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Geneva Jean Monnet Working Papers

05/2017



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Geneva Jean Monnet Working Paper 05/2017

Christine Kaddous, Director

Ramses Wessel, Co-editor of this Paper presented at the
ESIL Interest Group Workshop “The European Union as a Global Actor”

Centre d'études juridiques européennes

Centre d'excellence Jean Monnet

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ISSN 2297-637X (online)
© Alexandra Hofer 2017
Université de Genève – Centre d'études juridiques européennes
CH-1211 Genève 4

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Publications in the Series should be cited as:
AUTHOR, TITLE, Geneva Jean Monnet Working Paper No ./YEAR [URL]

EU Restrictive Measures as International Law Enforcement: The Case of the Ukrainian Crisis

by

Alexandra Hofer*

Abstract

This paper assesses how the EU's restrictive measures contribute to the enforcement of legal norms the EU considers to be essential. For the purpose of our analysis, we have chosen to focus on the measures in place against Russia since 2014 for its alleged violation of Ukraine's territorial and sovereign integrity. By applying a so-called constructivist approach, we demonstrate that the restrictive measures have had a counterproductive effect because they contribute to the hostile relationship between the EU and Russia; each actor views the other as a threat and bases its response on this perception. Contrary to encouraging Russia to cease its policy in the Ukraine, the sanctions give Russia incentive to continue its actions in the region, which gives the EU incentive to pursue its sanctions policy, etc. We conclude that the EU should focus on tools that promote dialogue and communication, which would bridge the gap and help Russia no longer perceive the EU as a threat. This may then have the effect of encouraging Russia to demilitarize in Ukraine.

Keywords: EU restrictive measures; Ukrainian crisis; effectiveness of coercive sanctions; social constructivism; political identity

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EU Restrictive Measures as International Law Enforcement: The Case of the Ukrainian Crisis

I. Introduction

The EU's restrictive measures are located at the intersection of the EU's role as a global actor in international relations and in international law. Indeed, if such measures are essentially qualified as foreign policy tools, they are adopted in order to, *inter alia*, 'influence policies *violating international law or human rights*, or policies disrespectful of the rule of law or democratic principles'.² Restrictive measures adopted under its Common Foreign and Security Policy shall be guided by the principles of 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law'.³ Not only are the EU's actions guided by these principles, through its international relations the organization seeks to advance them in the wider world.⁴ For instance, restrictive measures have been adopted against Bosnia and Herzegovina, the Central African Republic and Syria for, amongst other allegations, human rights violations. Consequently, the EU's sanctions are sometimes adopted in response to violations of international law,⁵ in particular human rights and the UN Charter. When this is the case, the EU appears as an actor that seeks to uphold international legal norms it considers essential.⁶ In an effort to evaluate the EU's role as a global actor that enforces international law, this article proposes to study whether or not the organization's restrictive measures are an efficient means for the EU to achieve this objective. In other words, it is submitted that

² EEAS, 'Common Foreign and Security Policy' (CFSP) < https://eeas.europa.eu/topics/sanctions-policy/420/common-foreign-and-security-policy-cfsp_en > last accessed 28 November 2016. Emphasis added.

³ Art. 21(1) TEU.

⁴ *Ibid.*, as well as Art. 3(5).

⁵ The word 'sometimes' is used in this sentence because when the EU adopts measures in response to violations of democratic principles (as was the case of the restrictive measures adopted against Belarus) it cannot be considered to be responding to violations of international law in as much as such principles are non-legal values. See also: DELCOURT Barbara, 'Au nom de quoi sanctionner et punir?', *Revue internationale et stratégique* (2015), vol. 97(1), pp. 79-87, p. 82.

⁶ By responding in this way to breaches it is not directly affected by it is adopting measures that constitute decentralized enforcement of international law. See: TAMS Christian, 'Individual States as Guardians of Community Interests' in FASTENRATH Ulrich, GEIGER Rudolf, KHAN Daniel-Erasmus, PAULUS Andreas, VON SCHORLEMER Sabine, and VEDDER Christoph (eds), *From Bilateralism to Community Interest, essays in honour of Bruno Simma*, Oxford, Oxford University Press (2011), 1376 p., pp. 379-405, p. 381 and footnote 9; WHITE Nigel and ABASS Ademola, 'Countermeasures and sanctions' in EVANS Malcolm D., *International Law*, Oxford, Oxford University Press (2010), 952 p., pp. 531-558, p. 531; BEAUCILLON Charlotte, *Les Mesures Restrictives de l'Union Européenne*, Bruxelles, Bruylant (2014), 712 p., pp. 179-180.

by studying the effect of the EU's restrictive measures in response to violations of international law, we can learn more about the organization's influence it seeks to uphold essential community norms.⁷ It is therefore beyond the scope of this piece to address the legal nature of the EU's restrictive measures.⁸ Instead, our focus is the *political* effect of the sanctions on the targeted State. In particular, we explore whether or not these sanctions help strengthen compliance with international law by applying a sociological approach to the issue. As Hirsch writes, 'sociological examination may also suggest some better legal mechanisms for coping with new challenges faced by international law, such as [...] enhancing compliance with international law'.⁹ Our case-study consists of the EU's restrictive measures against the Russian Federation in the context of the Ukrainian crisis. Indeed, seeing as the EU characterized Russia's behaviour in Ukraine as an aggression in breach of the UN Charter Article 2(4),¹⁰ part of the EU's measures can be explained as a response to the violation of international law in an attempt to enforce compliance. Though it is, of course, difficult and not advisable to draw general conclusions from one case study, it is hoped that this paper's findings could be applied to other situations where sanctions have been imposed in response to violations of international law and contribute to existing research.

Initially, the EU adopted restrictive measures in response to the misappropriation of Ukrainian State funds and human rights violations in Ukraine.¹¹ This article will however focus on the subsequent sanctions adopted in response to the violation of Ukraine's territorial integrity.¹² The first set of these measures were implemented on 17 March 2014, following the referendum held in Crimea on reunification with the Russian Federation and the region's subsequent annexation by the Kremlin. These measures consisted of targeted sanctions, imposing travel restrictions and asset freezes against persons 'responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of

⁷ See, e.g., PORTELA Clara, *European Union Sanctions and Foreign Policy – when and why do they work?*, New York, Routledge (2010), 206 p., p. xiv: 'the question of [restrictive measures'] efficacy has major consequences for the debate on the nature of the EU as an international actor'

⁸ On this issue, see, e.g. Beaucillon, *supra* note 6. For a specific-case study, though not on the sanctions against Russia, see: DUPONT Pierre-Emmanuel, 'Countermeasures and Collective Security: The Case of the EU Sanctions Against Iran', *Journal of Conflict and Security Law* (2012), vol. 17(3), pp.301-336, p. 301.

⁹ MOSHE Hirsch, *An invitation to the sociology of international law*, Oxford, Oxford University Press (2015), 240 p., p. 2.

¹⁰ UNGA Verbatim Record, 27 March 2014, UN Doc A/68/PV.80, p. 5 (European Union); European Council, Extraordinary meeting of EU Heads of State or Government on Ukraine, 'Statement', Brussels, 6 March 2014, para. 3 < <http://www.consilium.europa.eu/en/meetings/european-council/2014/03/06/> >; Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L 78/16, [4]; Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L 229/13.

¹¹ Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L 66/26.

¹² A timeline of European measures taken in the context of the crisis is available here: European Council, 'Timeline - EU restrictive measures in response to the crisis in Ukraine' < <http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/history-ukraine-crisis/> >. See also Summary of EU Legislation, 'EU restrictive measures in view of actions destabilising the situation in eastern Ukraine' < http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:25_2&rid=1 > Accessed 21 February 2017 >.

