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Ukraine-Konflikt und Rußlandpolitik



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Introduction

This little polemic pamphlet asks questions about the context and development of and reasons for the Ukrainian conflict and calls into question the legal position (“criminal annexation of Crimea”), conclusions (“irremediable violation of international law”) and reactions (economic sanctions and political isolation of Russia from 2014 until 2016 and further?) that are often considered to be unquestionable.

The author sees this as an opportunity to discuss the Ukrainian conflict and European politics towards Russia beyond the same old routine and common confrontational positions, and to get closer to realistic approaches. He considers this approach useful, even necessary, also with regard to quite a number of recent publications on the Ukraine conflict of scientific, political, journalistic and other origin quoted later.

The author finds this position confirmed because convincing arguments lack and those brought up by political actors in Germany and the EU with regard to Russia (ongoing useless embargo policy without any realistic exit strategy) are detrimental or even destructive in their effect. But other reasons support it as well:

- The Ukrainian war (with more than 6 000 fatalities to date) and the Crimean conflict both have a long history. It is at least worth asking about the relevance of this historical dimension for Russia, its government and the majority of its citizens, but also for the Ukraine and its partly Ukrainian, partly Russian citizens.
- The Russian President Putin is often held primarily or even solely responsible for the Ukrainian war. The causal connection between the Soviet Union’s collapse, his policies, and the policy of EU and NATO and their ongoing unlimited Eastern enlargement is rarely taken into consideration.
- Politicians – and journalists – utilize factual claims as political arguments even if these are not as unquestionable as often assumed. And sometimes jurists miss the limits of international law caused by economic and security interests or simply national claims to power.
- Willy Brandt’s and Egon Bahr’s creative formula “change through rapprochement” is still up-to-date in the Ukrainian conflict and may show a way out of this conflict. The EU’s present policy towards Russia causes the opposite of what it has been aimed at: alienation

instead of rapprochement between Europe and Russia. It is the same vice versa with regard to Russia's harsh political reaction towards the EU – and the Ukraine.

- By attempting to associate with and later on integrate six former Soviet Republics, which are still Russia's closest neighbours, into the EU common market, the EU obviously exceeds its political and legal mandate. According to the EU treaty, the functioning and coherence of the Union and its further integration clearly take precedence over any further enlargement. Furthermore, the extension of the "EU's sphere of influence" up to the Russian border goes far beyond the financial capacity and the limitations and legal restrictions of the currently valid EU budget.
- This aggressive policy of the EU and the NATO towards Russia, supported by the USA, combined with the prospect of future enlargement of the "NATO's area of influence" from the river Elbe in Germany 2000 km eastward up to the Eastern border of the Ukraine, is the essential reason for this war. The Majdan revolt was the final trigger.
- On the other hand, the Russian government has to accept the majoritarian will of its Ukrainian neighbours to live in a secure state, legitimized by democratic elections as well as additional empirical survey results, and based on international law. The internal organisation of this secure state – by means of a long overdue reform of the Ukrainian constitution, an inevitable intergovernmental agreement with Russia (concerning borders and their control, minority and transit rights) and a renewed guarantee of its existence and integrity by international treaties – remains the subject for a long lasting peace process far beyond Minsk II. This process will probably need decades as we have learned from experience with other Eastern European conflict areas like the Balkans.
- Similar to all big conflicts (for example the Yugoslav Wars 1991–1995), the Ukrainian war is developing its specific dynamics (ongoing territorial expansion of the separatists, supported with heavy arms by Russia, inability of the Ukrainian and Russian government – as well as the EU – to compromise, supply of Eastern Europe with heavy arms and tanks by the USA). This conflict gained a momentum of its own and can't be managed with sanctions instead of political contacts, activities, exchange of information and negotiations on all levels.

It is strange to watch elected or nominated decision makers, their opponents and addressees acting in the Ukrainian war under similar mechanisms like those described by Christopher Clark (“The Sleep Walkers” 2012) at the beginning of World War I: The main actors filtered ongoing events of world history using narratives composed of their singular personal experiences and held together by fears, projections and interests that were passed off as maxims.

The following 15 hypotheses, partly short, partly detailed, try to combine political, contemporary and scientific views with priority to the political view. Differences in form and length are also results of (or contributions to) the author’s discussions with German and Eastern European academic, political and other partners. Some arguments have been published in a short newspaper article; others on a growing website, which has provoked a lively echo. This is the reason why arguments may be repeated in some parts or overlap in other parts.

This paper version of the pamphlet gives room for notes and responses just as well or even better. Readers are invited to take part in this ongoing debate.

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Summarizing Overview

1. Foreign policy as “penal policy”?

Foreign policy as “political punishment” and a policy of isolation against Russia are unproductive and dangerous for peace and need to be corrected as soon as possible.

