after the Soviet collapse, and from obstacles placed in Ukraine's path by its own authorities. Today the focus of attention is on the latter. But there is much to be said about the former, because the Soviet and Tsarist inheritance still colours the perceptions that Ukrainians have of their neighbours and themselves.

Since 1991, Ukraine's greatest liability has been the absence of a respected political class willing and able to pursue its proclaimed goals and the ability to secure the trust of the country. Its second liability has been the divisions over the country's identity, affinities and even its past. All post-Communist states suffered from painful legacies, but they did not all suffer from these particular weaknesses. The demise of the Warsaw Pact established immature democracies initially reliant on fragile or woefully compromised state institutions. However, in most

of Central Europe, the collapse also resurrected civic instincts, the values of the middle class, the ethos of private entrepreneurship and convictions about belonging to Europe. For these states – which include the three Baltic states of the former USSR – the psychological factor was overwhelmingly favourable. For them, the ‘return’ to Europe – and membership of NATO and the EU – was intrinsically feasible. By contrast, most of Ukraine was not blessed with this heritage, let alone this psychological confidence. Not only was the Communist ‘war against civil society’ more protracted than it was in Central Europe, national divisions had clear geopolitical implications. More to the point, the new political and economic elites of Ukraine were largely post-Soviet elites rather than anti-Soviet elites. In contrast, and despite the depredations of the Stalin era in the Baltic states – where at least a fifth of the citizens were liquidated – even these countries had counter-elites in place when the USSR collapsed: elites largely untainted by *nomenklaturist* mores and values.

Again, some qualifications are in order. It would be wrong to say that the *nomenklaturist* background of the elites charged with building Ukrainian statehood in the 1990s was an unmitigated disaster for the country. In some respects it was a blessing. A portion of the Soviet administrative class that aligned itself with Ukraine – whether out of pragmatism, opportunism or conviction – was competent and capable. It possessed qualities instrumental to state-building: an understanding of organization, institutions, policy-making and power. Ukraine’s deeply cultured and democratic anti-*nomenklaturist* elite had, for the most part, less understanding of these things, and the consequences became painfully obvious after Viktor Yushchenko came to power in 2005.

But the fact remains that Ukraine was not blessed in the way that Poland, Estonia or Czechoslovakia were: with people of the *state* who were also liberal and democratic in their culture. These gaps, contradictions and discords within Ukraine’s governing system and between the system and its opponents can explain the ease with which Kuchma’s largely progressive first term metamorphosed – without any real obstruction or restraint from the top – into an increasingly ugly second term; they can also explain why the colossal expectations of the Orange Revolution were only partially understood by the Orange leaders and were very inadequately addressed.

To many Ukrainians these contrasts are outweighed by the impression that the West supported the Euro-Atlantic aspirations of the former Warsaw Pact countries and cold-shouldered Ukraine. Yet the image departs from reality in several important ways. For one thing, even NATO’s initial response to the Atlanticist aspirations of the three Vis-

egrad countries was one of surprise and discomfort. Its 1995 *Study on Enlargement* had a theme but not a message. In its initial iterations, *Partnership for Peace* was more of an alternative to NATO membership than a preparation for it, and this was bitterly resented in Poland most of all. The EU's response was even cooler than NATO's. What changed these attitudes were facts on the ground in Central Europe. Countries that behaved like future members had a *prima facie* claim to be treated like them.

Ukraine's experience reinforces this judgement in positive as well as negative ways. The mid-1990s were an exceptionally fruitful period in NATO–Ukraine relations, largely because the attitude of Ukraine's defence establishment generated enthusiasm in the Alliance. In 2006, NATO's expectations of granting a Membership Action Plan were foiled not by Berlin or Paris, or even by Moscow, but by (then) Prime Minister Yanukovich, who informed NATO HQ that Ukraine required a 'pause' in its relationship. Until the Orange Revolution, the EU's attitude towards Ukraine had been palpably reserved, in part because of the Russian factor, but also because in the economic, business and legal spheres there was very little to be enthusiastic about. The European Neighbourhood Policy (ENP) was the result. Nevertheless, once Viktor Yushchenko came to office, everyone in Brussels knew that the ENP's days were numbered, and the European Parliament even called for the granting of a membership perspective. It was the Orange team's failures, not the EU's coolness, that dissipated this impulse.

Ukraine's third liability is an economic system and business culture that is at variance with European norms and is damaging to the prosperity and potential of the country. It is a mutated system, a synthesis of contradictory elements, moulded in the crucible of Soviet breakdown. That breakdown accelerated the transfer of real power from the structures of 'command-administration' to the illicit and often criminal networks that had come to exercise *de facto* control over resources and their distribution. Today's economic *cum* political order is an amalgam of two pathologies. The first arises from lapsed Leninist habits of governance: compartmentalization, administrative intrusiveness, the politicization of law, 'divide and rule' and, in everything, an obsessive regard for power. The second arises from the influence of 'shadow structures': clannish, conspiratorial, predatory – and like Dzerzhinsky's *chekists* (with whom their forebears fought and collaborated), beyond the reach of any law. In this world, understandings matter more than contracts, property rights are ephemeral, connections rather than rules decide disputes, and those without connections have neither money nor security for long.

Yet even in these malign conditions, there are important countervailing factors. For Ukraine is not a closed world, and alongside these pathologies and in the midst of them are individuals with high moral standards, civic-mindedness, experience of life in rules-based cultures and patriotism. Just as the pathologies have grown, so have these tendencies grown as well. They are increasingly widespread amongst the young, the university educated (military and civilian) as well as the small and medium entrepreneurs, for whom European values and standards are a matter of material self-interest. Today the majority of the country is divided between those who despise and those who loathe what they see around them. Yet this majority has found no route to political power, and neither the country's leaders nor the establishmentarian opposition has found a route to them. Unlike physical vacuums, political vacuums are not always filled. Ukrainians have fled from politics. Until they recover their political voice, the country will deteriorate, and so will its international relationships.

Obduracy and Deafness

For twenty years, the habitual response of Ukraine's authorities to the conditions described has been integration by declaration. Rather than producing real changes, they produce programmes about changes; rather than enforcing laws, they produce new laws. Over the same period, Ukraine's leaders have also assumed that their country's future is of existential importance to the West. In its positive iterations, this presupposes a *prima facie* Western interest in keeping Ukraine out of Russia's grasp, irrespective of the country's shortcomings and the unwillingness of its leaders to address them. In its negative iterations, this presupposes a willingness to sacrifice Ukraine as part of a grand bargain with Russia. Encouraging behaviour by the West validates the first view; discouraging behaviour validates the second. A third and related continuity is the paucity of people who take the West at its word. Such people have been a minority in every government, and in Yanukovich's administration, they seem not to exist at all. Alongside ignorance about Western motivations is a fourth continuity: ignorance about the West's knowledge. Here, Ukrainians can be forgiven. After all, many prominent Westerners know little about Ukraine, and some will believe anything they want to hear. The point missed is that, inside and outside offices of state, there are also well-placed experts who know at least as much about Ukraine (or the matter in question) as their Ukrainian interlocutors.

All this said, there have been important variations. Under Kravchuk, Kuchma and Yushchenko, real changes took place. The problem is that these changes were rarely consolidated; positive steps were often accompanied by negative ones, and they were halted or reversed the moment they threatened existing prerogatives and the system of pow-

er. Yushchenko's views about Europe were shaped by civilizational factors even more than geopolitical ones. This represented an immensely promising change, as it gave his administration a basis of conviction that others lacked. Yet these convictions were also an impediment to practical judgement. Yushchenko regarded Europe, in essence, as an ethno-cultural, Greco-Roman and Christian civilization, and believed that Ukraine was organically part of it. He acted as if the challenge was to integrate with the Europe of 1905, not the Europe of 2005: an increasingly multi-cultural entity defined less by heritage than by values, standards and the harmonization of institutions. Because he viewed Ukraine as primordially European, he underestimated the challenges of 'returning' to it. By replacing 'bad' people with 'good' people, he assumed this would happen by itself.

The failings of the Yanukovich administration are of an entirely different order. They have surprised the Western establishments who rightly praised the legitimacy of the elections that brought him to power. The Brussels and Washington consensus of 2010 was that Yanukovich had grown more moderate during the Orange years, that he would be a pragmatist and consolidator, conscious of the need for effectiveness and competence in government. In every one of these respects, they have been disappointed. Few in either capital would dispute the widespread Ukrainian verdict: that Yanukovich has 'drawn a line through [Ukraine's] democratic achievements and methodically replaced national values with those of the Family'.² The personalization [*personifikatsiya*] of institutions, begun with benign intent by Yushchenko, has acquired a malign scale and direction. Not only is it necessary to note that key offices of state (Procuracy, State Tax Service, Ministry of Interior, State Security) have been captured by narrow and pecuniary interests, we must also ask whether the elementary principles of statehood are being forgotten in this process.³ As Geir Flikke has noted, Europeanization 'implies that the state has the capacity both to exercise sovereignty and pool it in discrete areas' (p. 10). It is also predicated on values, which are not codified abstractions, but habits of mind and heart. None of these points seems to be recognized by Ukraine's current authorities.

After November 2013, what?

In three respects, the EU has articulated a vision towards Ukraine that belies every established Ukrainian stereotype about its ethos and horizons. Firstly, as affirmed by Commissioner Stefan Füle, the EU–Ukraine Association Agreement and DCFTA are the 'most ambitious and complex agreements the European Union has ever negotiated with

² Tatyana Silina, 'Half an Hour Before Spring' [*Za polchasa do vesniy*], *Zerkalo Nedeli* [Mirror of the Week], 1 March 2013.

³ Mykola Siruk interview with James Sherr, *Den* [The Day], Kyiv, 26 February 2013.

a third country'.⁴ They provide neither a membership perspective, nor a substitute for it. What they offer is tangible integration, consistent with the hope expressed by no less a figure than EU Commission President Barroso that membership will one day follow. Second, these agreements have been hammered out in the teeth of unprecedented economic pressures against doing nothing of the kind. The Eurozone crisis has dilated vision as well as narrowed it – not only within the currency zone itself, but across the EU as a whole. Third, negotiations have been reinforced by an intensity of diplomatic activity and high-level engagements that should cast no doubt on the EU's seriousness.