Ukraine'.¹³ Following the downing of the Malaysian Airlines flight MH17 in July 2014, of which Russian-backed separatists are believed to be responsible, further sanctions were adopted against the Russian Federation for its 'actions destabilising the situation in Ukraine'.¹⁴ These consisted of sanctions targeting Russia's financial and energy sectors as well as a ban on arms, related materials and dual-use goods. Their proclaimed objective is to send a 'powerful signal to the leaders of the Russian Federation: destabilising Ukraine, or any other Eastern European neighbouring State, will bring heavy costs to its economy' and will cause Russian isolation.¹⁵ At present, the lifting of the European measures is dependent upon Russia's implementation of its obligations under the Minsk Agreements and its contribution to the peaceful settlement of the dispute with Ukraine.¹⁶ The Agreement calls for, *inter alia*, an immediate ceasefire, the withdrawal of heavy weaponry and foreign armed formations, military equipment and mercenaries.¹⁷ In September 2016, 'in view of the continuing undermining or threatening of the territorial integrity, sovereignty and independence of Ukraine', the EU decided that the targeted sanctions should remain in place until March 2017.¹⁸ In December 2016, finding that Russia had not implemented the Minsk Agreements, the sectoral sanctions were further extended until 31 July 2017.¹⁹ On 7 February 2017, the EU indicated its commitment to maintaining the sanctions against Russia until compliance with the Minsk agreements is achieved.²⁰ At the time of writing, one could therefore assume that the EU is once again set to renew the restrictive measures.²¹

Seeing as the EU adopted restrictive measures in response to Russia's internationally wrongful act, the question that arises is whether or not these measures are an effective tool to encourage Russia to change its behaviour and cease its wrongful act. In the following sections, we will proceed to articulate the methodology that will be used in order to assess

¹³ Council Decision 2014/145/CFSP, *supra* note 10, Article 1(1). For a discussion on the measures adopted in March 2014, see BEAUCILLON Charlotte, 'Crise ukrainienne et mesures restrictives de l'Union européenne : quelle contribution aux sanctions internationales à l'égard de la Russie ?', *Journal du droit international* (2014), vol. 3, pp.1-16, p. 10.

¹⁴ Council Decision 2014/512/CFSP, *supra* note 10; Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L 229/1

¹⁵ European Council, 'Statement by the President of the European Council Herman Van Rompuy and the President of the European Commission in the name of the European Union on the agreed additional restrictive measures against Russia' (29 July 2014) EUCO 158/14 < https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/144158.pdf>.

¹⁶ The question that arises is whether the Minsk Agreements are legally binding. We will not address the legal character of the Agreements here; instead it suffices to say that the EU considers that the Agreements are a means through which Russia can cease its alleged wrongful act in Ukraine. Consequently, at the very least, the Agreements are a policy tool that aims at enforcing international law.

¹⁷ 'Minsk agreement on Ukraine crisis: text in full' *The Telegraph* (12 February 2015) <http://www.telegraph.co.uk/news/world-news/europe/ukraine/11408266/Minsk-agreement-on-Ukraine-crisis-text-in-full.html>.

¹⁸ Council Decision (CFSP) 2016/1671 of 15 September 2016 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2016] OJ L 249/39.

¹⁹ Council Decision (CFSP) 2016/2315 of 19 December 2016 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2016] OJ L 345/65.

²⁰ O'KANE Michael, 'EU & UK foreign ministers reaffirm commitment to Russia sanctions' *European Sanctions*, 7 February 2017, < <https://europeansanctions.com/2017/02/07/eu-uk-foreign-ministers-reaffirm-commitment-to-russia-sanctions/>>. See also EEAS, 'Remarks by the HRVP Federica Mogherini at the press conference following the Foreign Affairs Council' (Brussels, 6 February 2017) <https://eeas.europa.eu/headquarters/headquarters-homepage/20031/remarks-hrvp-federica-mogherini-press-conference-following-foreign-affairs-council_en> both accessed 21 February 2017

²¹ The restrictive measures stemming from Decision 2014/145/CFSP, *supra* note 10, are therefore likely to be renewed in March 2017.

their effect on the Russian State (Parts II and III) before concluding on their effectiveness as an enforcement measure (Part IV).

II. Evaluating the effectiveness of EU restrictive measures as an enforcement mechanism

At the outset, when discussing the ‘effectiveness’ of sanctions – whether adopted by the EU or another entity – it is important to be clear about what we mean by the term and on what basis it can be measured.²² The Oxford Dictionary defines effectiveness as ‘the degree to which something is successful in producing a result’.²³ A sanction will therefore be considered effective, or successful, if it achieves the result desired by the policy-makers who adopted it;²⁴ consequently, it is first necessary to determine the policy objective behind the EU’s restrictive measures (section A). The next step is to determine the appropriate methodology for evaluating whether or not the sanction enabled the goal to be achieved (section B).

A. Determining the policy objective: the coercive nature of the EU’s restrictive measures

In initial sanctions studies, the dominating view was that sanctions were adopted in order to pressure the target State into changing its behaviour. It follows that sanctions were mainly considered to serve a *coercive* function and that they were considered to be effective if they caused the target to adjust its policies in the manner desired by the sender. For example, Doxey wrote that ‘an effective sanction in any political system is one which succeeds in producing the desired behavioural response from the individual or group to which it is communicated’.²⁵ In another study, economic sanctions were defined as ‘tool[s] for coercing target governments into particular avenues of response’.²⁶ The same logic seems to be applicable to targeted sanctions,²⁷ which includes the EU’s restrictive measures.²⁸

²² BALDWIN David, ‘The sanctions debate and the logic of choice’, *International Security* (2000), vol. 24(3), pp. 80-107, p. 87

²³ Consequently, effectiveness and success are used interchangeably throughout the paper. ‘effectiveness, n’ (*OED Online*, OUP) <<https://en.oxforddictionaries.com/definition/effectiveness>>.

²⁴ PORTELA, *supra* note 7, 13. See also BIERSTEKER Thomas J, Sue E. ECKERT and Marcos TOURINHO, ‘The effectiveness of United Nations Targeted Sanctions’ in Thomas J BIERSTEKER, Sue E. ECKERT and Marcos TOURINHO (eds), *Targeted Sanctions, the impacts and effectiveness of United Nations action*, New York, Cambridge University Press (2016), 405 p., p. 229: ‘effectiveness is understood broadly as a function of two variables: the overall policy outcome of each purpose, and the distinct contribution of [the sanctions] to that outcome.’

²⁵ DOXEY Margaret, ‘International Sanctions: A Framework for Analysis with Special Reference to the UN and South Africa’, *International Organization* (1972), vol 26(3), pp. 527-550, p. 529.

²⁶ HUFBAUER Gary, Jeffrey SCHOTT, Kimberly Ann ELLIOT and Barbara OEGG, *Economic sanctions reconsidered*, Washington D.C., Peterson Institute for International Economics (2007), 3rd ed., 233 p., p. 5.

²⁷ Since the grave humanitarian consequences of the comprehensive UN sanctions against Iraq, the preferred policy is to adopt ‘smart’ or ‘targeted’ sanctions, which (in principle) affect only the individuals responsible for the undesired behaviour without causing collateral damage to the innocent population. For an account of this transition see PORTELA Clara, ‘Are European Union sanctions “targeted”’, *Cambridge Review of International Affairs* (2016), vol. 29(3), pp. 912-929, pp. 914-915

²⁸ See, e.g., PORTELA, *supra* note 7, p. 4 and ERIKSSON Mikael, *Targeting Peace: Understanding UN and EU sanctions*, Great Britain, Ashgate (2011), 306 p., pp. 3 and 14.

