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Ukraine: Between Scylla and Charybdis

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Ukraine: Between Scylla and Charybdis

Cover Page Footnote
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Ukraine: Between Scylla and Charybdis

Max Biedermann†

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Ulysses and his crew “entered the Straits in great fear of mind, for on the one hand was Scylla, and on the other dread Charybdis kept sucking up the salt water.”1 The night before continuing his journey home, the Greek goddess Circe had warned Ulysses about the paths that laid before him—either guide his ship close to the

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monster Scylla, which promised death to some of his crew; or travel by the whirlpool Charybdis, which if he traveled by at the wrong time would kill his entire crew. Although Ulysses chose to suffer losses at the hand of Scylla, he was able to guide his ship past these two titanic forces. The states caught between joining either the European Union or Russia’s Eurasian Customs Union are faced with the same dilemma, because they have learned, just as Ulysses did, that there is no way “of escaping Charybdis, and at the same time keeping Scylla off.”

“The rapid proliferation of regional economic integration models in the latter half of the 20th century is often attributed to the success of the European Economic Community (“EEC”) established in 1957.” The success the EEC achieved in increasing trade among its members in the 1960s “inspired countries on other continents to set up regional organizations: ASEAN in South East Asia (1967), ECOWAS in West Africa (1975), MERCOSUR in Latin America (1991) and NAFTA in North America (1994), to name but a few.” In a way, the European Union (“EU”) was built on top of the foundation laid by the EEC.

Since the dissolution of the Soviet Union in 1991 and the aftermath that followed, the “newly independent States in the post-Soviet area have been involved in various integration processes.”

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2 See id.
3 See id.
4 Id. at 98.
6 Id. (“Integration within these groupings has been limited to free trade agreements, however, with the notable exception of MERCOSUR establishing its customs union in 1995.”)
8 Sherzod Shadikhodjaev, Trade Integration in the CIS Region: A Thorny Path Towards A Customs Union, 12(3) JIEL 555 (2009). “In the political field, the Commonwealth of Independent States (CIS) comprising 12 ex-Soviet republics and excluding Estonia, Latvia and Lithuania; the Belarus–Russia Union; the organization of ‘GUAM’ (which stands for Georgia, Ukraine, Azerbaijan and Moldova); and the Shanghai Cooperation Organization (which also includes China in addition to five CIS countries) have emerged. In the military field, the Collective Security Treaty Organization was established. Finally, the economic sphere includes Free Trade Agreements (FTAs), the Single Economic Space (SES) between Belarus, Kazakhstan,
The first integration processes occurred in December 1991 through the formation of the Commonwealth of Independent States ("CIS"), which includes Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine. However, "[o]nce the idea of the creation of a customs union within the entire CIS region failed the feasibility test, smaller groups of like-minded CIS countries have embarked on new initiatives..." This article will focus on two of the main initiatives—joining either the European Union or the Russian backed Eurasian Customs Union. While exploring the implications of joining either the European Union or the Eurasian Customs Union, this note will take into account the current situation in Ukraine.

This note will argue that with Russia's reemergence into the international sphere, the Eurasian Customs Union needs to entice Ukraine and others to join to succeed in the long term. This note is organized in three parts: Part I of this note will discuss the European Union and Eurasian Customs Union; Part II will discuss the current situation and developments in Ukraine; and Part III will explore the implications that joining either one will have for Ukraine and the Eurasian Customs Union.

I. The Options: the European Union and the Eurasian Customs Union

Regionalism—"the tendency for states to form regional groupings"—involves states situated in geographic proximity to each other banding together to form economic and political blocks. After the Soviet Union collapsed, many of the former Soviet Republics located in the East-Central region of Europe proceeded to join the European Union and NATO. The

10 Shadikhodjaev, supra note 8, at 556.
11 For information on the current situation in Ukraine see infra Part II.
12 RILKA DRAGNEVA & KATARZYNA WOLCZUK, The Eurasian Customs Union: Framing the Analysis, EURASIAN ECONOMIC INTEGRATION 1 (2013).
13 See id. In 2004, the European Union accepted 10 new member states. Poland and Estonia are examples of Soviet Republics and satellite states that have since joined the EU. See European Commission - Enlargement - 3 Years After, EUROPEAN
remaining states\textsuperscript{14} were left with a simple choice—join the West or pursue re-integration with the East.