Officially, the EU still adheres to the position that 'as soon as there is determined action and tangible progress by Ukraine on the benchmarks', the Agreement will be signed and put forward for ratification, 'possibly by the time of the Eastern Partnership Summit in Vilnius in November 2013' (emphasis added).⁵ According to the EU Council Conclusions of December 2012:

Ukraine's performance... will be assessed on the basis of progress in three areas: the compliance of the 2012 parliamentary elections' with international standards and follow-up actions, as well as Ukraine's progress in addressing the issue of selective justice and preventing its recurrence, and in implementing the reforms defined in the jointly agreed Association Agenda.⁶

Yet with increasing frequency, representatives of the EU Presidency, the Commission, the External Action Service and the European Parliament have articulated a distinctly different perspective: that Vilnius will be the *last* opportunity Ukraine has to take the steps required. This is not only a tactical mistake, but one that could have strategic and long-term consequences.

This is not because, as the current Ukrainian authorities maintain, the EU is demanding the impossible. It is not. Were Ukraine governed by those who understood the EU's ethos and shared it, some of the most important steps could be taken in a matter of days; others in a matter of weeks. It would be enough to entrust leadership of key departments of state to individuals of decency and proven professional merit. Some opposition figures now incarcerated could be released (not 'pardoned') and charges against them dismissed; others could be released pending a proper judicial review conforming to EU standards. To be sure, such measures would require broadening the Presidential Administration and Cabinet of Ministers, but the beneficiaries might include people of principle and standing, now side-lined, from the Party

⁴ Stefan Füle, 'Speech at the Meeting of the EU-Ukraine Parliamentary Cooperation Committee, June 2012' <http://europa.eu/rapid/press-release_SPEECH-12-448_en.htm>

⁵ http://eeas.europa.eu/ukraine/index_en.htm

⁶ EU Council Conclusions on Ukraine': 3209th Foreign Affairs Council Meeting, Brussels, 10 December 2012.

of Regions and its parliamentary allies. They might also include talented and younger individuals from the second and third echelons of state administration, representatives of honest and successful businesses, not to mention seasoned professionals who take pride in being ‘above party’. The EU is not demanding a change in Ukraine’s *condition*, but a change in its *direction*. It is also demanding that Ukraine’s leaders put the country first. Yet the odds are that this will not take place, and the EU cannot be faulted for this. Where, then, is the EU at fault?

The EU’s first error, finally being addressed, is one of communication. The EU has been expert at making the simple appear complicated, but it is gradually learning the art of simplification. Reading the 906-page Association Agreement would be beyond the task of any layperson. In fairness, it is not designed for a lay public – and the Ukrainian bureaucrat, like the EU bureaucrat, requires a reference even if he does not require a bible. At least now there is a five-page guide to the Association Agreement, but it is difficult to find on the EEAS website and does not appear to be published in Ukrainian.

The EU’s second and greater error is one of expectation. Nothing has altered the view of Yanukovich as we described it in 2010: ‘geopolitics is the extension and the servant of the process of regime creation and perpetuation’.⁷ Nor has anything occurred to alter the axiom underpinning the culture of power: ‘the purpose of power is to gain more of it’.⁸ These are not perceptions or principles, but hardened reflexes. They do not describe differences of intellect, but of mentality; they are sociological rather than civilizational. They might be unenlightened, but they are not irrational. They put Viktor Yanukovich in power (first in Donetsk, then in Kiev), and they keep him there.

None of this implies that Yanukovich’s policy towards the EU is sham. It is simply transactional. Conditionalities that are concretely and narrowly defined will be understood: ‘You release Lutsenko, and we will do X; you release Tymoshenko, and we will do X and Y’. But the ethos of the EU will not be understood and its values will not be internalized, no matter how many carrots are offered or how much personal diplomacy takes place. Nor will the essential priority – regime perpetuation – be altered. If Ms Ashton and Messrs Rompuy and Füle have not understood this by now, why not? If they have, then why have they made November 2013 Ukraine’s last chance? If Messrs Yatsenyuk and Lutsenko were in power, such an approach might make sense. But under Yanukovich, it makes no sense at all.

⁷ Yuriy Onyshkiv interview with James Sherr, ‘Yanukovich Has Miscalculated’, *Kyiv Post*, 30 May 2010.

⁸ James Sherr, *The Mortgaging of Ukraine’s Independence*, Chatham House Briefing Paper, REP BP 2010/01, August 2010, p 4.

The greatest error is one of optic. If the EU means what it says, it is willing to visit the sins of Ukraine's authorities on the country: a country which in increasing measure despises and loathes what is taking place. The current political dispensation in Ukraine is obdurate but brittle. Rigidity should not be confused with stability. Civil society is again becoming a factor, and it is relearning the art of governing without government (without cues from the established opposition either – note the Kiev snow emergency of 2013). By one measure, Yuriy Lutsenko's release from prison was an inadequate response to EU demands. By another, it was a political miscalculation, because the initial signs are that prison has transformed him (like Russia's Khodorkovskiy) into a serious figure who might help to change the game. By November 2013, the EU might have grounds to walk away from the authorities, but why walk away from the country? The consequences of doing so – a turn towards hard authoritarianism internally and Russia externally, with all the attendant risks of civil conflict and fragmentation – would affect the EU's priorities whether Brussels likes this or not.

It would be best if these consequences were avoided: and indeed, there are better ways of doing so than the 'now or never' approach. Assuming as we prudently must that Kiev will not meet EU requirements by November 2013, the EU's priority task should be to dispel confusion in Ukraine and focus minds. First, it should explain concretely and to the widest possible audience why the Association Agreement cannot yet be signed. This means highlighting areas of progress, inaction and regression since the February summit. Second, and with the utmost emphasis, the EU should underscore that its core requirements are basic, simple and instinctual to those who share its commitments and its purpose. Third, it should state openly what Barroso has stated privately: that Ukraine belongs in Europe and that the only factor keeping it out of Europe is Ukraine itself. The EU should not become the unwitting ally of those who would exclude it permanently.

Ukraine and Europe: Transforming the Eastern Partnership

Alexander Duleba *

The recent Eurozone crisis has engendered a new phase of institutional reforms within the EU. This indicates that the Union is again focused on internal issues, bringing certain pessimism into the discourse on EU enlargement, and dimming prospects for any new country to achieve membership, except perhaps Croatia.¹ As a consequence of the crisis, the Eastern Partnership countries, including Ukraine, have disappeared from the horizon of potential EU membership. Moreover, the political stalemate in current EU–Ukraine relations (due to criticism from EU institutions on legal sanctions against members of the former ‘Orange government’ in Ukraine) offers few hopes for a change anytime soon – quite the contrary.

Nevertheless, I believe that a multi-layered European integration project with the EU as its pillar will serve as a beacon for navigating the difficult waters of the recent crisis, as has been the case several times in the past. Further, I believe that, sooner or later, Ukraine will be able to comply with the EU norms and standards, including in the area of rule of law and functioning of democratic institutions. With these two assertions, we may contemplate two positive visions: Ukraine in Europe, and/or Europe in Ukraine.

The first vision is rather an idealistic one of Ukraine as part of the European project. This involves a normative interpretation of the project: how it should be understood and what it should concern for Europe, in a normative interpretation valid for and with Ukraine. Arguably, this is a goal that will require hard and focused work, both in the EU and in Ukraine.

The second one is a more realistic vision of a potential upgrade of present-day EU–Ukraine relations within the existing institutional

* This article builds on findings from research conducted by the Research Centre of the Slovak Foreign Policy Association on issues related to the EU’S Eastern policy. See author’s list of publications under About the Contributors.

¹ Croatia became a member of the European Union as of 1 July 2013. [Editor’s comment]

framework of the Eastern Partnership. Very importantly – it means ignoring the political stalemate in the current EU–Ukraine dialogue.

Here I will outline these two visions, and, in the third part of this article, argue that the EU also stands to blame for the existing problems in its relations with Ukraine. It would be wrong to treat Ukraine as the sole troublemaker in bilateral EU–Ukraine relations. I hold that, since 2004, the EU has made some mistakes in developing the European Neighbourhood Policy, including the Eastern Partnership (2009). There is a need to review the existing strategic framework for the EU’s Eastern policy – in order, first, to make it into a more efficient policy from the EU perspective; second, to make it a more efficient tool for Ukraine and other East European countries in their processes of European integration, including their post-Soviet transformation.

An idealistic vision of ‘European project’ and Ukraine as a part of it

First of all, let us define what is to be understood by the term ‘the European project’. A highly simplified definition runs as follows: the project implies an integrated space of European nations (and/or ‘united Europe’) that respect fundamental European values and political principles (democracy, individual freedom, respect to human rights, rule of law), and work together on common rules and policies that are recognized and applied by all participating nations. In referring to a ‘European project’ and/or a ‘united Europe’, we should understand a Europe of democracies, each of which recognizes and adheres to the same political values.

Thus, a ‘united Europe’ might be envisaged as a common area of four freedoms based on common standards and rules. Such a European project is possible only as a legal project based on commonly shared European public law. This law is both a joint consensual deal between participating nations, and an entity capable of integrating domestic and international law to the extent of being obligatory to all members. That does not mean an end to sovereign nations in Europe; rather, it means a new ‘integrative reading’ of sovereignty that is shared by the states participating in the European project. They are sovereign to the extent that they have access to the shaping of common rules – rules that they in turn must follow. The less access they have to the formation of common rules they have to follow, the less sovereign will they be. In this perspective, the European integration process is a multi-layered project that evolves in several circles; the countries of Europe differ in their degree of participation in common policies, and as regards their access to the formation of common rules.

In Europe today, the dominant source of European public law is, unquestionably, the *acquis communautaire* of the EU. Within more than

30 common and sectoral policies, the EU produces normative acts which directly impact the daily lives of almost 500 million people in its 27 member states, but also indirectly affect the daily lives of people in other countries that are non-EU but still European nations. That is possible thanks to the economic strength of the EU single market – and the current Eurozone crisis will change nothing in this respect – with its pull-effect on other European economies; furthermore, the EU still represents an attractive model of political modernization for the former Eastern bloc countries of the Western Balkans and Eastern Europe.