Nevertheless, scholars have demonstrated that this may be a limited understanding of sanctions. Biersteker, Tourinho and Eckert criticize the ‘conventional wisdom on sanctions’, arguing that policy-makers may have a variety of goals in mind and that sanctions can be adopted for multiple policy objectives that are not necessarily coercive.²⁹ Drawing from the experience of the EU’s restrictive measures, Giumelli identified three types of objectives these measures may achieve: coerce, constrain and signal.³⁰ Coercive sanctions, as previously stated, seek ‘to change the behaviour of the target’ or its policy objective; constraining sanctions are defined as ‘an effort to thwart a target from pursuing a policy’ by impairing its operational capacity; and finally, signalling sanctions send a message to one or more targets by highlighting the absence of broad international social acceptability of the target’s policy.³¹ The purpose of the sanction can change over time; sanctions can also serve multiple purposes simultaneously.³²

If we recognize that sanctions serve a variety of functions, an additional challenge emerges. Indeed, though States and international organizations provide justifications for the reasons the sanctions are adopted, publicly stated goals are not always the most reliable source.³³ Nevertheless, in the absence of other forms of proof, public declarations will serve as the benchmark for determining the policy objective of the restrictive measure.³⁴ Based on the facts and justifications provided by the EU and according to the criteria provided by Giumelli, the restrictive measures can be said to have a coercive purpose.³⁵ The EU appears to seek to pressure Russia into changing its behaviour towards Ukraine and into complying with the Minsk Agreements, and thus enforce compliance with one of the most fundamental principles of international law. It follows that they will be considered successful if they induce the targeted State to cease its wrongful act and comply with its international obligations.³⁶ This is not to say that EU sanctions against Russia do not have other objectives,³⁷

²⁹ BIERSTEKER et al, *supra* note 24, 220-222, 225-226. See also: JONES Lee and PORTELA Clara, ‘Evaluating the “Success” of International Economic Sanctions: Multiple Goals, Interpretive Methods and Critique’, Research Collection School of Social Sciences (2014), pp. 1-20, pp. 4-5 and pp. 8-13. Available at http://ink.library.smu.edu.sg/soss_research/1671

³⁰ GIUMELLI Francesco, ‘The purpose of targeted sanctions’ in Biersteker et al, *supra* note 24, pp. 38-59. GIUMELLI Francesco ‘From effective to useful sanctions: lessons learned from the experience of the European Union’ in RONZITTI Natalino (ed.), *Coercive diplomacy, sanctions and international law*, Leiden, Brill Nijhoff (2016), pp. 246-269, pp. 256-258.

³¹ BIERSTEKER et al, *supra* note 24, 225-226; GIUMELLI ‘The purpose of targeted sanctions’, *supra* note 30, pp. 21-23.

³² GIUMELLI ‘The purpose of targeted sanctions’, *supra* note 30, pp. 48-49.

³³ PORTELA, *supra* note 7, 13; JONES and PORTELA, *supra* note 29, p. 8.

³⁴ PORTELA followed the same reasoning, PORTELA, *supra* note 7, p. 13.

³⁵ See also GIUMELLI, ‘From effective to useful...’, *supra* note 30, pp. 256-257, comparing the coercive strategy adopted with EU sanctions applied against Syria and Russia: ‘In such cases, the aim of the EU is to alter the behaviour of the targets’; KRAUSE Joachim, ‘Western Economic and Political sanctions as instruments of strategic competition with Russia – Opportunities and Risks’ in RONZITTI, *supra* note 30, pp. 270-286, pp. 270-271.

³⁶ We of course recognize the risks of such a narrow definition of restrictive measures, see ERIKSSON, *supra* note 28, pp. 15-16 on the dependency between the definition of sanctions and sanctions outcome, but for the purpose of this article we believe that this narrow approach is justified.

³⁷ GIUMELLI, ‘From effective to useful...’, *supra* note 30, p. 258: ‘the decision to sanction Russia for the Crimea annexation (...) bore important signals about the seriousness of the EU leadership to deal with serious challenges’; KRAUSE, *supra* note 35, p. 280, on the symbolic nature of some of the sanctions; JONES Lee, *Societies under siege: exploring how international economic sanctions (do not) work*, Oxford, Oxford University Press (2015), 238 p., p. 186, arguing that the March 2014 targeted sanctions against Russian businessmen and banks serve to demonstrate that European policymakers are ‘doing something’. HELLQUIST Elin, ‘Either with us or against us? Third-country alignment with EU sanctions against Russia/ Ukraine’, *Cambridge Review of International Affairs* (2016), vol. 29(3), pp. 997-1021, p. 997, on the ‘normative power’ of the EU’s restrictive measures against Russia.

however, within the framework of this article – whether or not the EU’s restrictive measures are an appropriate tool to enforce international law – it makes sense to place emphasis on the restrictive measures’ coercive capacity.³⁸

Having identified the goal of the EU’s restrictive measures, the next step is to determine the proper methodology for measuring their effectiveness. Bearing in mind that this exercise ‘is not an exact science but a logical process of analysis and a discursive practise’,³⁹ we will demonstrate why we believe a sociological approach on the measures’ effectiveness is appropriate.

B. A sociological approach to the effectiveness of coercive sanctions

The debate on measuring the effectiveness of coercive sanctions has known many steps in political science literature. It is beyond the scope of this article to provide a precise overview of the discussion, suffice it to recall that the conventional understanding of sanctions was formulated by Galtung in his assessment of the UN sanctions against Rhodesia in the 1960s: ‘the more value-deprivation’ the sanctions cause, ‘the more political disintegration’ is expected,⁴⁰ which he dubbed the ‘naïve theory of sanctions’. This understanding of sanctions has been refined and contested over the decades.⁴¹ Nevertheless, the effect of coercive sanctions is most commonly determined by taking into account the impact on the target and the cost borne by the sender; such an assessment is expected to determine if sanctions are able to bring about the desired policy outcome at a lesser cost than other policy tools.⁴² This logic was applied to comprehensive sanctions and remains so even with the shift to coercive ‘smart’ sanctions,⁴³ which, as in the case of Russia, can also encompass entire sectors.⁴⁴ However, it is not because economic costs, or other forms of pressure, can be inflicted that political gain is guaranteed. Even if the sanctions are arguably successful in imposing economic discomfort, this does not mean that the target is not able to work around them.⁴⁵ For these reasons, the environment in which sanctions are expected to work merits

³⁸ After all, inducing a State that is ‘responsible for a violation of international law to resume compliance with its international obligation (...) does not take place with place with sweet talk, but with coercive (economic) force’ in TZANAKOPOULOS Antonios, ‘The Right to be Free from Economic Coercion’, *Cambridge Journal of International and Comparative Law* (2015), vol. 4(3), pp. 616-633, p. 617.

³⁹ GIUMELLI, ‘From effective to useful...’, *supra* note 30, p. 253.

⁴⁰ GALTUNG Johan, ‘On the effects of international economic sanctions: with examples from the case of Rhodesia’, *World Politics* (1967), vol. 19(3), pp. 378-416, p. 388.

⁴¹ For an overview of the debate since 1967, see BIERSTEKER et al., *supra* note 24, pp. 221-225; ERIKSON, *supra* note 28, pp. 9-14; JONES and PORTELA, *supra* note 29, pp. 3-4, 5-7; GIUMELLI ‘From effective to useful...’, *supra* note 30, pp. 248-250.

⁴² GIUMELLI ‘From effective to useful...’, *supra* note 30, p. 252; BALDWIN, *supra* note 22, pp. 85-86.

⁴³ Recall the statement made by the President of the European Council and the President of the European Commission: ‘destabilising Ukraine, or any other Eastern European neighbouring State, will *bring heavy costs to its economy*’ (emphasis added), *supra* note 15. See also GIUMELLI, *supra* note 30, p. 45: the objective of coercive sanctions ‘is to change the behaviour of targets by imposing a cost on some misconduct in order to affect targets’ cost/benefits calculation in a way that change of behaviour becomes more likely’.

⁴⁴ This is also the case of the American and EU sanctions targeting Iran’s oil and gas sector, DUPONT, *supra* note 8, pp. 318-319.