\textit{A. The European Union}

If the remaining states were to join the West, they would be joining the European Union in some capacity. The EU is an economic and political partnership between twenty-eight European states.\textsuperscript{15} A primary goal of the EU is to create a single market based on the free movement of goods, services, people, and money.\textsuperscript{16} The Treaty on European Union, signed on February 7, 1992, in Maastricht, Netherlands, was fundamental in establishing the foundation of the European Union. For example, it established the creation of an economic and monetary union among member states; the steps to the creation of a common European currency, the Euro; union citizenship and the right of free movement among member states; and foreign and security policy.\textsuperscript{17} Subsequent treaties led to the further integration of Europe.\textsuperscript{18}


\textsuperscript{15} See \textit{How the EU Works}, EUROPEAN UNION, http://europa.eu/about-eu/index_en.htm (last visited Feb. 14, 2014). In order to create the EU, the first step was to foster economic cooperation in Europe, which was achieved through the creation of the EEC in 1958. Over time the EEC's focus expanded beyond just fostering economic cooperation and began to enter into other policy areas, which eventually lead to the EEC evolving into the EU in 1993. See \textit{id}.


\textsuperscript{18} The foundation laid by the Treaty on the European Union has since been modified and expanded through subsequent agreements and treaties including the Treaty of Amsterdam, the Treaty of Nice, and most recently, the Treaty of Lisbon. For more detail on the treaties and the gradual process of European integration, see Stefaan Van den Bogaert, \textit{The Treaty of Lisbon: The European Union's Own Judgment of Solomon?}, 15 \textit{MAASTRICHT J. EUR. & COMP. L.} 7, 8-10, 17-18 (2008).
1. Economics of the European Union

One of the key benefits of choosing to integrate into the EU is the fact that the EU’s economy is the second largest in the world in terms of GDP.19 Although the EU makes up about 7% of the world’s population, “the EU’s trade with the rest of the world accounts for around 20% of global exports and imports.”20 However, despite its strength, the EU is not without problems, as it is still navigating the aftermath of a sovereign debt crisis that wreaked havoc on many member states and resulted in bailouts for some members of the Euro-zone21—Greece, Portugal, Spain, Ireland, and Cyprus.22

The Euro-zone’s recovery has been slow as output increased by only 0.3% during the last quarter of 2013.23 “The strengthening in the recovery was bolstered by the currency club’s two heavyweights, Germany and France, which together make up about half of Euro-zone GDP.”24 However, the results have been mixed for the eighteen states that have adopted the Euro, as some of the peripheral states’ output grew in the last quarter of 2013, while others saw output fall.25 This crisis has led to the call for further integration of the Euro-zone economies by strengthening the European Central Bank and entering into treaties that aim to boost budgetary discipline and coordination.26


21 The Eurozone is made up of EU member states that have adopted the Euro. See Eurozone, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/us/definition/american_english/eurozone.


24 Id. (“They grew by 0.4% and 0.3% respectively, in both cases a bit stronger than expected.”).

25 See id. (stating that Cyprus, for example, had output fall by 1%, while Portugal’s output increased by 0.5%).

26 See European Union, supra note 19 (stating that 26 of 28 EU member states (all except the UK and Czech Republic) intend to enter into a “fiscal compact”).
2. Joining the European Union

The EU has gradually enlarged from six to twenty-eight members, the last being Croatia, which joined the EU on January 7, 2013. The bedrock of the EU’s expansion policy is The Treaty on the European Union, which states “that any European country may apply for membership if it respects the democratic values of the EU and is committed to promoting them.” Once a state applies to join the EU, its application must be approved by all current member states. If the applicant state is approved it begins an accession process, which was espoused in 1993 by the Copenhagen European Council.

The Copenhagen European Council was responsible for establishing the key criteria for accession to the EU, known as the Copenhagen criteria. The Copenhagen criteria establish three main criteria that must be met: a political criterion, an economic criterion, and an acquis criterion. In addition, the EU must meet its own criterion—it must ensure that it has the ability to integrate new members. The criteria are “not just a wish-list or a

expansion of the power of the European Central Bank has met resistance, most notably from Germany. See It isn’t over, THE ECONOMIST, (Feb. 15, 2014), available at http://www.economist.com/news/finance-and-economics/21596570-european-monetary-policy-has-not-been-given-reprieve-markets-believe-it-ism?zid=295&ah=0bca374e65f2354d553956ea65f756e0. On February 7, 2014, a German court found that the European Central Bank had overstepped its mandate and that Outright Monetary Transactions “was a backdoor to ‘monetary financing’ of governments, outlawed under European treaties.” Id.