The alternative scenario to the European project is a return to 19th century Europe with a concert of some big European powers – which, we should recall, in the end ‘disconcerted’ Europe by bringing it into two world wars. Today there are only two European countries that position themselves – at least, as shown by their political leaderships for the past two decades – as not interested in being a part of the EU-based European project: these are Russia and Belarus. Now, what is good for Russia or Belarus might be good for Russia and Belarus, but it does not offer solutions to the future of Europe – moreover, neither Russia nor Belarus can ignore their own complex historical heritage. Today the question of what Europe is, where it starts from and where it ends has nothing to do with geography.

A pertinent example is the ‘Turkey debate’ within the EU. It started in the context of ‘where the borders of Europe are’ versus that of ‘where the future borders of the EU will end’, and has become a confusing debate that leads nowhere. Any answer to the question of future ‘European borders’, or the outer ‘borders of the European integration project’ (‘where Europe starts from and where does it end’) must, almost explicitly, be political. And those who provide the answer are the European non-EU countries, not the EU itself. And yet, the EU cannot retreat from its ‘pan-European’ agenda, which has been an inherent part of its values and purpose from the very beginning of the European integration process in the aftermath of the Second World War.

It is easy to criticize the EU for its many shortcomings. Political parties may lament loss of sovereignty, and outsider countries may see the EU as a massive bureaucracy. However, there is nothing else that could be termed the ‘European project’ for the 21st century. The EU has been able to manage both the deepening and widening of the integration process through the expansion of the four freedoms, community laws and standards, and by improving its institutional framework and decision-making process.

It was a turning point in the history of the EU when the enlargement policy became part of its foreign policy. The accession of three relatively poor and post-authoritarian South European countries in the 1980s – Greece, Portugal and Spain – had a profound impact on the institutional framework and financial arrangements within what was then the European Economic Community (EEC). It pushed the EEC to seek a new institutional framework, which ultimately resulted in the adoption of the Maastricht Treaty (valid from 1993), in turn transforming the EEC into the European Union. The grand enlargement of 2004/2007 and the adoption of the Lisbon Treaty further strengthened the institutional framework, and revealed the EU's capacities to adjust internally while also drawing states around the EU closer to its core.

The accession of economically less-developed and relatively poor countries forced the development of new solidarity instruments in order to maintain the political stability and economic prosperity of the new members. Finally, the enlargement brought a new dimension into the EU's external policy. The European Union became a key international actor in Europe, exporting prosperity and stability to countries pursuing freedom and democracy. First, it brought stability and prosperity to Southern Europe by including Greece, Spain and Portugal in the 1980s. Then the EU accession of ten post-Communist countries together with Cyprus and Malta in the past decade significantly expanded its borders towards Eastern Europe. And finally, the EU is today the guarantor of stability, peace and modernization in the Western Balkans. Southern Europe, Central Europe and the Balkans have become part and parcel of the European integration project.

Although there are many things that the EU cannot do in external relations, it can export its community law and standards to the neighbourhood. Its member states may disagree on various international issues, especially on relations with Eastern neighbours and Russia. However, within the EU there is consensus that it should promote the modernization of its neighbourhood through the export of its standards of governance. If there is any European neighbouring country that wants to follow the EU way of modernization, the Union can assist it in this effort. That was precisely why the EU launched the ENP in 2004 and the Eastern Partnership in 2009. Both these policies have provided a strategic framework and conditions for the participation of Ukraine in the European integration project.

A realistic vision: Norway's relations with the EU as a pattern for Ukraine

Until recently, Ukraine has been the focal point of the Eastern Partnership. Together with Moldova, it managed to engage with the EU on the full spectrum of the Eastern Partnership activities. In the bilateral

track, the Eastern partners were offered new contractual relations with the EU, including the possibility of new Association Agreements (AA) with adjacent Deep and Comprehensive Free Trade Agreements (DCFTA). The new contractual arrangements should replace the Partnership and Cooperation Agreements (PCAs), the aim being to facilitate the gradual integration of Eastern partners' economies into the EU single market. As stated by the European Trade Commissioner, Karel de Gucht:

[...] these Association Agreements will provide one of the most ambitious levels ever of political association between the EU and a foreign country. They will affect businesses and citizens in several concrete ways since they cover most aspects of economic life – from consumer protection to company law, from environmental protection to education and training. They include a major trade component – a Deep and Comprehensive Free Trade Agreement or DCFTA in the jargon – which is the key driver for economic integration between the EU and the region.²

Ukraine was the first Eastern Partnership country to conclude talks with the EU on a sectoral part of its Association Agreement (AA). The chapters on Institutional, General and Final Provisions, Political Dialogue and Reform, Political Association, and Cooperation and Convergence in the Field of Foreign and Security Policy, including all chapters on Economic and Sector Cooperation (31 sectoral segments), were provisionally closed already in October 2009. Thereafter, the EU and Ukraine conducted talks on the signing of a Deep and Comprehensive Free Trade Area (DCFTA). Finally, in October 2011 – exactly two years after the conclusion of sectoral part of AA – the EU and Ukraine concluded their talks on DCFTA at the technical working level. However, as we know, the political timing was unfortunate.

While full-fledged membership is not acceptable politically at present, the EaP countries, if and when they are internally ready, should get a clear perspective of associated membership. In my view, this perspective should reach beyond short-term partnership and emulate the model of the EU's relations with the countries of the European Economic Area (EEA). After concluding the AA and DCFTA Ukraine will, as an EaP country, find itself in a similar situation to countries that have concluded EEA agreements with the EU: Norway, Iceland and Lichtenstein.³ Experts from EEA countries can participate in the work of the EU sectoral working groups as observers without voting rights, but entitled to present their arguments on new EU legislation.

² K. de Gucht: 'EU trade policy looking East'. Speech at the Civil Society Trade Seminar, Warsaw, 3 October 2011.

³ According to of the European Commission representatives who were participating in the talks on AA with Ukraine, the AAs under EaP include the same provisions as the EEA agreements. Author's interviews in Brussels, 7 May 2010.

The EU should consider observer status for EaP countries along the lines of the EEA model. To this end, the EaP should foster network-like relations between the EU and EaP countries, ensuring constant interactions and reinforcing trust and predictability of actions based on mutual reciprocity. This will allow Ukraine to obtain access to the formation of the *acquis communautaire*. In other words, this is a way for Ukraine to become a part of the EU's institutions without full political membership. The EEA model could represent an effective programme for integrating Ukraine into Europe under the current political and economic conditions.

In the energy sector, there are in fact precedents for an EEA-like status for Ukraine vis-à-vis the EU. The following three bilateral documents comprise the fundamental institutional framework for EU–Ukraine cooperation in energy: the Partnership and Cooperation Agreement (PCA, from 1998), the Memorandum of Understanding on co-operation in the field of energy (from 2005), and the Protocol concerning the accession of Ukraine to the Treaty establishing the Energy Community (ratified in 2010, entered into force from 2011). The PCA refers to provisions of the European Energy Charter as the normative and legal framework document for cooperation between the EU and third countries as regards energy. The 2005 Memorandum of Understanding sets out the ambition of the EU and Ukraine to upgrade their cooperation in the field of energy. This entails facilitation of the integration of the Ukrainian electricity and gas markets into the EU's internal energy market. For this to be realized, however, Ukraine must implement key elements of the EU's *acquis communautaire* on energy, the environment, competition and renewables. The Memorandum assumes that the goal is to be achieved via Ukraine's acceding to the Energy Community. Finally, on 24 September 2010 Ukraine signed the Protocol concerning its accession to the Energy Community, becoming a full member on 1 February 2011. The Protocol includes the list of energy *acquis* of the EU which Ukraine is obliged to follow, along with the timeline for implementation. Ukraine's energy obligations as identified by the Protocol became a separate part of the Association Agreement's chapter on energy, one of the total 31 sectoral chapters of the agreement. The EU–Ukraine Association Agreement is to absorb provisions of the accession Protocol to the Energy Community on entering into force.

The energy sector presents a unique field for collaboration between the EU and Ukraine, in terms of both scope and institutional shape. It is as yet the only sector to be regulated by binding contractual relations (via the accession Protocol to the Energy Community), and aimed at harmonizing Ukraine's national legislation with that of the EU. Energy might become the first sector where Ukraine can achieve

real integration with the EU. Ukraine's experts participate in the work of European Energy Community together with experts from other countries. Energy Community expertise is a key source for the EU in drawing up new common legislation to regulate the energy sectors of participating countries, including the internal market of the EU.

The principal question is thus: Can this EEA-like model in the energy sector be applied to the 30 other sectors covered by the Association Agreement between EU and Ukraine? There was a strong momentum in the EU Eastern policy in the course of 2006/2007, when the gradual sectoral integration of Eastern neighbours in a 'step by step' and/or 'sector by sector' manner was seen as a grand strategy for further upgrading the ENP. That was replaced by the EaP of 2009, with its ambitious offer to Eastern neighbours to conclude a complex Association Agreement with an adjacent DCFTA. In view of the current achievements of the EaP, we may conclude that the EU's offer has been too ambitious to be absorbed by Eastern neighbours, including Ukraine. Is it possible for the EU to combine both approaches in its policy towards Eastern neighbours? This will be the fundamental question for the EU if it should wish to revitalize its Eastern policy in the years to come.

Obstacles on the EU side and/or question marks related to existing EU policy

The aim of the EaP is, pursuant to the EU documents on Eastern Partnership, including the ENP (2004), to assist neighbouring and interested countries in the process of democratization and modernization. Therefore, its success should be measured not by the name of the agreement (or its intentions), but primarily by the quantity and quality of reforms it has brought to partner countries. Since the ENP/EaP policy applies the logic of the EU enlargement policy (without enlargement promises: that is, without strict conditionality for the partner country), the progress of the EaP depends on the voluntary decision of each EaP country to harmonize its legislation with the EU legislation and policies. The scope of political will of EaP countries to go farther and deeper in approximation with the EU *acquis*, however, varies with the political preferences of EaP governments and the political culture of the EaP societies. That is why the Action Plan as the key implementation instrument of the ENP for the period 2004–2009 (Association Agenda, in the case of Ukraine since 2009) was a policy document, and not a contract. Nevertheless, research conducted by RC SFPA has shown that the former ENP Action Plan brought more reforms to Ukraine in the years 2005 to 2009 than the EaP Association

Agenda, which was launched as the main implementation instrument of EaP in 2009.⁴

In the past, the success of EU enlargement policy has hinged on a conditional relationship between the EU and the candidate country based on the principle of *obligatory approximation* with the membership standards of the former. That is not the case in a partnership and/or neighbourhood policy. The EaP has been presented as an *offer* or *initiative* for partner countries. It is up to them to pick the cherries – how many and which ones – from the EU menu. Nevertheless, there is scope for strengthening both the conditionality and obligatory dimensions of the EU's relations with an EaP partner country. Moreover, the more this relationship is based on conditionality and the more it carries a contractual character, the better it is for the EU's ability to press for reforms and modernization in its neighbourhood. If that is the goal of the EaP, the EU should reform the EaP so that it encompasses contractual elements and enhances conditionality. The present situation of Ukraine shows that the EaP offer of 2008 with AA/DCFTA has proven overly ambitious for partner countries. We now need to think about how to *strengthen* contractual relations between the EU and partner countries by adopting agreements that they can absorb.