2. Euro-Atlantic differences of interest

Differences and sometimes contrasts of interests are to be stated between EU – Germany – USA – Russia – Ukraine. Main losers of politically useless economic sanctions are Russia, Germany and other EU countries, but also the Ukraine, which paradoxically is deemed to be supported by sanctions against Russia. The main winner is the USA.

3. Risk of economic destabilization in Russia

There is a risk of economic and political destabilization of Russia and the East-West-European economic and political relations because the USA, EU, Germany and Russia have different economic interests: from the “Pipeline Embargo” in 1961 to the “Russia Embargo” in 2014 ff.?

The positive alternative: peacekeeping by mutual economic interdependence within a Trans-European energy market including Russia.

4. Politics and confidence

Facing conflicts over power and interests, every durable political cooperation needs a minimum of personal trust between the political actors. The successful „Neue Ostpolitik“ until the gradual opening of the Wall and finally the (re)unification of Germany was based on good and even friendly personal relations between Brandt and Brezhnev as well as Kohl and Gorbachev, followed by Schröder and Putin in a later period. After this successful era of cooperation, the current German policy towards Russia shows deficits compared to the preceding Schröder/Putin era.

5. The core of the conflict

Core of the present Ukrainian conflict is the absence of an adequate position for Russia in a Pan-European security and economic architecture.

Until now, the great political and economic option, which Russian President Putin offered in his historical Berlin Speech before the German Parliament in the Reichstag 2001, was neither understood nor valued by the German governments under Chancellor Merkel for what it was and still might be: a historical chance for Germany and Europe.

6. (Soviet-)Russia's loss of military and political power and influence

One of the most relevant historical experiences engraved in the collective memory of most Russians and their leading elites during the last 25 years is the collapse of the Soviet Union as well as its end and the harmful transformation of the state-socialist system ruling Russia for three quarters of a century. The big retreat of the Soviet-Russian sphere of influence and security of about 2000 km eastwards was accompanied by a gradual enlargement of EU's and NATO's spheres of influence towards the east – both excluding Russia. With regard to these dimensions, the often repeated hypothesis of a „new Russian expansion“ can hardly be upheld.

7. The situation in the Crimea and the Donbass

The legal situation of the Crimea, Sevastopol and Russian activities, including the referendum followed by the incorporation of the Crimea into the Russian Federation, are controversial. Most German and Western commentators consider them unlawful acts which irremediably violated international law and justify economic and political sanctions against Russia. This legal and political point of view is highly questionable and its conclusions are not convincing.

The majority of the population of a constitutionally autonomous Republic with undisputed borders democratically decided to separate from its state and to join a neighbouring state to which it had belonged throughout longer periods of its history. Followed by the legal and administrative incorporation into this state, this is obviously not the typical example of an unlawful annexation violating international law – even if certain circumstances of this procedure were not always in line with national and international law. Moreover, the argument that this procedure as such is irremediably unlawful because of lacking legal grounds in national and international law cannot be upheld. International law knows many examples of international recognition of member states or autonomous regions that had separated from their former central state without any specific constitutional and concretized inter-

nal legal basis to do so. The falling apart of the Soviet Federation, especially the Yugoslav Federation and the gradually following international recognition of seven separate states, particularly the former autonomous province and nowadays Republic of Kosovo, set a precedent for Crimea's separation.

This legal situation makes the difference between the former Autonomous Republic of Crimea and the former administrative districts of Donetsk and Lugansk in the Donbass region. The latter did not enjoy any form of legal autonomy before. Therefore future rights on self-administration or further autonomy can only be based on a constitutional reform of the Ukraine, as it is prescribed in the Minsk II agreement, but still denied by the Ukrainian government in Kiev. Or even in a bilateral Russian-Ukrainian agreement, which, at the moment, is not even part of the debate.

It is also an open question whether the Ukrainian State found itself in a pre-revolutionary situation of civil war in consequence of the Majdan Revolt or not. In this situation the support of separatist activities from the outside (i. e. in Kiev by the West and in the Donbass and the Crimea by Russia) can no longer be characterised as a violation of national integrity – unless one simply disregards the first and “Western” part of the development of the Ukrainian conflict.

8. Politically questionable and legally doubtful western sanction and isolation policy towards Russia

The legal grounds of the sanctions imposed and implemented by the USA, the EU and Germany as well as other member states are doubtful. It is an open question whether international customary law beyond the collective peacekeeping mechanism of the UN Charter provides a clear legal basis for embargo activities which are violating personal, legal and even human rights, property rights and legitimate economic interests of states, enterprises and individuals who are not or rarely involved in the conflict at all. Similar objections arise with regard to EU law. Besides open legal questions, there is no rational and realistic exit strategy out of the embargo policy. Last but not least: Obviously, and confirmed by OSCE, international and humanitarian law is not just violated by the only addressee of sanctions, namely Russia, but also the Ukraine. So what about the further legitimacy of unilateral sanctions against Russia?