29 See Scottish Independence: Barroso Says Joining EU Would be ‘Difficult’, BBC NEWS (Feb. 16, 2014), http://www.bbc.com/news/uk-scotland-scotland-politics-26215963 (stating that an independent Scotland could face challenges gaining approval from all current member states because some states may worry about implications that approval could have regarding separatist regions in their own states).
31 See Conditions for Membership, supra note 28.
32 See Marktler, supra note 30, at 344-45.
33 See Conditions for Membership, supra note 28; see also Marktler, supra note 30, at 344 (“[T]he Copenhagen European Council stated that the Union’s capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate
statement of expectations, but a workable tool in governing the accession."; as a result, an applicant's progress toward meeting the criteria is closely monitored.³⁴ To incentivize an applicant to meet the Copenhagen criteria, the European Council enacted Council Regulation 622/98, which conditions financial aid on an applicant's fulfillment of the criteria.³⁵ For states looking to join the EU, the Copenhagen criteria are especially important because meeting the criteria may be difficult and will undoubtedly result in changes to their governments and economies.³⁶ Some of the main elements of each criterion will be briefly explored below.

a. The Political Criterion

In order to meet the political criterion, an applicant must have "stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities . . .."³⁷ Furthermore, an applicant state must conduct free and fair democratic elections that abide by international standards.³⁸ "A national parliament satisfying the political criteria 'continues to operate satisfactorily, its powers are respected and the opposition plays full part in its activities.'"³⁹ The political criterion also requires transparency regarding all stages of the legislative process.⁴⁰ Another important condition is that the executive should be "completely demilitarised . . . including the police, which should be composed of civilian public servants, serving the rule of law."⁴¹ Next, the "judiciary should be independent, well-

³⁴ Marktler, supra note 30, at 347 ("The annually published progress reports, for instance, indicate whether each of the applicant countries has satisfied the various criteria.") (citation omitted) (internal quotation marks omitted). "The candidates' accession maturity is evaluated, and the results are subjected to extensive analysis, which itself becomes the basis for numerous recommendations." Id.

³⁵ See id.

³⁶ See id. at 348.

³⁷ Conditions for Membership, supra note 28.


⁴⁰ Id. at 350.

⁴¹ Id. at 351 (internal quotation marks omitted) (citing EUROPEAN COMM'N, 2002
staffed, well-trained, well-paid, efficient, respected and accessible to citizens.\footnote{42} Finally, the EU looks to how well the applicant is fighting corruption.\footnote{43}

\textit{b. The Economic Criterion}

In order to fulfill the economic criterion, an applicant must have "a functioning market economy and the capacity to cope with competition and market forces in the EU..."\footnote{44} To have a functioning market economy, the applicant must ensure that prices and trade are liberalized; an enforceable legal system, including property rights, is in place; there is sufficient privatization; and there are no significant barriers to entry and exit.\footnote{45} In regards to possessing the capacity to cope with competition and market forces, the EU often looks at the applicant’s infrastructure, state and private enterprise investment and efficiency, and the amount of human and physical capital.\footnote{46}

\textit{c. The Acquis Criterion}

The acquis criterion is met if, and when, the applicant has "the ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic, and monetary union."\footnote{47} The acquis criterion was expanded in 1995 by the Madrid European Council to ensure that EU law "is not only... adopted, but also applied and enforced" through the "[e]xpansion of administrative structures for effective adoption of the acquis."\footnote{48} In total, there are thirty-five separate chapters that make up acquis.\footnote{49} Some of the topics covered by the

\footnote{42} Id. at 351.

\footnote{43} See id.

\footnote{44} Conditions for Membership, supra note 28.

\footnote{45} See Markttler, supra note 30, at 353.


\footnote{47} Conditions for Membership, supra note 28.

\footnote{48} See Markttler, supra note 30, at 345.

acquis are free movement of goods, intellectual property law, energy, taxation, and judiciary and fundamental rights.\textsuperscript{50}

B. The Eurasian Customs Union

As demonstrated by the formation of the EU, the first step in forming a strong union is to integrate the economies of the individual states.\textsuperscript{51} Therefore, Russia, Belarus, and Kazakhstan have sought to integrate their economies through the creation of the Customs Union ("CU") "[i]n the lead-up to the creation of a Eurasian Economic Union (EEU), foreseen for 2015 . . . "\textsuperscript{52} The CU was perceived as the second stage toward the creation of a fully integrated economic union when The Treaty on the Establishment of the Customs Union ("CU Treaty") was signed in 2007.\textsuperscript{53} The CU "encompasses a common customs territory and legislation . . . a single commodity nomenclature of foreign economic activity, common customs tariff and non-tariff regulation measures, as well as common procedures for customs clearance and control."\textsuperscript{54}