In addition to the Action Plan of 2004, the EU offered a set of sectoral tools to its neighbours during the EU Presidency of Finland (second half of 2006) and of Germany (first half of 2007). The idea of expanding sector tools of cooperation within ENP was based on the German proposal for the ENP Plus. The Communication of 4 December 2006 called for building a *thematic dimension* within the ENP: a regional and sectorial cooperation framework for EU interaction with ENP countries.⁵ The Communication also stated the urgent need for multi-lateral agreements between the EU and ENP countries, especially in the sectors of energy and transport. It suggested a path to achieve such arrangements by extending the Energy Community Treaty to ENP countries that are both willing and ready to adopt the respective EU sector-based *acquis*. In this way, the EC Communication laid the foundations for developing a distinct regional policy for the EU and a cooperative framework for its Eastern neighbourhood.

Another element of the ENP that was included in the above Communication was the possibility for the ENP countries to participate in the *EU Community Programmes and Agencies*. The Commission has been mandated to develop separate Community Programmes for the ENP

⁴ See Alexander Duleba and Vladimír Bilčík, *Taking Stock of the Eastern Partnership in Ukraine, Moldova, Visegrad Four, and the EU* (Bratislava: RC SFPA, 2011).

⁵ 'Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy'. Commission of the European Communities, Brussels, 4 December 2006, COM(2006)726 final.

countries that represent a qualitatively new ENP instrument; this leads beyond the horizon of the original concept of the neighbourhood policy expressed by former Commission President, Romano Prodi, as ‘everything, but institutions’. The ENP countries that qualify for the Community Programmes will indeed be granted access to community policies of the Union within the respective programmes and agencies.

The new formula of the neighbourhood policy proposed by the EU in 2006/2007 to the ENP partners who were both willing and ready to go beyond the Action Plan could be summarized as follows: *contractual sectoral relationship based on two fundamental principles – obligatory approximation to the respective EU sectoral acquis and subsequent access to the EU sectoral programmes and institutions*. Although the relevant EU documents do not mention the originally proposed ENP Plus instrument as a ‘sectoral agreement’, access to the Community programmes and agencies implies that the ENP countries should conclude sectoral agreements and/or protocols relevant for this access.

In this way, the EU has evolved to a higher level than that of the ENP; and indeed, even the ENP has gone beyond the horizon of the original definition of an instrument that offered ‘everything, but institutions’. The first level of the ENP means that the EU dialogue with an ENP country on political and sectorial issues follows the Action Plan (and/or the Association Agenda in the case of Ukraine from 2009), which is a political document without binding implications for the ENP country or for the EU. The access protocol of the ENP country to a Community programme and/or Agency stipulates that the respective sectoral dialogue should be framed by a binding agreement. The expectation of the EU institutions and the member states is that approximation to the EU *acquis* and access to the EU institutions will create a common space between the Union and the ENP country – ‘sectoral integration’ with the EU. The regional dimension notwithstanding, the EU could apply a principle of ‘sectoral integration’ with ready and willing individual partner countries by adopting scaled-down sectoral agreements.

However, the EaP concept, as proposed by Swedish–Polish EaP initiative in 2008, re-wrote the sector-by-sector approach developed in 2006/2007, offering instead an ambitious ‘singular and big’ AA/DCFTA contractual deal. We can now see deceleration of sectoral reforms in the partner countries as well as an emerging contractual stalemate with the EaP-pioneering Ukraine. No, I do not argue that sectoral agreements are in any way in contradiction with the path offered by the EaP and the talks on comprehensive and cross-sectorial agreements within the Association Agreements. I suggest that if the EaP country is ready to make significant progress within a given sec-

tor, it should be offered a sectoral agreement *in addition to* the AA, which basically will represent a list of provisional arrangements for EaP countries in various fields. If the EaP country is both willing and ready to proceed in a specific sector, it should be given a higher level of contractual relationship with the EU. And once the AA talks are completed, such sector-based agreements can become integral parts of the AA.

In sum, if a partner country is ready to follow an EU sectoral *acquis* fully, it should be offered a binding sectoral agreement, and the EU should open its institutions to such a partner country, thereby mirroring its arrangements in the EEA agreement with Norway, Iceland and Liechtenstein. As noted, the EEA states can participate in Internal Market and relevant Community Programmes and Agencies, albeit without voting rights. The point is that the EEA states are present in EU institutions with their experts and are entitled to consult any new relevant EU legislation at an early stage of preparation.

The possibility for an EaP country to conclude a sectoral agreement with the EU should be open exclusively to those countries that are ready to accept and follow respective sectoral *acquis* of the EU fully. Given full compliance with the EU's *acquis* in a given policy sector, the partner country might achieve the status of an *observer* in EU institutions. The EaP countries should be given transparent and clear benchmarks, so that they can know where they are moving in relation to the EU within the EaP. The granting of observer status for sectoral agreements – as proposed by ENP Plus – should become *the* fundamental idea of the Eastern Partnership: this is in absolute correspondence with the declared need to enhance the EU's commitment toward its Eastern neighbours, and vice versa. Consideration should also be given to the possibility of transforming future AAs into EEA-like agreements, allowing for the same institutional observer status for EaP countries.

If this can become reality, we may conclude that the reform of the EU's Eastern policy as outlined above will decisively improve the prospects for the deeper integration of Ukraine into Europe – and it will bring Europe to Ukraine as well.

Ukraine and Europe: Why Ukraine is more than Yanukovych

*Olaf Osica**

The year 2012 was supposed to be a watershed, marking a profound and lasting breakthrough in relations between Ukraine and the European Union, and paving the way for Ukraine's gradual integration with the EU. Instead, 2012 marked the onset of a strategic pause between the two, foreclosing the prospects of Ukraine's approximation to the EU.

The hopes for a paradigmatic shift in EU–Ukraine relations were rooted in the fact that after three years of negotiations, the EU and Ukraine initialled the Association Agreement (AA) in March 2012, and the Deep and Comprehensive Free Trade Area Agreement (DCFTA) in July 2012. Both agreements open up prospects for Ukraine's gradual and sectorial integration with the EU. Whereas AA includes a set of political goals to be met by Ukraine in the area of democratic freedoms, the scope of the DCFTA is by far more extensive than that of a typical free trade agreement. Firstly, it envisages a complete liberalization of trade through lifting customs tariffs, import quotas and other barriers (legal, technical and procedural) to trade. The agreement also stipulates that Kiev will liberalize regulations on investments and services. Secondly, by signing it, Ukraine would undertake to adopt and implement EU laws, norms and standards concerning all trade under the agreement.¹

If signed and ratified, the AA and DCFTA together would constitute the backbone of the EU–Ukraine relations for at least a decade. The DCFTA would provide Ukraine access to the market of 500 million consumers valued to 17.6 trillion USD, compared to the domestic Ukrainian market of 50 million consumers and a mere 165 billion USD. It would improve conditions for Ukrainian companies operating in the EU, through a common legislative, technical and procedural framework for trade and investment and solution of trade disputes. In

* This chapter, an extended version of the 2012 seminar presentation, is based on materials published by the OSW (<http://www.osw.waw.pl/en/publikacje/tagi/Ukraine>).

¹ Cf. R. Sadowski, 'The prospects for the EU–Ukraine free trade agreement', *OSW Commentary* No 94, October 2012.

the long-term perspective, this would also facilitate the dialogue on visa liberalization and access to the EU labour and educational market for ordinary Ukrainian citizens.

That is not to say that the process would be an easy and a smooth one, or that there are no pitfalls. The arrangement does not imply fully-fledged Ukrainian membership in the EU at the end of the process, as this is always a political decision and depends on the overall integration context. It would, however, test Ukraine's commitment to European integration, and the EU's readiness to offer accession to those that meet membership requirements. Importantly, this has been the only concrete and realistic foundation for Ukraine's integration with Europe: rather, *there is no other and there will not be any other proposal of this kind.*

Given this comprehensive arrangement, pessimism would seem out of place. However, pessimism emerges from the fact that despite the success of the AA and DCFTA negotiations, the political dialogue between the EU and Ukraine has stalled to the extent that it may hamper final ratification of both documents and freeze EU–Ukraine cooperation for years to come. Whether the agreements will be signed and implemented is still an open question, and depends on favourable political conditions. On the one hand, the repression imposed by the Kiev government on its political opponents (including the disputed conviction of former Prime Minister Yulia Tymoshenko) has provoked criticism from the EU. The Union now refuses to sign if the government in Kiev continues to violate democratic principles by applying selective justice. On the other hand, Russia has become increasingly active in its efforts to pull Ukraine into the integration projects that it has initiated – the Customs Union and the Eurasian Economic Community. Moscow has effective instruments for exerting its will, not least the dependence of the Ukrainian economy on supplies of Russian oil and gas and on exports to the internal Russian market.