⁴⁵ On Russia’s economic resilience see KRAUSE, *supra* note 35, pp. 282-283; HELLQUIST, *supra* note 37, p. 1008: the EU measures against Russia hit ‘crucial economic sectors (energy, arms, financial sectors) and is likely to have contributed to the collapse of the rouble and the general economic crisis’.

study, an issue that Jones took into account in his study on economic sanctions. Recognizing that sanctions do not work in a vacuum but are context-specific, Jones posited that it is important to study the actual influence of sanctions on the society of the target State.⁴⁶ Using this study as inspiration for our analysis of the EU restrictive measures against Russia, our focus will be on the targeted State in order to consider how the sanctions have affected Russian decision-making. To paraphrase Jones, understanding how sanctions work is analytically prior to studying whether or not they are effective.⁴⁷ We will therefore study how the Russian decision-makers have been impacted by the measures before concluding on their effectiveness as a tool for international law's enforcement. Indeed, if the goal of the sanctions is to change undesirable Russian behaviour, it is necessary to understand their impact on those responsible for the contested behaviour. Within this framework, the first step is to understand how Russia's policy in the Ukraine came into existence. In other words, we need to understand the elements that made this behaviour possible. In order to assess these factors, we have chosen to draw insight from a sociological approach to foreign policy, constructivism.⁴⁸

One of constructivism's main premises is that social structures are not natural but constructed by agents – such as States – that possess their own sets of identities, norms, values and interests.⁴⁹ A State will assess the actions of another State and choose the appropriate reaction based on its identity and how it interprets and defines the other State's action. This flow of action-reaction is what leads to the creation of a given social structure.⁵⁰ Constructivists therefore turn to ideational variables such as identity, values, norms and interests in order to understand how they contribute to the State behaviour that leads to the creation of a given structure.⁵¹ Throughout our own analysis on understanding Russian policies and how they are influenced by European restrictive measures, emphasis will be placed on Russian identity; indeed 'identities are the most proximate causes of choices, preferences, and

⁴⁶ JONES, *supra* note 37, p. 6.

⁴⁷ *Ibid.*, p. 8.

⁴⁸ On the other hand, Jones applied social conflict analysis in his study. His theoretical choice is justified by the coercive purpose of the sanctions he analysed, which aimed at causing regime change in South Africa, Myanmar and Iraq, thus changing the power structure in the targeted States. In our case study, the EU's restrictive measures are coercive but the declared aim is to pressure Russia into ending its destabilizing policy in Ukraine and complying with the Minsk Accords, thus influencing the State's behaviour. Second, whereas Jones was focused on the economic impact of the sanctions (indeed, he wanted to study to what extent economic pressure caused political transformation), here we will not study how the economic costs of the restrictive measures have influenced Russian decision-makers. Instead, we are interested in non-material impact of the EU's measures. This decision is based on the fact that we consider that policy-makers are deeply influenced by ideational factors taken into account by constructivists.

⁴⁹ Agents and structures are 'mutually constituted', see e.g. CHECKEL Jeffrey 'The Constructivist Turn in International Relations', *World Politics* (1998), vol. 50, pp. 324-348, p. 328.

⁵⁰ This is illustrated by WENDT Alexander, 'Anarchy is what States Make of it: The Social Construction of Power Politics', *International Organization* (1992), vol. 46, pp. 391-425, pp. 404-406. See also RISSE-KAPPEN Thomas, 'Democratic Peace-Warlike Democracies? A Social Constructivist Interpretation of the Liberal Argument', *European Journal of International Relations* (1995), vol. 1, pp.491-517, p. 491.

⁵¹ HIRSCH Moshe, 'The Impact of the Advisory Opinion on Israel's Future Policy: International Relations Perspective', *Journal of International Law and International Relations* (2005), vol. 1, pp. 319-344, p. 338; HIRSCH, 'Invitation to...', *supra* note 9, p. 13.

action'.⁵² In this study, identity encompasses how the actor defines itself and how it positions itself towards others.⁵³ In order to uncover these invisible but highly influential variables, our methodology will consist of a study of Russian discursive practices from the beginning of the Ukrainian Crisis to the present day.⁵⁴ A study of narratives and storylines will provide insight into how Russian officials view the role of the Russian State within international relations and how they position themselves towards Ukraine and the EU. Finally, we will take into account the position the restrictive measures have in their discourse. We will focus on the discourse emanating from Russian State officials, mainly President Putin and Prime Minister Medvedev, in the course of interviews and public statements, as well as the speeches given by representatives of the Russian Federation in international forums.

III. The effect of the sanctions on Russia's behaviour

We begin by attempting to understand the Bear's main identity traits and what motivated the Kremlin to annex Crimea and support the rebels in Eastern Ukraine⁵⁵ (section A) before determining the effect of the EU's restrictive measures on Russian policy-makers (section B).

A. Understanding Russia's Policy in Ukraine

According to Hopf, 'the predominate elite discourse of Russian national identity makes the annexation of Crimea and the arming of rebels in Donetsk and Luhansk sensible'.⁵⁶ He argues that Russian policies in the Ukraine can be understood as the result of (i) Russia's

⁵² HOPF Ted, 'The promise of constructivism', *International Security* (1998), vol. 23(1), pp. 171-200, p. 174, footnote 10.

⁵³ We draw this definition from HOPF supra note 52), p. 175: 'Identities perform three necessary functions in a society: they tell you and others who you are and they tell you who others are. In telling you who you are, identities strongly imply a particular set of interests or preferences with respect to choices of action in particular domains, and with respect to particular actors. The identity of a state implies its preferences and consequent actions. A state understands others according to the identity it attributes to them, while simultaneously reproducing its own identity through daily social practice.' We also refer to HOUGHTON David P., 'Reinvigorating the Study of Foreign Policy Decision Making: Toward a Constructivist Approach', *Foreign Policy Analysis* (2007), vol. 3, pp. 24-45, p. 36: 'Identities allow us to assign meaning, both to ourselves and others, making the world a more intelligible place'; see also HIRSCH, 'An invitation...', supra note 9, pp. 93-95 on the concept of 'social identity'.

⁵⁴ Indeed, 'the social world is a world of human consciousness that includes language, signals, and understanding among human beings, and especially groups such as states' HIRSCH, supra note 9, p. 12. See also: HOPF Ted, *Social Construction of International Politics*, Ithaca, US, Cornell University Press (2002), 320 p., p. 1: 'each identity has associated with it a collection of discursive practices'; HIRSCH, supra note 9, p. 97: 'language (...) and the construction of social identity are inextricably linked. (...) Collective narratives and memories often contribute to the emergence and maintenance of social identities'; DOTY Roxanne, 'Foreign Policy as Social Construction: A Post-Positivist Analysis of U.S. Counterinsurgency', *International Studies Quarterly* (1993), vol. 37(3), pp. 297-320, in particular pp. 302-309.

⁵⁵ DOXEY Margaret, *Economic sanctions and international enforcement*, London, Macmillan (1979), 161 p., p. 132: 'the circumstances which contributed to the adoption of policies which the international community deems offensive also merit attention'.

⁵⁶ HOPF Ted, "'Crimea is ours": a discursive history', *International Relations* (2016), vol. 30(2), pp. 227-255, p. 244.

identity⁵⁷ and its understandings of Western politics⁵⁸ coupled with (ii) the circumstances that arose in Ukraine.⁵⁹

With regard to the first point, President Putin's annual presidential addresses to the Federal Assembly,⁶⁰ since his re-election in 2012, project as Russia a strong, stable and sovereign State that upholds conservative and universal values.⁶¹ At the end of 2014, Putin explained that Russia 'faced trials that only a mature and united nation and only a truly sovereign and strong state can withstand. Russia proved that it can protect its compatriots and defend truth and fairness.'⁶² Putin's speeches place emphasis on domestic policy and Russian society and economy. The Russian State is presented as a work in progress;⁶³ it faces difficulties but takes on the challenge, knowing that along the process it will only become stronger. When foreign policy is addressed, Putin does not place Russia in opposition to any specific State. Instead 'the Other' are the States that are described as immature and arrogant; these States also irresponsibly intervene in other States' internal affairs. In this way, Putin (implicitly) places Russia in opposition to American unilateralism and to States that follow US policies. Whereas a superpower acts unilaterally and imposes its way of being on other States, as a leader within a multilateral world Russia seeks to foster partnerships based on equality and, importantly, dialogue. Consequently, Russia's leadership role is placed in opposition to the 'superpower' that seeks hegemony.⁶⁴ The Other also comprises States that do not recognize or respect Russia as an equal nor as a strong, sovereign State.⁶⁵ Finally, Russia is to be distinguished from weak, fragmented States that are easily influenced. It expects its partners to recognize and respect its 'legitimate interests' and its identity as a strong State.⁶⁶ According to Putin, America is 'always influencing Russia's relations with its

⁵⁷ *Ibid*, p. 227: '[I]n the last 10 years, Russia understood itself as becoming authentically Russia, delinked from identification with the West, and rejecting most of its Soviet past, but increasingly identifying with Imperial Russia'.