The future development of the CU will be interesting, as the three members have at times stated different goals for the union.\textsuperscript{55} For instance, Belarusian leader Aleksandr Lukashenko has called for wider diplomatic and political integration between the states, while Kazakh leader Narsultan Nazarbaev has stated that the CU "must not become politicized."\textsuperscript{56} Nevertheless, Russian leader Vladimir Putin has stated that the EEU, an economic and political union, is "still on course to come into power on the long-declared date of January 1, 2015 . . . "\textsuperscript{57}

\textsuperscript{50} See id.
\textsuperscript{51} See supra Part I.A..
\textsuperscript{52} Blockmans, Kostanyan & Vorobiov, supra note 5, at i.
\textsuperscript{53} See generally EURASIAN ECON. COMM'N, EURASIAN ECONOMIC INTEGRATION: FACTS AND FIGURES 14–15 (2013) (stating that in the first stage, the FTA in the Eurasian space was created under the umbrella of the Commonwealth of Independent States).
\textsuperscript{54} Blockmans, Kostanyan & Vorobiov, supra note 5, at 1-2.
\textsuperscript{56} Id. (internal quotation marks omitted).
\textsuperscript{57} Id.
1. The Economics of the Customs Union

The states that make up the CU encompass an estimated 170 million people and around fifteen percent of the world’s surface.58 The core of the CU is Russia, whose economy is around six and a half times larger than both Belarus and Kazakhstan’s economies combined.59 In 2010, when the CU officially became operational, “the mutual trade in the CU was mainly aggregated by Russia, which had rather intense trade links with the two other members of the economic union, whereas Belarus and Kazakhstan had very limited trade flows in goods between them.”60 Russia’s superior trade interest and position is reflected by its increased voting rights in the Commission of the Customs Union created by the CU Treaty.61

The Commission of the Customs Union has the authority to regulate foreign trade, which includes the authority to “change import duty rates; introduce the commodity nomenclature of the Customs Union; establish tariff preferences and tariff quotas; define the system of tariff preferences; [and] introduce non-tariff regulatory measures.”62 According to the Commission, during the January through December 2012 period, reciprocal trade between CU member states was $68.6 billion, an increase of 108.7% during the same period in the previous year.63

2. Joining the Eurasian Customs Union

The CU is open to expanding membership to other states “that

58 See EURASIAN ECON. COMM’N, supra note 53, at 10-11.
60 Blockmans, Kostanyan & Vorobiov, supra note 5, at 8.
61 See Blockmans, Kostanyan & Vorobiov, supra note 5, at 2 (“The Treaty on the Commission of the CU (6 Oct. 2007) established a supranational body composed of one member from each state at the level of deputy head of government. The votes in the Commission were distributed as follows: Belarus – 21.5%; Kazakhstan – 21.5%; Russian Federation – 57%,”).
63 See id. at 17.
share goals... of the union and are prepared to take over the commitments deriving from that membership. Currently the CU is courting Armenia, Kyrgyzstan, and Tajikistan; furthermore, the leaders of the CU have discussed plans to possibly invite Turkey, India, and even Syria to join. Russia has been active in recruiting Ukraine to join the CU. At this time, Armenia appears to be on course to be the first new member to successfully enter the CU.

In practice, the CU requires potential members to implement a “road map” on accession that identifies how the state is going to adopt CU standards. Because the CU at this point in time is an economic union, the CU requires applicant states to adopt only economic and trade reforms, including its Unified Customs Code. For example, Armenia’s road map requires the state to implement extensive legislative amendments regarding customs and taxation, as well as amendments to its criminal and administrative codes.

II. The Situation in Ukraine

Like most of the states that were once part of the Soviet Union, the modern state of Ukraine achieved independence after the dissolution of the Soviet Union in 1991. “After Russia, the