The parliamentary elections of 28 October 2012 did not help to clarify the overall picture. The report prepared jointly by the OSCE/ODIHR, the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament and the NATO Parliamentary Assembly contains a positive evaluation of the events on election day, but the period preceding it and the counting of the votes in the electoral commissions were criticized.² The report's main points of criticism against the government were an unfair and biased electoral campaign, primarily the failure to ensure equal opportunities for all candidates; the excessive use of administrative resources to pro-

² Post-election interim report 29 October–6 November 2012, published 9 November 2012, at <http://www.osce.org/odihr/elections/97077>

mote the government's own candidates; the lack of pluralism in the media; the jailing of Yulia Tymoshenko and Yuriy Lutsenko, preventing them from participating in the elections; and the non-transparent counting process. The report did not contain any direct suggestions that these elections should be acknowledged as free and fair, or any assessment concerning the impact of the irregularities on the final electoral result. In general, these elections have been described as a step backward in comparison to those held in 2007.³

The conclusions contained in reports from other institutions are largely similar to those of the OSCE. The International Civil Society's Election Observation Mission to Ukraine reported procedural irregularities, but said that 'the incidents did not appear to have a nature and a scope that could have seriously distorted the election results.'⁴ In turn, the report from the well-reputed Ukrainian organization, the Committee of Voters of Ukraine, deemed that, despite numerous irregularities in the period preceding Election Day, 'they were not of a mass scale and systematic nature'.⁵ The head of the ENEMO mission stated that the elections showed a regression in respect of democratic standards, in comparison to those in 2007, and cited various forms of abuse of power from the government as the most serious violations.⁶

On the other hand, however, as Andrew Wilson of ECFR noted, there were encouraging signs of democratic vitality.⁷ The political competition was real, although curtailed by unequal access to mass media and the tricks of political technologists. The opposition parties (United Opposition, Ukrainian Democratic Alliance for Reforms and Freedom Party) gathered more votes in the proportional elections than the ruling Party of Regions. The number of parties represented in the *Verkhovna Rada* (Parliament) promises more political debates than fewer, and more importantly, it shows that Ukrainian voters are not afraid to vote against the government. The total vote for the opposition parties (United Opposition *Batkivshchyna* [Fatherland], *UDAR* [Blow] and *Svoboda* [Freedom]) in the proportional elections was higher than that for the ruling party, which won 30 per cent compared to the opposition's 49.9 per cent. The Party of Regions won in single-mandate

³ Cf. T. Olszanski, 'After the parliamentary elections in Ukraine: a tough victory for the Party of Regions', *OSW Eastweek*, 07.11.2012.

⁴ Preliminary statement on findings and conclusions international civil society election observation mission to Ukraine Kiev, 29 October 2012, <http://www.batory.org.pl/upload/files/Programy%20operacyjne/Otwarta%20Europa/observation-mission-to-ukraine-2012-preliminary-statement.pdf>

⁵ Ibid.

⁶ See Kiev Post, 28 October 2012, available at: <http://www.kyivpost.com/content/politics/enemo-mission-points-to-irregularities-in-ukraines-elections-315144.html>

⁷ A. Wilson, 'The EU and Ukraine after the 2012 elections', *ECFR policy memo*, November 2012.

constituencies,⁸ but even here, it did not enjoy the success it had expected. Compared with the 2007 election, it lost nearly 2 million voters (see Table 1); and the 187 to 189 seats it can count on do not give it a simple majority (which would require 226 votes).

Indeed, the elections clearly show that Ukraine's political system is far from being consolidated in an authoritarian fashion, and that the government has to accept the reality of political pluralism and competition. In this, Ukraine stands out from Belarus or Russia, where the genuine opposition groupings are not allowed to take part in any elections, and thus are driven onto the streets. On the other hand, Ukraine may be sliding from democracy to some soft version of authoritarianism, and notable problems persist.

- The freedom and independence of the mass media are still secure by post-Soviet standards, but do not live up to European norms. The freedom and independence of the media in Ukraine have been regularly restricted over the past three years. Following a period of relative freedom in 2005–2010, the scope of direct and indirect government control of the press has increased. The press in Ukraine has partially lost its position as a watchdog regarding the government and politicians in general, and cannot act as a reliable source of information to the public.⁹
- Selective justice which aims at side-lining political rivals brings Ukraine closer to Russia and Belarus, but not to its western neighbours like Poland. The Tymoshenko verdict has accentuated this problem.
- Endemic corruption and lack of an independent and effective judiciary system and police make small and medium-sized enterprises, both Ukrainian and foreign ones, helpless in defending their property rights and businesses.
- Finally, Ukraine is sliding towards an authoritarian consolidation of state power under President Viktor Yanukovich. The problem lies not so much in the fact of the presidential system of power, a systemic feature of most post-Soviet states, but in the policy of Yanukovich (and his 'Family') of taking over control of the institutions of the state and its major economic assets.

Given the deteriorating state of Ukrainian democracy, it matters less that the EU accepts the elections result as meeting basic democratic standards. The major question remains whether the EU will sign and

⁸ The elections were held under a mixed system: 225 seats allotted in proportion to national lists, and 225 chosen in single-mandate constituencies.

⁹ Cf. T. Iwanski, 'The press and freedom of speech in Ukraine ahead of parliamentary elections', *OSW Commentary*, September 2012.

ratify the AA and DCFTA – and the outcome here will send a political message to Kiev. Continuing cooperation on the basis of the AA might be interpreted by the Ukrainian authorities as not only full acceptance of their policies, but also a reward for ‘good performance’. By contrast, suspending the political dialogue and postponing the AA and DCFTA *ad calendas graecas* might result in less leverage on Kiev and – in the longer term – acceptance of Ukraine’s drift towards a fully-fledged authoritarian state. The choices confronting the EU in its Ukrainian policy must be thoroughly scrutinized before any decisions are taken.

In the present situation, a myopic domestic political agenda has sidelined the long-term state interests of Ukraine. From the early days of the Tymoshenko trial in June 2011, EU leaders sent an unequivocal message to Yanukovich: they did not regard the proceedings as fair, and her imprisonment would put at risk the signing of the AA and DCFTA.¹⁰ The trials revealed that Tymoshenko was charged with abuse of powers as Ukraine’s acting prime minister at the end of 2008 because she had issued instructions to officials negotiating the gas contract with Gazprom that were in violation of the relevant law. This in turn, according to the Criminal Code, resulted in ‘particularly sizeable’ losses. The link between the formal (procedural) mistakes with the content of the contract as it was eventually signed remains unclear, and the trial, to judge from the available materials, was unable to prove that Tymoshenko had in fact broken the law. This indicates that the trial was political in nature, intended to show that, in accepting unfavourable terms for the deliveries and transit of natural gas to Ukraine for the period from 2009 to 2019, Yulia Tymoshenko had acted to the detriment of state security. However, that allegation has not formally been made.¹¹

For months, Ukrainian authorities appeared to understand what the direct consequences of the trial would be, and promised to find a legal solution that would solve the problem, by introducing new clauses in the Penalty Code that would distinguish between the abuse of the administrative power and criminal acts. But in October 2011, Tymoshenko was convicted and sentenced to seven years’ imprisonment. In addition, the court ruled that she was barred from holding public office for three years, and was obliged to pay damages to Naftogaz amounting to 1.5 billion hryvna (approximately USD 187 million).

¹⁰ A. Kwiatkowska, A. Ciechnowicz, T. Iwanski and R. Sadowski, ‘The crisis in EU/Ukraine relations surrounding Tymoshenko’, *OSW Eastweek*, May 2012.

¹¹ S. Matuszak and T. Olszanski, ‘Yulia Tymoshenko sentenced’, *OSW Eastweek*, October 2012, available at: <http://www.osw.waw.pl/en/publikacje/eastweek/2011-10-12/yulia-tymoshenko-sentenced>.

The sentence sparked immediate and sharp criticism from Brussels as well as from individual EU countries. European politicians saw the court's decision as politically motivated and a violation of all democratic standards. The head of EU diplomacy, Catherine Ashton, stated the verdict would affect bilateral EU–Ukraine relations, including the Association Agreement.¹² At the same time, the Commissioner for Enlargement, Stefan Füle, indicated that he was counting on Tymoshenko's rapid release through changes to Ukraine's Criminal Code.¹³

The escalating criticism of the Ukrainian government has led to the political isolation of President Yanukovich and his government. The summit of Central European states scheduled for May 2012 in Yalta was cancelled, as 14 of the 19 presidents refused to participate; moreover, a host of European leaders announced their boycott of the Ukrainian part of European Soccer Championship games in 2012. These symbolic gestures confirm Ukraine's decreasing importance in the policy of European countries, which are no longer interested in improving dialogue with the government in Kiev.

Yanukovich's political tactics of having his cake and eating it too – sentencing Tymoshenko for her alleged crime *without* jeopardizing Ukraine's relations with the EU – has proven self-defeating. It reflects a constant problem faced by Ukrainian policymakers: that of being overconfident in one's power and overestimating the importance of one's position. Indeed, we could say that Ukraine is now getting what it deserves: the politicization of the judiciary system and the abuse of administrative resources in violation of the rules of the democratic game must lead to a halt in the process of EU integration. The EU has no other option but to be consistent in its policies – otherwise it will undermine its own position not only towards Ukraine, but also the entire set of standards it seeks to bring to the EU neighbourhood.

Clearly, however, this game has one important flaw. By focusing on the Ukrainian authorities, and on Yanukovich himself as the main instigator of the strategy, it reduces the EU–Ukraine relationship to a dialogue between political elites, leaving no room for society at large. This does not mean that Ukrainians do not share the EU criticism. On the contrary, an independent mass media, an efficient and independent judiciary and democratic rules of the political game are the bedrock of a modern and free society. Ukrainian society and public opinion are as disappointed with the current state of affairs as is the EU, and see the EU as a potential instigator of change and improvement.

¹² Ashton was first quoted that the AA should proceed. For Ashton's statements, see: <http://en.rian.ru/world/20111013/167634985.html> and <http://commonsense.eu/eng/links/6/id923>. [Editor's comment]

¹³ S. Matuszak and T. Olszanski, op. cit.

After more than three years under President Viktor Yanukovich and the Party of Regions, Ukrainian society has little confidence in the state, its main institutions and its politicians, regardless of their political affiliation.¹⁴ Polls taken after two and a half years with Yanukovich show that none of the key state institutions, with the exception of the army, is trusted by more than 22 per cent of the Ukrainian people. Although President Viktor Yanukovich enjoys the highest public confidence levels among all politicians in the ruling camp, only 22 per cent of the respondents say that they trust the president; while as many as 66% do not trust him. Yanukovich performs badly even in the eastern parts of the country, where both he and his Party of Regions have traditionally enjoyed the highest level of public confidence: only 30 per cent of the respondents in eastern Ukraine say they trust the president, while as many as 57 per cent do not. Public support for the decisions taken by Yanukovich during his presidency has also been waning. Back in April 2010 – two months after Yanukovich took office – 37 per cent of the Ukrainians supported his policies; by December 2011 this figure had dropped to just 8 per cent. A similar decrease over the same period was observed in the public's support for both the government and parliament.¹⁵

Ukrainian society has become increasingly alienated from political life.¹⁶ As many as 82 per cent of Ukrainians believe that they have no real influence over what happens in the country, while over half of the respondents are uninterested in or irritated by the work of the government and the president. The polls also show that only 5 per cent of respondents respect those who hold power, and as little as 3 per cent are positively disposed towards the members of the ruling camp. Furthermore, the number of people who consider themselves to be happy has dropped for the first time in 10 years and for the first time under the rule of Viktor Yanukovich; the figure for 2012 stood at 53 per cent (down from 63 per cent for 2010).