⁵⁸ According to Hopf's analysis, Russia believes it has been humiliated and ridiculed by the West since the end of the Cold War: 'Disappointed by US unilateralism after 9/11, Russian hopes to be a multilateral partner of the United States and the West were dashed, pushing it to establish its own unilateral regional hegemony', *ibid*, p. 244. On the effects of US unilateralism and the expansion of NATO, see *ibid*, pp. 232-233, p. 244, pp. 246-247. See also Address by President Putin to the UNGA, UNGA Verbatim Record (28 September 2015) UN Doc A/70/PV.13, 24.

⁵⁹ HOPF, 'Crimea is ours'..., *supra* note 56, p. 246.

⁶⁰ On the value of 'state of the union like speeches' see HYMANS Jacques, *The Psychology of Nuclear Proliferation, identity, emotions and foreign policy*, Cambridge, Cambridge University Press (2006), 273 p., pp. 50-51.

⁶¹ President Putin, 'Presidential Address to the Federal Assembly' (the Kremlin, Moscow, 12 December 2013) <<http://en.kremlin.ru/events/president/news/19825>> 'Presidential Address 2013'; President Putin, Presidential Address to the Federal Assembly (the Kremlin, Moscow, 1 December 2016) 'Presidential Address 2016' <<http://en.kremlin.ru/events/president/news/53379>>.

⁶² President Putin, 'Presidential Address to the Federal Assembly' (the Kremlin, Moscow, 4 December 2014), <<http://en.kremlin.ru/events/president/news/47173>> 'Presidential Address 2014'.

⁶³ As articulated by HOPF, *supra* note 56, p. 238 and p. 242.

⁶⁴ 'Presidential Address 2013', *supra* note 61; See also HOPF, *supra* note 56, p. 233 and pp. 238-239.

⁶⁵ See, e.g., Putin's reference to Turkey in President Putin, 'Presidential Address to the Federal Assembly' (the Kremlin, Moscow, 3 December 2015) <<http://en.kremlin.ru/events/president/news/50864>> 'Presidential Address 2015'.

⁶⁶ 'Presidential Address 2014', *supra* note 62: 'If for some European countries national pride is a long-forgotten concept and sovereignty is too much of a luxury, true sovereignty for Russia is absolutely necessary for survival. (...) [E]ither we remain a sovereign nation, or we dissolve without a trace and lose our identity'; 'Presidential Address 2016' *supra* note 61): 'We do not want confrontation with anyone. We have no need for it and neither do our partners or the global community. Unlike some of our colleagues abroad, who consider Russia an adversary, we do not seek and never have sought enemies. We need friends. But we will not allow our interests to be infringed upon or ignored. We want to and will decide our destiny ourselves and build our present and future without others' unasked for advice and prompting. At the same time, we desire well-intentioned and equal dialogue and we affirm the principles of justice and mutual respect in international affairs. We are ready for a serious discussion on building a stable system of international relations for the 21st century'; See also: UNGA, 'Statement by H.E. Mr. Sergey V. Lavrov, Minister of Foreign

neighbours, either openly or behind the scenes’.⁶⁷ Therefore, in relation to Europe, Russia places itself as equal, if not superior to, its Western neighbour: ‘Russia has come to be understood as the True Europe, while Western Europe is a corrupted version occupied, influenced, and suborned by the United States.’⁶⁸

With regard to the second point, the circumstances that arose in Ukraine, the Ukrainian crisis can also be understood as a competition for influence between the EU and Russia in Eastern Europe.⁶⁹ In Russian discourse, ‘Ukraine itself and Ukrainians are always referred to as fraternal by Putin and Medvedev’.⁷⁰ In contrast to the EU, Russia presents itself as a Nation that cares about Ukraine’s wellbeing. According to Putin, Crimea and Sevastopol ‘have invaluable civilisational and even sacral importance for Russia, like the Temple Mount in Jerusalem for the followers of Islam and Judaism.’⁷¹ On the other hand, as expressed in Russian discourse, ‘Ukraine is merely a geopolitical playground for some Western politicians’.⁷² Indeed, the Russian narrative on Ukraine’s rapprochement with the EU through the Association Agreement was framed in terms of severe economic costs for Ukraine. Medvedev described the Agreement as a form of neo-colonialism and as a means for the EU to dictate rules to Ukraine, which included convincing Kiev to reduce its cooperation with Russia.⁷³ Hence, the Kremlin believes that Western leaders are encouraging Ukraine to diminish its ties with Russia at the former’s disadvantage.

From the Russian perspective, as the Ukrainian crisis unfolded, the US and EU closed off all opportunities for dialogue: ‘All the arguments that Russia and Ukraine are members of the CIS free-trade zone, that we have deep-rooted cooperation in industry and agriculture, and basically share the same infrastructure – no one wanted to hear these arguments, let alone take them into account.’⁷⁴ Seeing as they refused dialogue, Russia took the measures necessary ‘to protect [their] legitimate interests unilaterally.’⁷⁵ Additionally, the EU was accused of stirring up the Ukrainian population, leading to the Maiden protests that undermined Ukrainian democracy⁷⁶ and eventually causing the ousting of Yanukovich.

Affairs of the Russian Federation, at the 71st session of the UN General Assembly’ (23 September 2016) <<https://gadebate.un.org/en/71/russian-federation>>.

⁶⁷ ‘Presidential Address 2014’, *supra* note 62.

⁶⁸ HOPF, *supra* note 56, pp. 235-236. See also WHITE Stephan and FEKLYUNINA Valentina *Identities and foreign policies in Russia, Ukraine and Belarus: the other Europes*, Basingstoke, Palgrave Macmillan (2014), 350 p., p. 110.

⁶⁹ MARTUCCI Francesco, ‘La réaction multidimensionnelle de l’Union européenne dans la crise ukrainienne’, *Journal de Droit International* (2014), vol. 3, in particular para. 44 ; BEAUCILLON *supra* note 13), para. 3; For a more nuanced analysis of this issue see DRAGNEVA Rilka and Kataryna WOLCZUK, *Ukraine Between the EU and Russia : the Integration Challenge*, Basingstoke, Hampshire, Palgrave MacMillan (2015), 148 p..

⁷⁰ HOPF, *supra* note 56, p. 245 and pp. 247-248.

⁷¹ ‘Presidential Address 2014’, *supra* note 62.

⁷² UNSC Verbatim Record (3 March 2014) UN Doc S/PV.7125, p. 4 (Russia).

⁷³ Dimitri Medvedev, ‘Russia and Ukraine: Living by new rules’ (15 December 2014) <<http://government.ru/en/news/16118/>>; see also UNSC Verbatim Record (1 March 2014) UN Doc S/PV.7124, p. 4 (Russia).

⁷⁴ ‘Presidential Address 2014’, *supra* note 62; see also ‘Full Text of Putin’s speech on Crimea’ *Prague Post* (19 March 2014) <<http://www.praguepost.com/eu-news/37854-full-text-of-putin-s-speech-on-crimea>>.

⁷⁵ ‘Presidential Address 2014’, *supra* note 62.

⁷⁶ UN Doc S/PV.7124, *supra* note 73, pp. 4-5 (Russia); UN Doc S/PV.7125, *supra* note 72, p. 3 (Russia); Address by ‘President Putin to the UNGA’, *supra* note 58, p. 26.