64 Id. at 35.
65 See Viktor Kuzmin, Customs Union Courting India, Turkey for Membership, RUSSIAN & INDIAN REPORT (Nov. 6, 2013), http://indrus.in/economics/2013/11/06/customs_union_courting_india_turkey_for_membership_30623.html (reporting that Russian experts are skeptical about the prospects of India, Turkey, and Syria joining, specifically stating that “[t]here is nothing more to it than proposals at this point”).
67 See Armenia Signs Customs Union Roadmap, supra note 55 (reporting that even though Armenia expressed interest to join in 2013, it should enter the Customs Union before Kyrgyzstan, which applied to join in 2011).
68 See, e.g., Emma Gabrielyan, Customs Union “Achievements” Are Already Outlined, ARAVOT.AM (Feb. 6, 2014, 3:29 PM), http://en.aravot.am/2014/02/06/163689/ (stating that Armenia’s Customs Union road map includes 262 actions that must be taken for CU accession).
69 See supra Part I.A.2 (requiring potential members to enact various political and humanitarian reforms).
70 See Gabrielyan, supra note 68.
71 See Ukraine:, The World Factbook, CENT. INTELLIGENCE AGENCY, Introduction,
Ukrainian republic was the most important economic component of the former Soviet Union, producing about four times the output of the next-ranking republic.\textsuperscript{72} Since independence, Ukraine has suffered from various economic crises, which have resulted in Ukraine being bailed out by the IMF.\textsuperscript{73} Additionally, Ukraine’s dependence on Russian energy imports has created tension between it and Russia.\textsuperscript{74} As of 2012, Ukraine’s GDP was estimated at $336.1 billion, with growth at a mere 0.2% that year.\textsuperscript{75}

Ukraine has around 44.5 million people.\textsuperscript{76} Generally speaking, Ukraine is divided ethnically, politically, and linguistically into eastern and western halves.\textsuperscript{77} This divide is important because it often pits ethnic Ukrainians on one side of the country and ethnic Russians against each other when it comes to deciding the future of the Ukrainian state and its relationship with Russia and the EU.\textsuperscript{78} Before the civil unrest in Ukraine, the country’s last elected president was Viktor Yanukovych, who won the majority of his votes in the Russian-speaking eastern half of the country.\textsuperscript{79} The current president, pro-European billionaire Petro O. Poroshenko,
was elected on May 25, 2014.80

A. Ukraine’s Position between the EU and Russia’s CU.

Ukraine “has long divided its loyalties and economy between Europe and longtime ruler Moscow, giving it huge strategic importance to Russia, Europe, and the United States.”81 Since its independence in 1991, Ukraine has been reluctant to participate in post-Soviet integration regimes, and this reluctance can be shown by Ukraine’s preference “for ‘pick and mix’ formats, . . . observer status, . . . or general, declarative frameworks.”82 In reality, Ukraine has attempted to walk two separate paths of regional economic integration.83 For instance, Ukraine is a co-founder of the CIS, which, “among other things, is aimed at achieving close economic integration among the former republics of the Soviet Union.”84 While “[o]n the other hand, . . . Ukraine has expressed its ambition to integrate into the [EU] on the basis of association and even accession.”85 As a result, “Ukraine’s foreign policy constantly oscillates between closer relations with Brussels . . . and Moscow . . . ”86

80 See David M. Herszenhorn, Pro-European Businessman Claims Victory in Ukraine Presidential Vote, N.Y. TIMES (May 25, 2014), http://www.nytimes.com/2014/05/26/world/europe/ukraine-elections.html. While President Poroshenko was elected by a majority of voters in both the eastern and western halves of the country, it is important to note that this may have occurred because of low voter turnout, especially among the pro-Russian voters in the eastern half of Ukraine. See Sergiy Kudelia, Ukraine’s 2014 Presidential Election Result Is Unlikely to Be Repeated, WASH. POST (June 2, 2014), http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/06/02/ukraines-2014-presidential-election-result-is-unlikely-to-be-repeated/.


84 Id.

85 Id. at 421-22.

86 Id. at 422.
1. Recent Developments Involving the EU

Although Ukrainian leadership has discussed full-scale accession to the EU, Ukraine has more recently been linked to other economic integration strategies with the EU.\(^\text{87}\) The EU has seen Ukraine as “a key partner within the European Neighborhood Policy (ENP), which was complemented with a so-called ‘Eastern Partnership’ in 2009 ‘to accelerate political association and further economic integration’ between the European Union and its East European neighbors.”\(^\text{88}\) In furtherance of the objectives of the Eastern Partnership, the EU sought to negotiate an Association Agreement and enter into a “Deep and Comprehensive Free Trade Area” (“DCFTA”) with Ukraine.\(^\text{89}\)

The 2013 Vilnius Summit, held from November 28 to 29, “was meant to be crowned by the signing of an association agreement and all-encompassing trade deal with Ukraine.”\(^\text{90}\) However, things did not go according to the EU’s plans.\(^\text{91}\) Instead of signing the agreements, “the Ukrainian Government [decided] to suspend temporarily the process of preparations for signature of the Association Agreement and Deep and Comprehensive Free Trade Area between the EU and Ukraine.”\(^\text{92}\) Theories of why Ukraine backed out of the deal are varied.\(^\text{93}\) Regardless of the reason,

\(^\text{87}\) See id. (“After the 2005 Orange Revolution, then-President Viktor Yushchenko radically opted for deep integration with the EU in preparation of full membership in the future.”).