On the other hand, the negative assessment of the work of the ruling party has not improved most Ukrainians' view of the opposition. Also this side of the political spectrum suffers from low levels of public trust, although the figures are slightly better than those for the president and the government. Polls suggest that 24 per cent of the electorate trusts the opposition (while 53 per cent do not), with somewhat more positive figures coming from western Ukraine (a difference of 5 per cent).¹⁷ Overall support for opposition leaders has been growing,

¹⁴ See Kiev International Institute of Sociology, February 2012.
<http://kiis.com.ua/ua/news/view-152.html>

¹⁵ Cf. T. Iwanski, 'Public feeling in Ukraine ahead of the parliamentary election', OSW Commentary, No 89.

¹⁶ See <http://kiis.com.ua/ua/news/view-149.html>

¹⁷ T. Iwanski, *op. cit.*

albeit slowly. For example, between April 2010 and December 2011, public support for Yulia Tymoshenko increased from 14 per cent to 15 per cent (and support for one of the key opposition figures, Arseny Yatsenyuk, rose from 11 per cent to 13 per cent in the same period). The high level of distrust of Ukrainian politicians can be clearly seen from a survey published by the weekly *Zerkalo Nedeli* indicating that Ukrainians are more likely to trust a complete stranger than a politician.¹⁸ Meanwhile, Ukrainian society is most willing to trust institutions that have no links to the government, and those with no direct influence over the economic situation in the country. These include the Ukrainian Orthodox Church and the media. These institutions are also the only ones that more people trust (62 per cent and 40 per cent, respectively) than distrust (17 per cent and 28 per cent, respectively).¹⁹

The question hence arises: how *not* to reward (or even punish) Yanukovich, without alienating a society that still regards the EU as a potential instigator for change in Ukraine. And the tools for change are the AA and DCFTA – as they are not designed to perpetuate the rule of Yanukovich, or to improve business environment for the oligarchs, but to force Yanukovich and the oligarchs to create room for and protect small and medium-sized enterprises, to improve the investment climate for foreign companies and open up the Ukrainian economy for Europe. If the EU suspends the signing and ratification process of the AA and DCFTA, this will not necessarily undermine the power of Yanukovich, let alone force him to change his approach to Ukraine as ‘a family business’. It may, however, punish society, as the deterioration of relations between Ukraine and the EU will have negative effects on other areas of cooperation, including visa liberalization, where a political decision by the EU countries is pending, even though the technical decisions have been made.

A breakdown of relations with Ukraine will limit the importance of the Eastern Neighbourhood Policy (ENP) and the Eastern Partnership (EaP) as instruments in the EU’s foreign and security policy. With relations with Belarus frozen, and progress in reforms in Moldova and in the countries of the Caucasus meagre and slow, EU involvement in the region will fade. The principle of ‘more for more’ announced in the European Neighbourhood Policy in 2011 (more resources and preferential benefits from the EU in return for more progress in integration and reforms from EaP countries) may lead to a *de facto* reduction in EU funding for the eastern partners. Moreover, the eastern neighbourhood of the EU has also become less important in the face of mounting internal problems (like the Eurozone crisis, and changes in EU decisionmaking processes). Simultaneously, the marginalization

¹⁸ Ibid.

¹⁹ Ibid.

of Ukraine and other eastern neighbourhood countries vis-à-vis EU policy has weakened their bargaining positions with Russia, which might lead to a rise in Russian pressure in the region.

Today, Ukraine finds itself sandwiched between two geopolitical projects: the European integration project, and the Russian Customs Union and the Eurasian Economic Community (EurAzEc) initiatives. Despite all the flaws and question marks related to both projects, non-commitment to either of them will in the short-term perspective (say, till 2015, the year of new presidential elections), pose serious political and economic challenges. The fence-sitting style of Ukraine's foreign policy may still be viewed by many in Kiev as a sign of a strategic maturity and cleverness, but in reality it is a waste of time and a recipe for political and economic disaster. If Ukraine is not ready to make a choice, its policy will simply become a function of the choices made by Russia or the EU.

The EU still has a role to play. It should embrace a dual-track strategy of alienating Yanukovich, while not losing sight of ordinary Ukrainians. That will mean continuing a 'tough-love' policy by making Yanukovich's life a bit harder, while refocusing on Ukrainian society. The question remains, however: is the EU prepared to play that role?

Table 1.

Votes for main parties after 2007 and 2012 elections, in thousands²⁰

Total vote	2007	2012
Party of Regions	8013	6114
<i>Batkivshchyna</i>	7162	5203
Our Ukraine/People's Self-Defence (2012: Our Ukraine)	3301	226
UDAR	(did not participate)	2844
Communist Party of Ukraine	1257	2686
Lytvyn Bloc	924	(did not participate)
Socialist Party of Ukraine	668	93
Progressive Socialist Party of Ukraine	309	(did not participate)
<i>Svoboda</i>	179	2127

²⁰ T. Olszanski, 'After the parliamentary elections in Ukraine'.

Ukraine and Europe: Ukraine's Civilizational Choice

Grigoriy Perepelytsia

Having obtained its independence as a state, Ukraine faces a whole set of problems in defining its future as a *sovereign* state. The major ones are the problem of civilizational choice, the formation of the political system and the Ukrainian nation, the building of state institutions, and finally, the strategies and principles of its foreign and security policy. Ukraine's path to the EU faces a host of obstacles, and these again are linked to both internal and external factors.

Five Obstacles – Five realities

The first factor concerns the geopolitical position of Ukraine. Its territory is on the fringes of two civilizations: the Eastern Eurasian (Russian) and the Western European. Modern Ukraine has found itself playing the role of a *shared periphery*. The eastern and south-eastern parts of the country are historically and politically focused on Russia, while the western and central parts look to Europe.

From this position, Ukraine has limited capacities to implement its foreign policy interests, as these capacities depend primarily on the quality of relations between the West and the East. Any East/West clash of interests always turns Ukraine into a buffer zone and a medial state. According to the classical geopolitical definition by Collins,¹ such buffer states can lose their sovereignty and territorial integrity. Ukraine occupies precisely such a geopolitical position, as a medial state and a buffer zone.

In the post-Communist transformation processes, Ukraine, like the other former East Bloc countries, faced the challenges of dismantling the Communist political system. All these countries basically rejected the its ideology and embarked on a transition from totalitarianism to democracy by building a free market economy on the ruins of the old planned economy. Over a period of some twenty years, the former

¹ Randall Collins, 'Geopolitics in an Era of Internationalism', *Social Evolution and History*, vol. 1, no. 1, 2002, available at: <http://www.socionauki.ru/journal/articles/130385/>

Communist system countries have gone through these changes – but their paths, and the depth and results, show fundamental differences.

The Central European countries have always been part of political and geopolitical Europe. Nobody has doubted that they belong to European civilization, the European cultural community and to European history. That these countries came to be within the Communist camp was a result of Soviet occupation following the establishment of the Yalta-Potsdam system in Europe. The destruction of this system at the end of the Cold War has, quite naturally, put the withdrawal of Soviet troops from Central Europe and the return of these countries to the rest of Europe through accession to NATO and the EU on the political agenda of Europe.

Due to its geographical location, Ukraine has been part of Europe. But it could not be considered part of *political* Europe and, more specifically, not part of the wider European civilization because it was part of the USSR. The criteria employed by the West in determining the fate of Central Europe could not be applied to Ukraine. It was not seen as having been occupied by Soviet troops and could not expect to be included into the European and Euro-Atlantic community

From this it follows that, if the dominant influence on internal processes and foreign policy of the Baltic States and Central Europe after the Cold War had the EU, NATO and the USA as a source, the former Soviet states were externally influenced by Russia. If the Western influence focused on democratic transformation and economic reforms in the Baltic States and Central Europe, the influence of the Russian factor in the post-Soviet space, including Ukraine, served rather to reverse such processes. So the *first obstacle* which greatly complicates the movement of Ukraine to Europe is its status as a *divided periphery*.

Another structuring difference is the process of nation building in Central Europe, in Ukraine and in other countries of the post-Soviet space. Historically, these processes were associated with the post-imperial and post-colonial transition following the collapse of the Ottoman Empire in the 19th century and the Austrian Empire after the First World War. These collapses offered extensive opportunities for the formation of nations in the Central and Eastern European areas that had been part of these empires. Even before the Second World War, the peoples of these countries had already emerged as fully-fledged European nations, with their own national elites and indeed their own independent national states.

Ukraine, which by and large was a part of the Russian Empire, as well as other national borderlands of Russia, did not have such opportuni-

ties. Connected to the Communist camp, the Central European countries retained their state identity, although their sovereignty was limited by the Soviet Union. The Communist elites of these countries had a clear national identity, and their ruling Communist parties demonstrated a national-Communist disposition, although they professed the principles of internationalism.

The Communist Party of the Soviet Union (CPSU) also praised the principle of internationalism in its domestic and foreign policy, but in reality, its efforts were directed against any national manifestations. Therefore, the Communist Party of Ukraine conducted an overall anti-national policy by trying to turn Ukraine into a social community based on Soviet Russian identity. Thus we see that the *second obstacle* was that Ukraine, unlike Central Europe, simultaneously faced four historic tasks: to create an independent state, to form a Ukrainian nation, to conduct free-market economic reforms, and to establish a democratic political regime.

The third obstacle hindering Ukraine is that its European integration policy has had an *instrumental* rather than an *axiological* character. Integration into the European community has been seen mostly as a matter of political tactics preserving the interests of certain groups in the ruling elite: policies do not reflect the core interests of the state and society.

In short, the basis of European transformation processes in Central Europe was rooted in European democratic values. By contrast, in Ukraine, obtaining state sovereignty was based not on European values, but on a combination of paternalistic attitudes in society as well as *nomenklatura* interests. At the 1991 referendum, the people of Ukraine cast their votes for independence on the basis of material needs and paternalistic motives, hoping to improve their living standards and well-being while living in an independent state.