9. The threefold dilemma of Russia, the Ukraine and the EU

Russia is, like the Ukraine and unlike central European countries like Poland, one of the Eastern European countries with the longest state socialist and the shortest democratic history in Europe. Both countries can neither economically nor socially or legally compete with the European market and the EU's political model. The amount of financial support necessary to enable the Ukraine to become a successful and – according to the Association Agreement 2014 – fully integrated participant of the European Common Market goes far beyond the integrative capacity of the EU as well as the limits and legal conditions of its budget. And even if the Ukraine would at last succeed in further approximating the EU, this would very likely cut off all former privileged conditions of Russian-Ukrainian economic exchange. The Russian counteraction to reduce its economic relations with Europe and intensify them with China and Asia might, on the other hand, ruin the great Russian-German and -European “partnership for modernisation”.

10. The conflict between Russia, Ukraine and EU caused by the Ukraine-European Union Association Agreement

Arising differences during the negotiation process culminated before, during and after signing and ratifying the Ukraine-EU Association Agreement. The fact that Russia has been excluded for more than a decade from all previous negotiations because the EU and the former President of the European Commission Barroso considered this merely „a bilateral question“ turned out to be a grave political failure from the very beginning. None of the Russian Pan-European initiatives has been seriously taken into consideration by the EU and the German government. Postponing some parts of the agreement until the end of 2015 is a first, but not at all sufficient step to avoid further negative consequences. It was realised much too late within the European Commission that additional negotiations including Russia would be necessary because until then, only one third of Ukraine's foreign trade was with the EU, the other third, temporarily even more, had been with Russia. To date, neither the EU-Commission nor the German government developed or offered any substantial concept to solve this dilemma that would be attractive for Russia. And which would allow the Ukraine to be an economic and political partner not exclusively for one side, but for both.

11. War on the minds – mutual political effects of historical traumata

Every war, including the present Ukrainian war, is also a war on the minds. It happens by mutual discrimination through new Ukrainian and Russian legislation, manipulation of the public opinion, and administrative practices to the recent point of war propaganda and repressive activities against minorities in both countries. And in both countries, the propaganda is multiplied by the media, especially by the state-owned or state-controlled media. Unfortunately, quite a number of press commentaries and reports in Germany also lack objectivity and rather confirm hidden or open anti-Russian prejudices. The Russian trauma caused by the German aggression in World War II and the more than 25 million soviet victims, mostly Russians and Ukrainians, is still a lively political fact. This has not been adequately understood by either European or German policy makers who should know better. And this chapter of German-Russian history has not yet led to sufficient political attempts of a sustainable policy of reconciliation, comparable to that with France and more recently with Poland.

12. Russian inferiority

The Russian Federation is the largest country in the world. Beside its size there is geographical, historical, and cultural diversity, which in combination with differences in development cause weakness at the same time. The USA's huge military budget is more than seven times higher than the Russian one, and the military budget of all NATO states together is more than ten times higher. From an economical, technological and also socio-political point of view, Russia as well as the Ukraine are not able to compete on the European Common market. This situation may last for decades and is another argument against the totally misguided EU-Ukraine Association Agreement and its medium-term aim of "full market integration". This fact may also explain why a remarkable number of the Russian population feels threatened by EU's and NATO's unlimited and ongoing Eastern enlargement and why even more than 80 percent of Russians support the current policy of their president Putin.

13. "European values" and their limits in the global politics of interest

The priority of law and legal values over political and economic power can be executed within a constitutional democracy by means of jurisdiction, police, and other legal democratic instruments. This is also

the case – with some essential exceptions – in the “European judicial area”. It is not nor will it be the case in the near future in the open and fragmented judicial area of international law. Despite their claim for universality, basic legal principles are and will be limited to a certain extent by economic and security interests of states, especially of super-powers like the USA – but also of Russia. Russia is, like the Ukraine, one of the European countries with the briefest democratic history on the long way to a democratic state of law – Russia’s “democratization” is not and cannot be a legitimate political aim of German or European “value-based politics” – the “Russian way” is up to the Russians.

14. Change by rapprochement

Elements of a renewed German and European policy towards Russia – eight steps to get out of the crisis.

15. The Ukraine conflict – touchstone of European policy of peace beyond the EU and its borders

It is doubtful whether the current positions of the conflicting parties are able to produce a basis for a stable East-West-balance of interests. Despite unanimous EU-resolutions on the embargo policy, public opinion in Europe and Germany differs. A warning proclamation of well known politicians and elder statesmen and a less convincing contra-proclamation of experts in Eastern European affairs led to controversial reactions. A re-thinking and renewal of political principles exercised by all conflict parties is needed: from the EU and the NATO as well as from the Ukrainian and the Russian government.

The debate is going on. Or maybe it just starts right now?