The events in east Ukraine are described as the result of great concern caused by the anti-government uprisings in Kiev and anti-Russian demonstrations.⁷⁷ Ukraine, and especially the south-eastern region and Crimea, were therefore under threat. Russia consistently argues that the rights and interests of the people of the Donbass region should be respected.⁷⁸ During the build-up to the Crimean referendum, Russian officials argued that their government was asked to assist Crimea by the ‘legitimate authorities’ of the region.⁷⁹ Given the fraternal ties between Russian and Ukrainian peoples, the Russian government had a duty to respond to the request for assistance. Indeed, in reaction to these unsettling events, the Russian Ministry of Foreign Affairs emphasized that ‘Ukraine is a friendly and fraternal state for Russia, its strategic partner, and we will use all our influence to help this country live calmly and in peace.’⁸⁰ It should be highlighted that Russia denies it sent troops in east Ukraine⁸¹ and that it has a different version of the events that occurred in Crimea in February 2014; President Putin has explained the latter in the following manner:

We did not make war, nor did we occupy anyone; (...) We used the Armed Forces only to stop more than 20,000 Ukrainian service members stationed there from interfering with the free expression of will by the residents of Crimea. (...) In Crimea, there was no violation of international law. Under the United Nations Charter, every nation has the right to self-determination.⁸²

Further, Russian leaders deny that they provide support to the rebels in Donetsk and Luhansk.⁸³

Russia’s negative view of NATO’s expansion to Eastern Europe should also be taken into account.⁸⁴ As Hopf explains, it was absolutely essential that NATO be prevented from integrating Ukraine, as this would have made the region impenetrable to Russia.⁸⁵ From the Russian perspective NATO – as a leftover of the Cold War – remains an obstacle to European reunion. Despite the guarantees made to Russia at the end of the Cold War that NATO would not turn eastwards,⁸⁶ its membership of former Soviet countries has increased. To President Putin, this is a sign that the West was not interested in overcoming

⁷⁷ UN Doc S/PV.7124, *supra* note 73, pp. 3-5 (Russia); UN Doc S/PV.7125, *supra* note 72, pp. 3-4 (Russia).

⁷⁸ Address by President Putin to the UNGA, *supra* note 58, p. 26.

⁷⁹ UN Doc S/PV.7124, *supra* note 73, p. 5 (Russia); UN Doc S/PV.7125, *supra* note 72, p. 3 (Russia).

⁸⁰ ‘Statement of the Russian Ministry of Foreign Affairs regarding the situation in Ukraine’ (19 February 2014) <http://www.mid.ru/en/press_service/spokesman/official_statement/-/asset_publisher/t2GCdmD8RNlr/content/id/75606>.

⁸¹ Although according to some reports Putin has admitted that Russian troops were in Ukraine: OLIPHANT Roland and Rozina SABUR, ‘Vladimir Putin admits: Russian troops “were in Ukraine”’ *The Telegraph* (17 December 2015) <<http://www.telegraph.co.uk/news/worldnews/vladimir-putin/12054164/Vladimir-Putins-annual-press-conference-2015-live.html>>.

⁸² See President Putin’s explanation here: President Putin, ‘Interview to German newspaper Bild. Part 1’ (Sochi, 5 January 2016) <<http://en.kremlin.ru/events/president/news/51154>>; ‘Full Text of Putin’s speech on Crimea’, *supra* note 74.

⁸³ Instead they claim they are sending humanitarian aid or that they have intelligence officers in the region: RUYTS Tom and VERLINDEN Nele, ‘Digest of State Practice 1 July – 31 December (2014)’, *Journal on the Use of Force and International Law* (2015), vol. 2(1), pp. 119-162, pp. 122-127; RUYTS Tom, Luca FERRO and Nele VERLINDEN, ‘Digest of State Practice 1 July – 31 December (2015)’, *Journal on the Use of Force and International Law* (2016), vol. 3(1), pp. 126-170, p. 129.

⁸⁴ WHITE and FEKLYUNINA, *supra* note 68, p. 118. See also ‘Interview to German newspaper Bild. Part 1’, *supra* note 82.

⁸⁵ HOPF, *supra* note 56, p. 247. See also ‘Full Text of Putin’s speech on Crimea’, *supra* note 74.

⁸⁶ This narrative is hinted at by President Putin, ‘Interview to German newspaper Bild. Part 1’, *supra* note 82. See also GORBATCHEV Mikhail Sergueïevitch, ‘De la chute du mur de Berlin au risque d’une nouvelle guerre froide’, *Revue internationale et stratégique* (2015), vol. 97, pp. 16-22, pp. 18-20. This narrative remains heavily contested, for example CLARKE Christopher and SPOHR Kristina ‘Moscow’s account of NATO expansion is a case of false memory syndrome’ *The Guardian* (24 May 2015) <<https://www.theguardian.com/commentisfree/2015/may/24/russia-nato-expansion-memory-grievances>>. Nevertheless, an

past divides with the Soviet Union but that they wanted to take advantage of being at the ‘pinnacle of world fame, power and prosperity (...). They wanted to reign’.⁸⁷ Medvedev has described NATO’s policy towards Russia as unfriendly and obdurate.⁸⁸

In conclusion, it is suggested that Russia reacted dominantly, or aggressively, in response to Ukraine’s rapprochement with Europe and NATO, which would have damaged Russia’s fraternal and economic ties with Kiev, hurt Ukraine’s wellbeing and threaten Russia’s security interests. The question then is whether or not the EU’s restrictive measures succeed in dissuading this perception of threat within Russian decision-makers and may encourage the pursuit of less aggressive policies in Ukraine. As we will see below, the sanctions seem to have the opposite effect.

B. The impact of the EU’s restrictive measures on Russian decision-makers

As Gomez and Nivet write : ‘les sanctions internationales sont (...) révélatrices de l’environnement international dans lequel elles se déploient et du rôle qu’entendent y jouer différents types d’acteurs’.⁸⁹ With regard to the EU, Delcourt has suggested that the EU’s sanctions policy ‘correspond assez bien à l’image de puissance civile et libérale que les institutions européennes convoquent régulièrement’.⁹⁰ Indeed, promoting international legal norms has become an integral part of the EU’s identity; the TEU provides that the EU should use its external relations to promote, *inter alia*, respect for the principles of the UN Charter and international law. With regard to the Ukrainian crisis, the EU’s response appears to be based on its values and principles.⁹¹ Thus, when the crisis reached its peak in Crimea, the Heads of State or Government of EU Member States issued a statement on 6 March 2014, whereby they claimed that the EU ‘has a special responsibility for peace, stability and prosperity in Europe’.⁹² They further condemned Russia’s actions in Ukraine as a violation of international law and highlighted that:

The European Union's and the Russian Federation's common objective of a relationship based on mutual interest and respect of international obligations needs to be promptly restored. It would be a matter of great regret if the Russian Federation failed to work in that direction, and in particular if it continued to refuse to

article from the *New York Times* points to the ambiguities and mixed messages that were created during diplomatic discussions between the USA, West Germany and the Soviet Union: SAROTTE Marie Elise, ‘Enlarging NATO, expanding confusion’ *NY Times* (29 November 2009) < http://www.nytimes.com/2009/11/30/opinion/30sarotte.html?_r=0>. See also SAROTTE Marie Elise, ‘A Broken Promise? What the West really told Moscow about NATO Expansion’ *Foreign Affairs* (Sept./Oct. 2014) < <https://www.foreignaffairs.com/articles/russia-fsu/2014-08-11/broken-promise>> and SHIFRINSON Joshua R. Itzkowitz, ‘Russia’s got a point: the US broke a NATO promise’ *Los Angeles Times* (30 May 2016) < <http://www.latimes.com/opinion/op-ed/la-oe-shiffrinson-russia-us-nato-deal-20160530-snap-story.html>>.

⁸⁷ Interview to German newspaper Bild. Part 1’, *supra* note 82; Address by President Putin to the UNGA, *supra* note 58, 26.

⁸⁸ MEDVEDEV Dimitri, ‘Speech at the panel discussion’ (Munich Security Conference, Munich, 13 February 2016) < <http://government.ru/en/news/21784/>>; See also MEDVEDEV Dimitri, ‘Interview with Euronews TV Channel’ (Munich, 14 February 2016) < <http://government.ru/en/news/21789/>> and MEDVEDEV Dimitri ‘Interview with Time Magazine correspondent Simon Shuster’ (Munich, 15 February 2016) < <http://government.ru/en/news/21790/>>.