\(^\text{88}\) Id. at 422.

\(^\text{89}\) See Van der Loo & Van Elsuwege, supra note 83, at 422.


\(^\text{92}\) Id.

\(^\text{93}\) Keep the Door Open, supra note 90 (“The Europeans disagree over what went wrong. To some, Mr Yanukovych played them as fools, using the EU deal to improve Russia’s offer. To others, the EU was wrong to insist on the release of Yulia Tymoshenko, a former prime minister jailed by Mr Yanukovych. A third theory holds that the EU offer lacked a crucial element: the promise of eventual EU membership. A fourth says the very notion of an ‘eastern partnership’ was misconceived. It was born out of the failure in 2008 to put Ukraine and Georgia on the road to NATO membership.”).
Ukraine’s decision was a step back in terms of its integration with the EU.94

It seems, however, that hope for integration with the EU is not dead.95 For example, in February 2014, around the time of the ouster of President Yanukovych, “Ukraine’s [then] interim President Oleksandr Turchynov . . . said the country will focus on closer integration with the EU.”96 On June 27, 2014, President Poroshenko signed a trade agreement with the EU that will allow businesses in Ukraine, Moldova and Georgia to “trade freely in any of the EU’s 28 member nations without tariffs or restrictions, as long as their goods and practices meet EU standards.”97 While this deal does not require the reforms that formal accession would require,98 it does call for “adopting EU rules on government contracts, competition policy and copyright for ideas and inventions [which] should improve Ukraine’s economy by reducing widespread corruption and making it more investor-friendly.”99 Given Ukraine’s history of oscillating its interest between Russia in the east and the EU in the west, it will be interesting to see how long Ukraine’s interest stays with the EU.

2. Recent Developments involving Russia and the CU

When President Viktor Yanukovych unexpectedly rejected the EU agreements, he instead pivoted his foreign policy towards Russia.100 Shortly after suspending negotiations with the EU, Russia and Ukraine entered into agreements, which lowered “the price of gas exports, [removed] trade barriers and [invested] $15 billion in Ukraine’s government.”101 Vladimir Putin announced

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94 See id.
96 Id.
97 John-Thor Dahlburg, Ukraine’s New President Signed The Historic EU Trade Agreement That Sparked The Entire Crisis, BUSINESS INSIDER (June 27, 2014), http://www.businessinsider.com/ukraines-new-president-signed-the-historic-eu-trade-agreement-that-sparked-the-entire-crisis-2014-6. The deal will also allow EU goods and services to be sold easily and cheaply in the three countries. Id.
98 See supra Part I.B.2.
99 Dahlburg, supra note 97.
100 Keep the Door Open, supra note 90.
that these agreements had nothing to do with Ukraine’s accession to the CU, but many outsiders were skeptical.  

It would appear that the skeptics were right. Before the deals with Russia were announced, “the Ukrainian cabinet . . . instructed the nation’s Economic Development Ministry . . . to draw up a roadmap [sic] for Ukraine to join the [CU].” There have been few major developments regarding the road map because Ukraine’s “decision in late November to suspend talks with the European Union on a new trade agreement and instead court stronger trade ties with neighbor Russia sparked widespread protests that are continuing,” at this time. As a result of President Yanukovych’s recent dismissal, “Russia, which had backed him, has recalled its ambassador to Ukraine for consultations.” It now appears that Russia will need to reconsider how to get Ukraine into the CU.

On February 27, 2014, “Russia in effect occupied Crimea, part of the sovereign territory of Ukraine, under the pretense of protecting its Russian-speaking population.” Russia’s bloodless takeover of Crimea, a region of Ukraine predominately made up of ethnic Russians, has drawn comparisons to Nazi Germany’s annexation of Austria and the Sudetenland in 1938 and 1939. Russia’s logic regarding Crimea would also justify military intervention in other ethnically Russian areas of eastern Ukraine. On March 1, 2014, President Putin was granted the right to use


102 See id. (“This [deal] is not tied to any conditions . . . we have not discussed the issue of Ukraine’s accession to the custom union at all today.”). But see Keep the Door Open, supra note 90 (“Russia . . . offered a $15 billion loan and cheaper gas—all in hopes of luring Ukraine into its own Eurasian customs union.”).