Democracy, the slogans of which have been employed in Ukraine by all political parties (including the Communist Party), is widely perceived solely as a tool for improving the welfare of ordinary citizens. And Ukraine's European choice is supported by the population, in the expectation that financial aid from the EU will improve the overall economic situation in the country.

The dominance of social populism and paternalism in Ukrainian society complicates the formation of a democratic regime and creates highly favourable conditions for the reproduction of authoritarianism. Such a paternalistic approach generates aspirations among those living in the eastern and southeastern regions of bringing the country back to

the influence of Russia, in hopes of getting cheap gas and thereby improving their living standards. The same paternalistic approach is largely determined by the negative attitude among Ukrainian society to NATO membership, which does not promise any specific material goods.

This does not mean that over time these values will not be important for the formation of the political views of Ukrainians. After all, the Orange Revolution in 2004 unfolded under the slogans of democratic values, not under those of social populism. But the lack of consensus among democratic elites leads to a lack of consolidated democracy, resulting in a return to authoritarianism. If the democratic transformation in Ukraine has been associated with the establishment of political power institutions and has been instrumental in nature, Central European transformations were based on European democratic values.

This instrumental nature of democratic changes was necessary, first of all, for the Communist *nomenklatura* itself, which under the failure of the Communist system privatized economic, natural resources as well as political power in the country. State sovereignty and nation-building were not objectives pursued by the Ukrainian party *nomenklatura*: they saw state sovereignty as a tool for attaining power and control over the economic resources located on its territory, regardless of the union government in Moscow.

Therefore, if the transformation processes in Central and Eastern European countries could be considered as democratic revolutions, Ukraine experienced a *nomenklatura* revolution in 1991. The former Communist elite that consolidated its power to develop the Ukrainian state and consolidate the nation, and it failed in the formation of a consolidated democracy. Its main task was, and remains, control over economic resources and the government institutions in the country.

Symptomatically, it was this process that led the Ukrainian elite to adopt 'Stay Away from Russia' as its major foreign policy slogan in the 1990s. In its concentrated form, this slogan encapsulates the content of President Leonid Kuchma's book *Ukraine is not Russia*. By contrast, for most Central and Eastern European countries the main slogan of transformational changes was to 'Return to Europe'. So the *fourth obstacle* along Ukraine's path toward Europe is that for the Ukrainians ruling elite, a 'return to Europe' was not on the agenda; and the opportunities and challenges which thus needed to be addressed were not deemed politically relevant. Government and society in Ukraine did not see the Soviet troops as 'occupying forces': Ukraine simply *nationalized* them. This may explain why the elite prolonged the Russian military presence on Ukrainian territory first for 20 years

and then for another 25 years until 2042 in Sevastopol (the Black Sea Fleet in Ukraine), thereby increasing the country's dependence on Russia.

What about the Western model of society? In my view, this model was generally unacceptable to the ruling Ukrainian government for economic and political reasons. Paradoxically then, Euro-Atlantic integration has not only become an important aspect of transformational changes in Ukraine: it has actually split society into supporters and opponents. The Party of Regions, the Communist Party and other pro-Russian forces launched a massive anti-NATO campaign in Ukraine, seeking to mobilize their electorate in the eastern and southeastern regions of the country in their struggle for political power in local, parliamentary and presidential elections.² Subsequently, a policy of a return to Europe through reducing Russian influence, upholding national sovereignty, democracy and prosperity failed to become a significant motivation to accelerate the transformation processes for both government and society in Ukraine, compared with the countries of Central Europe.³

Thus, for 20 years, Ukraine has failed to overcome the main problems and resolve the main tasks of the transitional period. State leaders have lacked political will and foresight to implement radical economic reforms, and this has led to an environment conducive to the reproduction of authoritarian rule. To invoke the parallel with Third World countries: overcoming neo-colonialism *could* be considered a main driver for a transformation process towards the formation of a Ukrainian nation, i.e. a united and strong Ukrainian state aiming for European integration. However, the paradox is that Ukrainians do not see themselves as a 'colonized' nation. Moreover, many of those living in the eastern and southeastern regions of the country see themselves as part of a 'Russian world', and identify not with European, but with Russian or Eurasian civilization.

Thus, the *fifth obstacle* for Ukraine's integration into Europe is its *incomplete post-colonial transition*, where one part of country identifies itself not with European, but with the Russian or Eurasian civilization and culture.

² As mentioned by James Sherr in this volume, Yanukovych declared in 2006, after having become Prime Minister, that Ukraine wanted a 'pause' in the relationship. The exact words were that 'Ukraine was not ready for MAP'. [Editor's comment.]

³ Here Ukraine should be compared not with Central Europe, but rather with the Third World countries currently experiencing post-colonial transition. For a long period of its history Ukraine was built into imperial-colonial models of the Russian Empire and the Soviet Union. Today, this model continues to dominate relations between Ukraine and Russia. It combines flaws of both neo-colonialism and imperialism, with Ukraine being considered by Russian society and its political class as a Russian colony *and* a Russian periphery at the same time.

Prospects for Ukraine's relations with Europe

Given the aforementioned obstacles, Ukraine has tried to implement three models of relations with Europe: integration, disintegration and balancing between East and West. These strategies will be analysed in detail below.

The *integration model* of Ukraine's foreign policy was implemented in the period from 2004 to 2010. It was associated primarily with the intention of obtaining both EU and NATO membership. Euro-Atlantic and European integration were declared the main vectors of Ukraine's foreign policy, and the 'Orange Revolution' provided an opportunity to implement these European aspirations for the first time since Ukraine had declared its independence. Following the example of their neighbours, a substantial part of the Ukrainian elite saw the chance to achieve two main strategic objectives simultaneously: to integrate into Europe economically, and in terms of security.

This, however, unleashed a set of paradoxes: first, NATO membership remained the only way for Ukraine to integrate into Europe after the EU had decided to halt its enlargement process, at least temporarily. The paradox was reinforced by the fact that during this period, Ukraine faced a wide range of regional challenges that were almost impossible to resolve without NATO's help. First of all, there was the challenge from Russia itself. Ukraine's status as an independent sovereign state *de facto* contradicts Moscow's vital geopolitical interests. On this backdrop, joining NATO would guarantee the strengthening of Ukraine's sovereignty as well as preserving its independence and territorial integrity. However, mired in constant infighting and having lost credibility in society, the 'orange' government was not enthusiastic about full implementation of a Euro-Atlantic course. Moreover, opponents of the democratic forces were conducting a strong anti-NATO information campaign, with the support of Russia. As a result, the integration model of Ukraine's foreign policy, with its objective of joining the European and Euro-Atlantic community, became a lost opportunity.

As for the *balancing model*, a classic example remains the foreign policy of President Kuchma in the first period of his presidency (1994–1999). It became known as the multi-vector policy, and was conditioned on the following fact: In the post-Cold War period, trends of convergence dominated over trends of confrontation in Europe. Russia was too weak to recover its geopolitical influence in Europe, but still strong enough to retain control over the post-Soviet space it had lost as a result of the collapse of the Soviet Union.

While the West did not try to integrate Ukraine into the European community of nations, it also had no desire to restore the Russian geopolitical power that would bring back the Cold War period. Therefore, Europe, NATO and the USA were interested in preserving the independence of Ukraine. For its part, Ukraine did not seek real integration into Europe (NATO or EU membership). Ukraine's ruling elite were sceptical to NATO membership and security guarantees, in addition to professing values too different from the official EU values. Located between these geopolitical powers, Kiev used its position as a bargaining tool, seeking rapprochement with and support from Europe and the USA, while cultivating good relations with Russia. This policy of counter-balancing was not an integration process, but rather a means for avoiding integration with any system in the axis of Europe–Russia relations. Moreover, this policy gave the elite time to consolidate the Ukrainian state and the political regime in the country without external interference.

However, during Kuchma's second presidency in 2001–2004, this strategy fell apart. Authoritarian tendencies began to dominate in Ukraine, and the establishment of the authoritarian regime of Vladimir Putin in Russia also rendered such a balancing policy ineffective. Moreover, Viktor Yanukovich's attempts at employing Kuchma's policy of balancing between the West and Russia in 2010 took place under fundamentally different geopolitical, external and internal political conditions, and had little chance of success. Instead, it provoked the development of a new foreign policy strategy, which can be termed *double asymmetric integration*: a situation where a country is integrated simultaneously into two opposing directions and two antagonistic systems.

At first glance, this model might seem preferable, since it removes the internal contradictions between the eastern and western regions of Ukraine with their differing geopolitical orientations. It also dampens tensions in relations with Russia connected to Ukraine's integration into the European community of nations (NATO and the EU), and the other way around: Ukraine's relations with the West, if the country should decide to integrate into Russia. However, this should be considered as a dangerous experiment, as it may result in the break-up of Ukraine into (at least) two parts, one integrated into Russia, the other into Europe. And yet, this is the very model that the current Ukrainian government under President Viktor Yanukovich has been trying to implement. Let us take a closer look at its components.

The basic principles of this model are as follows. First comes the construction of a 'new country' on the basis of the restoration of Soviet Russian identity. In Yanukovich's perception, such an identity would

provide the same support for his power as, in the case of Putin and Medvedev, imperial thinking does for Russians. Secondly, there is the modernization of a ‘new country’ with an authoritarian political system. The social and political basis of authoritarianism in Ukraine consists of the corporate interests of big business as well as the state bureaucracy, none of which are interested in the development of a free market economy. Corporatism in this form monopolizes the Ukrainian market and sustains authoritarianism in politics. The construction of such an authoritarian power model – the ‘vertical of power’ – in Ukraine will direct the country’s foreign policy course towards integration with Russia and something similar to Putin’s system of ‘managed democracy’. The third principle entails ensuring an influx of Western technologies and investments – in other words, excluding the possibility of Ukraine being isolated by the West. The goal of this double asymmetrical integration into Europe and Russia is to leverage different vectors of Ukraine’s geopolitical orientation.

Implementation of the concept of double asymmetrical integration in relations with Russia has some specific features, or guiding principles.