⁸⁹ GOMEZ Carole & Bastien NIVET, ‘Sanctionner et punir. Coercition, normalisation et exercice de la puissance dans une société internationale hétérogène’, *Revue internationale et stratégique* (2015), vol. 97, pp. 61-68, p. 65.

⁹⁰ DELCOURT, *supra* note 5, p. 83. See also HELLQUIST, *supra* note 37, p. 999.

⁹¹ MARTUCCI, *supra* note 69, para. 4.

⁹² European Council, ‘Statement’, *supra* note 10, para. 3.

participate in a productive dialogue with the Government of Ukraine. We have today decided to take actions ...⁹³

These actions included measures that the EU Council adopted on 3 March 2014 – in response to the announcement that a referendum would take place in Crimea in 16 March – deciding to suspend bilateral talks with Russia on visa matters and on the new EU-Russia agreement. The EU further threatened to consider restrictive measures if Russia were to continue its destabilizing policies.⁹⁴ In reaction, during discussions at the UN Security Council, the Russian representative stated:

[t]hose who (...) are threatening sanctions and boycotts of all kinds are the very partners who have consistently encouraged political forces close to them to engage in ultimatums, to reject dialogue, to ignore the concerns of southern and eastern Ukraine, and ultimately to polarize Ukrainian society. We call on them to adopt a responsible approach, to set aside geopolitical calculations and to place the interests of the Ukrainian people above all else.⁹⁵

Despite attempts at countering the referendum,⁹⁶ the vote took place and Crimea and Sevastopol were integrated into the Russian Federation on 17 March. Whereas Russia described this as a historical reunification⁹⁷ that did not violate international norms,⁹⁸ the EU considered it as a violation of Ukraine's sovereignty and territorial integrity, amounting to an aggression⁹⁹ and adopted restrictive measures. In retaliation, Russia adopted its own sanctions under the guise of 'emergency measures' in August 2014, restricting trade in agricultural products from EU Member States.¹⁰⁰

Taking into account Russian identity, as expressed in Putin's presidential addresses, and its reasons for intervening in Ukraine, one would not expect Russia to give into European pressure. Indeed, not only would it appear that Russia is blaming the EU for behaving irresponsibly in the Ukrainian crisis and for hurting opportunities for dialogue, Russia is also working around the sanctions imposed against it. Whereas the EU wants the Russian Federation to feel the costs of the sanctions, the ban on exportations to Russia in technol-

⁹³ *Ibid*, para. 4.

⁹⁴ See, e.g., European Council, 'Remarks by Herman Van Rompuy on Ukraine' (Brussels, 6 March 2014) <<http://www.consilium.europa.eu/en/meetings/european-council/2014/03/06/>>.

⁹⁵ UN Doc S/PV.7124, *supra* note 73, p. 4 (Russia).

⁹⁶ Following, for example, the Russian veto against draft resolution S/2014/189 during UN Security Council meeting, 15 March 2014, UN Doc S/PV.7138.

⁹⁷ 'President Address 2014', *supra* note 71.

⁹⁸ 'Full Text of Putin's speech on Crimea', *supra* note 74. See also MALKSOO Lauri, *Russian Approaches to International Law*, Oxford, Oxford University Press (2015), 225 p., pp. 180-183.

⁹⁹ See *supra* note 10. The EU also sponsored and voted in favor of 'Resolution on the Territorial Integrity of Ukraine of 27 March 2014' (1 April 2014) UN Doc A/RES/68/262.

¹⁰⁰ President of Russia, 'Executive order on applying certain special economic measures to ensure the security of the Russian Federation' <<http://en.kremlin.ru/events/president/news/46404>>. These measures were adopted against the EU, the USA and States that had aligned themselves with their policies.

ogy is presented as an opportunity to develop Russian industry and improve Russian agricultural production as the necessary steps are being taken to substitute European and American food imports.¹⁰¹ In his 2016 Presidential Address, President Putin stated that:

two years ago, we encountered serious economic challenges and a difficult situation on global markets. We found ourselves facing sanctions that were an attempt to get us to dance to another's tune and ignore our own fundamental national interests. But let me say again that the main reasons for our economic slowdown are to be found above all in our internal problems (...).¹⁰²

Interestingly, whereas we may expect States under sanctions to blame the sanctioners for their economic difficulties, Russian officials are doing the opposite. By placing the emphasis on internal issues they are diminishing the influence of external factors. At most, the EU sanctions are an annoyance. Despite the fact that it has been excluded from the G8,¹⁰³ Russia has avoided isolation by participating in other high-level meetings, founding cooperation and partnerships with other States and actively participating in the Syrian crisis, making it a crucial actor in the conflict as it encouraged the signing of a cease-fire in Astana in early 2017.

Russia explains that the sanctions against it are part of a policy that seeks to demonize Russia as a threat to the EU, NATO and the US. It further argues that the sanctions hurt relations between Russia and the West.¹⁰⁴ According to Putin, 'unilaterally imposed sanctions circumventing the UN Charter have all but become commonplace today. They not only serve political objectives, but are also used for eliminating market competition'.¹⁰⁵ In his 2014 Presidential Address, Putin explained that even if the crisis in Ukraine had not arisen

[the West] would have come up with some other excuse to try to contain Russia's growing capabilities, affect our country in some way, or even take advantage of it. (...) whenever someone thinks that Russia has become too strong or independent, these tools are quickly put into use.¹⁰⁶

During the Munich Security Conference in February 2016, Medvedev called for an end of the deterrence policy against Russia and for the establishment of trust between Russia and

¹⁰¹ See documents from the Russian Government website: 'Import substitution in industry and the agro-industrial complex of the North Caucasus' (29 July 2015) <<http://government.ru/en/news/19079/>>; 'First meeting with government on import substitution' (11 August 2015) <<http://government.ru/en/news/19246/>>; 'A meeting on sectoral import substitution programmes' (3 April 2015) <<http://government.ru/en/news/17521/>>; 'Meeting of the Government Commission on Import Substitution' (3 October 2015) <<http://government.ru/en/news/19937/>>. 'Presidential Address 2014', *supra* note 62: 'the so-called sanctions and foreign restrictions are an incentive for a more efficient and faster movement towards our [development] goals'. 'Presidential Address 2015', *supra* note 65, on the improvements made in agriculture thanks to import substitution. MENON Rajan and RUMER Eugene, *Conflict in Ukraine: the unwinding of the post-Cold War order*, Cambridge, MA, MIT Press (2015) 220 p., pp.90-93, on Russia's 'economic nationalism' in response to the sanctions.

¹⁰² 'Presidential Address 2016', *supra* note 61.

¹⁰³ For President Putin's response to being excluded from the G8 see 'Interview to German newspaper Bild. Part 2' (Sochi, 5 January 2016) <<http://en.kremlin.ru/events/president/news/51155>>.

¹⁰⁴ 'Speech at the Panel Discussion', *supra* note 88.

¹⁰⁵ Address by President Putin to the UNGA, *supra* note 58.

¹⁰⁶ 'Presidential Address 2014', *supra* note 62. See also 'Interview to German newspaper Bild. Part 1', *supra* note 82; 'Full Text of Putin's speech on Crimea', *supra* note 74.