105 Ukraine: Interim Leader Turchynov Stresses “European Choice”, supra note 95.

106 See id.


108 Id.
military force in Ukraine by the upper house of Russia’s parliament.\textsuperscript{109} Although no large-scale military intervention has taken place at this point, Ukraine’s government has claimed that there is currently a “threat of a full-scale invasion [by Russia] from various directions.”\textsuperscript{110}

III. Ukraine’s Decision and its Implications

The ultimate fate of Ukraine would send a clear message to other states that are currently weighing the merits of joining either the European Union or Russia and the Eurasian Customs Union. This part will explore the implications for Ukraine of joining either union, and what next steps Russia could take to add Ukraine and other states to the CU.

A. Implications for Ukraine

1. Integrating with EU

Although ultimately accession may be an option for Ukraine, the most recent offers from the EU have come in the form of an Association Agreement and a DCFTA.\textsuperscript{111} Both of these agreements will provide Ukraine increased access to the European market for Ukrainian goods. The DCFTA is designed to “go further than classic free trade areas, as it will both open up markets but also address competitiveness issues and the steps needed to meet EU standards and trade on EU markets.”\textsuperscript{112} As of 2012,

\begin{footnotesize}
\begin{enumerate}
\item[109] Id.
\item[111] See Joint Declaration of the Eastern Partnership Summit, Vilnius, 28-29 November 2013, supra note 91.
\end{enumerate}
\end{footnotesize}
Ukraine exported around 25% of its goods to the EU; however, this percentage would most likely increase if Ukraine were to integrate with the EU and enter into the DCFTA. Ukraine also imports around 31% of its goods from the EU, so entering into a free trade agreement with the EU will hopefully reduce prices and increase trade in both directions.

The Association Agreement also has the potential to greatly impact Ukraine’s institutions. For instance, the key parts focus on support to core reforms, economic recovery and growth, and governance and sector cooperation in areas such as energy, transport and environment protection, industrial cooperation, social development and protection, equal rights, consumer protection, education, youth, and cultural cooperation. The Agreement also puts a strong emphasis on values and principles: democracy and the rule of law, respect for human rights and fundamental freedoms, good governance, a market economy, and sustainable development.

To obtain an idea of what sort of reforms the Association Agreement could possibly bring to the Ukraine, one can look to the Copenhagen criteria. Government transparency and fair elections, for example, are some of the many positive reforms that could come out of an association agreement.

Closer integration with the EU could also make it easier for Ukraine to access bailout funds from the IMF in the future. In the past, the IMF “twice offered Ukraine loan packages, but each time it stopped issuing the money after Ukraine refused to fulfill policy requirements.” As stated above, however, closer integration

114 Id.
115 Information on the EU-Ukraine Association Agreement, supra note 112.
116 See supra Part I.A.2.
117 In 2004, the Ukrainian people took to the street to protest an election that was viewed as fraudulent. See Joerg Forbrig, Why Ukraine’s future lies with the EU, not Russia, CNN (Dec. 13, 2013), http://edition.cnn.com/2013/12/03/opinion/ukraine-protests-russia-forbrig/index.htm?id=article_sidebar. In addition, corruption and lavish spending by Ukraine’s President have come to light now that protestors have taken control of the Kiev. See Katherine Jacobsen, Behind the decadence of a Ukrainian president, ALJAZEERA (Feb. 23, 2014), http://www.aljazeera.com/indepth/features/2014/02/behind-decadence-ukrainian-president-2014223205052722749.html.
118 Russia: Ukraine Should Seek Bailout Loan From IMF, ASSOCIATED PRESS (Feb.
with the EU would bring with it reforms that could make it easier for Ukraine to satisfy the IMF requirements. Furthermore, it is already apparent that Russia will be less willing to extend a helping hand financially if Ukraine chooses to go with the EU; therefore, IMF support will be even more crucial in the future.\textsuperscript{119}

2. Integrating with the CU

If Ukraine integrated with the CU, some of the first possible benefits would be cheaper gas prices and debt relief from Russia. Because Ukraine was awarded a $15 billion bailout in return for backing away from the EU,\textsuperscript{120} it is conceivable that similar incentives may be available to Ukraine if it were to pursue integration with the CU. In terms of gas prices, Russia has offered to sell gas to Belarus at the same price as Russian consumers by 2014, because of “an integration discount.”\textsuperscript{121} Considering Ukraine’s history of gas disputes with Russia, “an integration discount” could be very enticing.