1. Replacing the principle of national interests with pragmatism. Minister of Foreign Affairs, Konstantin Gryshchenko,⁴ has given the following interpretation for a pragmatic approach in the foreign policy of Ukraine: ‘It springs to mind that pragmatism is a strategy based on result-oriented tactical behaviour, and a result is something which should be achievable not in a distant, but in a foreseeable future.’⁵ Therefore, pragmatism reduces foreign policy from being a process of forecasting, strategic planning, approval and implementation to become a certain behaviour, oriented not towards long-term strategic perspective but towards certain short-term ‘results’. Applied to Ukraine’s integration into the EU, this would mean not integration on the basis of common values, but to achieve agreements on a visa-free regime, an Association Agreement (AA) and a Deep and Comprehensive Free Trade Agreement (DCFTA), all the while disregarding the value dimension.

Under this pragmatic approach, priorities regarding national interests can also be changed or omitted at the expense of other more fundamental interests – i.e. the pursuit of economic interests at the expense of national security and issues of state sovereignty. This makes possible significant concessions in the field of national security. Indeed, trading off sovereignty for economic preferences is not excluded with-

⁴ Gryshchenko was foreign minister until he was replaced by Leonid Kozhara in January 2013. [Editor’s comment]

⁵ Konstantyn Gryshchenko, ‘Ukraine as the General European Factor’, *Zerkalo Nedeli* 14 January 2011.

in this approach – and that leads us to the second principle of double asymmetrical integration:

2. *Removing ideology from the foreign policy of Ukraine.* Double asymmetrical integration into a democratic Europe and into an authoritarian Russia is not possible without this principle. But its consequences reach deeper. Indeed, it leads to:

3. *De-nationalizing the foreign policy of Ukraine.* Aimed at aligning Ukraine's interests with those of Russia, it involves surrendering the shaping of the entire humanitarian sphere to Russia, thereby sacrificing the protection of Ukrainian national values, interests and identity in relations with Russia. This means that important policy dimensions like the protection of Ukraine from Russian information and cultural expansion, the barring of Russia from interference in Ukraine's internal affairs, and the protection of the Ukrainian language as well as the rights of Ukrainian citizens – all disappear completely from the set of foreign policy priorities. Having de-nationalized its foreign policy, Ukraine expects to get economic preferences from Russia in exchange.

The result of these changes is obvious: *Ukraine has lost sovereignty and the ability to formulate a foreign policy vis-à-vis Russia.* With the implementation of a double asymmetrical integration, Ukraine faces one big problem: the attempt to move simultaneously in two opposite directions cannot compensate for the negative consequences of asymmetry. In the best scenario, the state can reduce the consequences; but under the worst scenario, the double move may enhance the risk that the more powerful subject in this asymmetry will gain the upper hand.

This trend has been evident in the years since this model was implemented. The officially declared aims of the foreign policy are formulated to suit both Ukraine's integration into the European political, economic and legal space (in order to achieve EU membership), as well as a harmonization of relations with Russia to the extent that a strategic partnership should be formed. As the results of this period show, Ukraine has achieved neither of these. The reasons for this failure lie primarily in the contradictions between European integration objectives and the goals of reintegration into the Russian political-economic and humanitarian space on the one hand, as well as the brewing contradictions between the objectives of Ukraine's foreign and domestic policies on the other. The objectives pursued by Ukraine along the Russian vector are in grave contradiction with the objectives of European integration, whereas the transition towards Europe implies a challenge to the Russian reintegration project.

In sum, Ukraine's movement towards one side has provoked a conflict with the other party. The principle of double asymmetric integration declared by Kiev can mean only one thing: stagnation caused by uncertainty about the country's orientation, and subsequent creeping international isolation. To the extent that Ukraine continues with this situation of uncertainty, the country will be isolated by both sides of the conflict. Reintegration into Russia under the banner of resurgent authoritarianism will isolate Ukraine further from the West. Indeed, it is clear that Russia seeks to isolate Ukraine from the West – because if Ukraine joined the European community, that would eliminate any prospects of reintegrating the country into Russia. Indeed, the creation of a DCFTA with the EU significantly weakens the political influence and economic presence of Russia in Ukraine. Moreover, the rules of this zone will prevent the absorption of the Ukrainian economy by Russia and make Russian capital less competitive in the Ukrainian market.

On the other hand, Russia would be satisfied with the reintegration of Ukraine into a pro-Russian union along the lines of the Customs Union or the Eurasian Union. Ukraine's unwillingness to join the Customs Union has already entailed certain actions from the Kremlin, aimed at isolating Ukraine from the Russian market as well as the market of the members of the Customs Union.⁶

Finally, fluctuations in Ukraine's policies only reinforce EU doubts about the sincerity of Kiev's European aspirations. EU politicians view membership in the Eurasian Common Economic Space as incompatible with admission to a free trade area with the EU. This situation creates new reintegration ambitions in Moscow, giving it the opportunity to use not only sticks but also carrots to encourage Ukraine to accept reintegration. To this end, Russia has promised to reduce the price of Russian gas if Ukraine joins the Customs Union. Then, as Putin holds, the Customs Union will negotiate a Free Trade Area with the EU, but from a much stronger position.⁷ In such a situation, the negotiations with the EU would be conducted by Russia – not Ukraine. It is obvious that Ukraine's EU integration through Moscow would also involve a scheme whereby Ukraine's reintegration with Russia will prevent any future western orientation on the part of Ukraine, which will lose its sovereignty by being a member of these Russian-dominated associations.

⁶ Indications of this came with the so-called 'cheese war', where Ukraine accused Moscow that the blocking the export of cheese to Russian markets (under reference to its high content of palm oil) was a tool for pulling Ukraine into the Customs Union. See *Kiev Post*, 13 February 2012, available at: <http://www.kyivpost.com/content/business/ukraine-russia-trade-accusations-in-cheese-war-122352.html> (editor's comment).

⁷ Putin nameren otgovorit Yanukovicha ot blizosti s ES. Available at: http://www.utro.ua/ru/politika/putin_nameren_otgovorit_yanukovicha_ot_blizosti_s_es1301895904.

The efforts of the current Ukrainian government to overcome the asymmetry of integration priorities in the Western and the Eastern directions is an utter fiasco. The concessions made for the sake of the geopolitical interests of Russia have brought about the complete and final rejection of Ukraine's European integration vector, the same scenario employed by Moscow when it forced Kiev to bury its Euro-Atlantic integration intentions. Upholding the EU integration course has also proven impossible under authoritarian modernization, as it runs roughshod over democratic values.

This negative trend will have far-reaching consequences for Ukraine, weakening the positions of the current government: firstly, the government will lose the fight for equal relations with Russia; second, the asymmetric dependence on Moscow will increase significantly; third, it will block asymmetric integration of Ukraine in the European direction and, *finally*, it will be impossible to modernize the country in line with European standards. In this situation, the only way to modernize Ukraine becomes to reintegrate into Russia and its integration associations.

Summing up Kiev's achievements and failures in relations with Russia and the EU, we note that the Ukrainian authorities have tried to find a balance between the Russian and European directions, and to show that non-aligned status may be a way out for the country. Equally obvious, however, is that Ukrainian foreign policy has failed to uphold the balance between the internal aspirations of Yanukovich to maintain a monopoly on power in the country and progress in negotiations with the EU on closer association. It seems inevitable that the 'equal proximity' policy fiasco and the subsequent threat of international isolation and increasing Russian pressure will force Kiev to lean towards the isolationist model in the West/East axis.

An *isolationist model* will significantly reduce the impact of both the West and Russia on the political situation in Ukraine. The model furthermore contributes to concentrating on the internal social and political processes unfolding within the country, such as the integration of the eastern and western parts of Ukraine. In this case, isolationism is seen as a way of strengthening the unity of Ukraine. However, we should not forget that a policy of isolationism may prove productive only under conditions of a viable economy, such as a protected market and sufficient natural resources. In the absence of such conditions and the presence of internal power struggles, each political force will rely on foreign support. Isolationism cannot remove the 'buffer-zone curse' from Ukraine, nor can it prevent Russia from interfering in the internal affairs of Ukraine, even if the standard security orientation of the isolationist model is non-alignment.

Isolationist policies may be motivated by the political and economic interests of the leading political parties or the ruling elite. Here, Ukraine's non-bloc status can be seen as associated with two groups of interests. The first group represents the interests of the regional oligarchic financial-industrial groups, which seek to preserve their own monopoly on the control of the economic resources of the country under conditions of low competition with foreign investors. Political and economic isolationism contributes to upholding such a monopoly, whereas the European and Euro-Atlantic course breaks this monopoly. The second interest group has a predominantly political orientation. This group does not identify itself with Ukraine: it sees the country's neutral status as justified not by national security interests, but by the interests of Russia.

In any case, the isolationist model cannot solve the problem of Ukraine's civilizational choice. This model represents a delayed and uncertain future for Ukraine, making it entirely dependent on the market conditions and volatility of the international situation.

Conclusions

The problem of making a choice in its foreign policy still haunts Ukraine, as it has throughout its independence. The fiasco of the policy of 'equal proximity' or double asymmetric integration is predetermined by the incompatibility between the Western European and Russian political systems as well as the contradiction between the internal and external objectives of this policy. It seems highly probable that, after the failure of the policy of 'equal proximity', Ukrainian foreign policy will evolve towards isolationism.

This is not due solely to external factors. The inability of Ukraine to solve the problem of its geopolitical choice between the West and the East is rooted in the combination of belonging to a shared periphery (defined by the current geopolitical situation), and the internal state of a 'divided society' caused by the Soviet heritage, as well as the incomplete processes of formation of the Ukrainian nation and statehood. Ukraine faces the enormous challenges of de-Sovietization, decolonization, de-Russification, democratization, de-oligarchization, Europeanization – and the formation of a strong political opposition, capable of building consensus between elites, as well as developing a clear strategy for social changes. In Ukraine, de-Sovietization is incomplete; moreover, the advent of the oligarchic-Communist coalition in 2010 promoted a restoration of elements of the Soviet regime and a Soviet social consciousness. Under the influence this restoration, society is has been focusing on the past, not on the future of the country. The failure of de-sovietization has made it impossible to think about implementing a developmental strategy in Ukraine.

Europeanization might provide a wide range of measures for forming European democratic values in Ukrainian society, like the establishment of a political culture and European cultural traditions. All the same, Ukraine itself will still have to manage the second round of transformations from authoritarianism to democracy, if it wants to remain an independent sovereign state and remain a fully-fledged Ukrainian nation.

Appendix: About the Contributors

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