Europe. He also remarked that ‘ideological stereotypes, double standards and unilateral actions do not ease but only fan tensions in international relations’.¹⁰⁷ Putin has made similar comments:

[I]f someone is not happy with our stance, they could find a better option than declaring us an enemy every time. Would not it be better to listen to us, to critically reflect on what we say, to agree to something and to look for a common solution?¹⁰⁸

It would therefore appear that the sanctions represent a threat to Russia. They are also described as a foolish and harmful decision that aims at imposing stigmatization and punishment. From Medvedev’s perspective: ‘[t]hey told us we were the bad guys and had to be punished. (...) They have always been trying to intimidate us with some sanctions, which were introduced even in the Soviet period, many times.’¹⁰⁹

In response to the EU’s justification that Russia needs to fulfil its obligations under the Minsk Agreements, Russian officials continuously reiterate that the Ukrainian authorities are stalling the cease-fire and failing to respect their end of the deal. We can, for instance, refer to the following statement by Putin:

Everyone says that the Minsk Agreements must be implemented and then the sanctions issue may be reconsidered. This is beginning to resemble the theatre of the absurd because everything essential that needs to be done with regard to implementing the Minsk Agreements is the responsibility of the current Kiev authorities.¹¹⁰

Consequently, Russia is contesting the re-adoption of the restrictive measures on the basis that the Agreements are not properly respected by Ukraine. In this way, Russia denies that it carries any responsibility in the Ukrainian crisis; this gives the impression that the EU’s sanction policy is unreasonable. On the other hand, Russia frames its operations in Ukraine in a manner that is positive for the Ukrainian people, for example by respecting the Crimean people’s right to self-determination or by providing humanitarian aid.

In conclusion, it is worth quoting Medvedev’s comments on the effect the sanctions have had on Russia’s policy-makers:

The next question is whether [the EU] really punished us. Perhaps they gave us some uncomfortable moments. Bad? Not really. We are developing. We live and naturally, we’ll survive. Have the Russian authorities changed their political position? They have not. Are they supported by the Russian people? You know very well that they are and they have support that no other political authority has because nobody likes it when their country is pushed around. Therefore, responsibility for these sanctions is borne by the entire European Union and other countries that supported them. (...) [W]e’ll never ask for these sanctions to be lifted. They’ll come and say: Let’s finally put an end to this because nobody is better off for it; everyone is only the worse off.¹¹¹

¹⁰⁷ ‘Speech at the Panel Discussion’, *supra* note 88.

¹⁰⁸ ‘Interview to German newspaper Bild. Part 1’, *supra* note 82.

¹⁰⁹ ‘Interview with Euronews TV Channel’, *supra* note 88.

¹¹⁰ ‘Interview to German newspaper Bild. Part 1’, *supra* note 82; ‘Speech at the panel discussion’, *supra* note 88; ‘Interview with Euronews TV Channel’, *supra* note 88. See also LUKASHEVICH Alexander, Permanent Representative of the Russian Federation to the OSCE, ‘Remarks at the OSCE Permanent Council meeting’ (Vienna, 28 July 2016) <http://www.mid.ru/en/web/guest/maps/ua/-/asset_publisher/ktn0ZLTvbbS3/content/id/2375991>.

¹¹¹ ‘Interview with Time Magazine ...’, *supra* note 88.

From this perspective, Russian officials will not give into coercion and change their behavior in Ukraine. Russia presents itself as being accustomed to being pressured by Western States; the restrictive measures are framed as yet another attempt to weaken Russia's growth. Instead of weakening Russia, the sanctions are used as an opportunity for self-improvement and for fostering ties with States in other regions. According to Medvedev, the EU should 'have the courage to say, guys, we'll just scrap all this from day X, and could you please reciprocate by lifting your response measures as well'.¹¹² In this sense, it is not Russia that needs to change its behavior but the European Union.

IV. Conclusion: the efficacy of the EU's restrictive measures in enforcing international law in the Ukrainian crisis

The aim of our analysis was to determine whether, as a policy instrument, restrictive measures are an effective means for the EU to contribute to the enforcement of international law using the Ukrainian crisis as our case-study. Based on the above, it seems that Russia's understanding of Western policies in Ukraine and NATO's expansion towards the East caused Russia to feel its fraternal ties with Ukraine were threatened and act aggressively. In response, the EU believed the norms it wants to defend in the 'wider world' were threatened and responded by adopting coercive measures. It follows that each actor continues to view the other as a threat and bases its response on this perception.¹¹³ Taking into account the fact that the perception of threat caused the Kremlin to pursue its destabilizing policy in the first place and that the sanctions are framed as a Western tool to weaken and punish Russia, the restrictive measures are not successful in encouraging Russia to change its policy. Further, Russia denies that it holds any responsibility in the Ukrainian crisis, making it difficult for the Kremlin to recognize – or even admit – that it needs to change its behaviour in order for the issue to be resolved. Seeing as the sanctions have contributed to promoting a situation of mutual distrust between the EU and the Russian Federation, it would seem that the restrictive measures have not only been ineffective at enforcing international law, but counterproductive.¹¹⁴ Contrary to encouraging Russia to cease its policy in the Ukraine, the sanctions give Russia incentive to continue its actions in the region. Instead of being enforced, international law is continuously violated.

Because sanctions can serve multiple purposes, if, as we conclude here, the EU restrictive measures against Russia are ineffective at coercing it to change its behaviour, this does not mean that the sanctions are unsuccessful at achieving other goals. Other studies could, for example, argue that the sanctions are successful at stigmatizing Russia or at signalling its

¹¹² 'Interview with Euronews TV Channel', *supra* note 88.

¹¹³ As noted in FORSBERG Tuomos and HAUKKALA Hiski, *The European Union and Russia*, Basingstoke, Hampshire, Palgrave MacMillan (2016), 328 p., p. 247: 'once the crisis over Ukraine had erupted, both parties were in fact ready to think the worst about the intentions and actions of the other'.

¹¹⁴ As Giumelli notes: 'sanctions are instruments and, as such, they can be useful, useless or counterproductive' in GIUMELLI 'From effective to useful...', *supra* note 30, p. 251.

disapproval with Russian policies. However, if the effect of stigmatization or signalling would be to make the target more ‘intransigent’, one may wonder what the added value would be. It may help the EU construct its social role as the promoter of fundamental principles of international law, yet this may come at the price of causing further antagonisms in international relations and harm to international law’s enforcement.

Our findings can contribute to understanding the effect of the EU’s restrictive measures on the development of international law’s enforcement as they may inspire us to look for sociological understandings of the effect of the EU’s restrictive measures in other States where the EU seeks to enforce compliance with international legal norms, in particular human rights.¹¹⁵ It appears that States are willing to pay a very high price in order to save face¹¹⁶ and uphold their sense of identity. These costs should be taken into account in evaluating policies that aim at influencing a State that has violated international law to changing its behaviour and ceasing its wrongful act. As the EU values and has an interest in promoting peaceful relations between States and contributing to the respect of international law in Europe, then it would be in the organization’s interests to consider changing strategies and adopting policies that would have a more positive influence on Russian decision-makers. The EU could consider tools that promote dialogue and communication, which would bridge the gap and help Russia no longer perceive the EU as a threat. As one author writes, ‘diplomacy in all cases, and inducements in some, may produce better results’.¹¹⁷ If the EU would be willing to make this strategic shift it may have the effect of encouraging Russia to demilitarize in Ukraine.

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¹¹⁵ As discussed by HIRSCH, *supra* note 9, in Chapter 4. See also JAEGAR Mark Daniel, ‘Constructing sanctions: rallying around the target in Zimbabwe’, *Cambridge Review of International Affairs* (2016), vol. 29(3), pp. 952-969, p. 952, discussing ‘sanctions conflicts’ as social constructions.

¹¹⁶ Gries has described the ‘face’ as the ‘self displayed before others’; see GRIES Peter Hays *China’s New Nationalism, pride, politics and diplomacy*, Berkeley, University of California Press (2005), 215 p., p. 20. Gries’ warning on Chinese nationalism may be worth taking into account in the context of interactions with Russia: ‘If Western (...) policies to not consider how Chinese nationalism is shaped by interactions with the West and evolving narratives of the national past, they may well push Chinese nationalism in a malevolent direction,’ at *ibid*.

¹¹⁷ DOXEY Margaret, ‘Reflections on the sanctions decade and beyond’, *International Journal* (Spring 2009), pp. 539-549, p. 549.

List of abbreviations

CFSP	Common Foreign and Security Position
EU	European Union
TEU	Treaty on the European Union
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
US	United States

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