As far as foreign trade is concerned, joining the CU would have a variety of different outcomes, both positive and negative. As with any customs union, some of the benefits would include the abolition of customs duties between member states, which brings with it cheaper goods and raw materials; increased direct investment among member states; and free movement of workers.\textsuperscript{122} Some of the disadvantages of integration with the CU include member states losing the ability to negotiate trade agreements with third party nations on their own; “member states [having to apply] higher customs tariffs on the products they buy from third countries; . . . [and the fact that] common customs tariffs . . . will largely comply with Russia’s customs tariffs”, which will result in higher prices for goods in member states, but

\textsuperscript{119} See id.

\textsuperscript{120} See id.

\textsuperscript{121} This integration discount could save Belarus around $2 billion, because Belarus “will pay $164 for 1,000 cubic meters of Russian gas in the first quarter of 2012 compared to an average gas price for Europeans of $400.” \textit{Russia to Offer Domestic Gas Price to Belarus by 2014}, RIA NOVOSTI (Nov. 13, 2013), http://en.ria.ru/world/20111125/169032805.html.

not Russia.123 Currently, “Ukraine has relatively low trade tariffs,” which means that if it were to join the CU it would have to raise its tariffs, resulting in a potential decrease in imports from the EU.124 Some experts argue that this decrease in imported goods from the EU could have adverse effects on Ukraine’s modernization.125

Joining the CU also has governmental implications for Ukraine. Currently the CU does not impose any requirements like the Copenhagen criteria on its potential members.126 Therefore, much of the corruption and crony politics that helped start the protests in the first place would likely continue.

B. Why is Ukraine Important to Russia and the CU?

Some suggest that the raison d’etre for the entire Eurasian integration project is to keep Ukraine aligned with the interests of Russia.127 Out of the states that have been actively courted to join the CU and eventually the Eurasian Union, Ukraine is the crown jewel in Russia’s eyes because it is “a huge market and the cradle of Russian civilization.”128 As stated earlier, Ukraine had the second largest economy in the former Soviet Union; as a result, it is not hard to imagine an economic union made up of former Soviet states needing to add that sort of economic strength.129

When Armenia finally joins the CU, it will likely be the first state to do so.130 While the first accession to the CU will be hailed

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123 Id. ("According to [the] Trade Consultancy of the Turkish Embassy in Moscow, for Russia, 82% of tariffs remained the same, 14% were decreased, and 4% increased. For Belarus, 75% of tariffs remained the same, 7% were decreased, and 18% increased. For Kazakhstan, 45% of tariffs remained the same, 10% were decreased, and 45% increased.").
124 Dragneva & Wolczuk, supra note 82.
125 See id.
126 See supra Part I.B.2. The only real reforms that would need to take place relate to customs tariffs. Id.
128 Heritage, supra note 66.
129 See supra Part II; see also Nate Schenkkan, Customs Disunion, FOREIGN AFFAIRS (May 12, 2014), http://www.foreignaffairs.com/print/138457 ("Ukraine would bring to the group growing consumer market, its borders with southeastern Europe, and its relatively developed manufacturing sector. Indeed, without Ukraine, the Eurasian merger makes little economic sense.").
130 See Armenia signs Customs Union roadmap, Kyrgyzstan needs more talks, supra note 55.
as great achievement,\textsuperscript{131} the CU’s future expansion does not appear to be proceeding as smoothly.\textsuperscript{132} For example, Kyrgyzstan, likely the second state to join the CU, delayed signing its road map because it “had been ‘\textit{drafted without Kyrgyzstan’s involvement}’ and risked subjecting the country to ‘\textit{social problems and instability}.’”\textsuperscript{133} Some CIS states, like Georgia and Moldova, have actively been courted to sign trade agreements with the EU as part of the Eastern Partnership; however, it would be considered a major victory for Russia and the CU if they were able to lure the “key ingredient in the whole deal”—Ukraine—permanently away from the EU.\textsuperscript{134} If Ukraine were to agree to join the CU, it could give legitimacy to the CU and potentially sway other CIS states that are on the fence.

Russia also has a key interest in Ukraine because of Ukraine’s relationship with Russia’s energy sector. Ukraine is an important oil and natural gas transit country for Russia because of the large amount of gas that Russia exports to Western Europe via the Bratstvo (Brotherhood) and Soyuz pipelines, which transgress Ukraine.\textsuperscript{135} According to the Russian Finance Ministry, “oil and gas revenues account for almost 50% of budget income in Russia.”\textsuperscript{136} Considering a majority of Russian gas flows through Ukraine, this dependence on oil and gas revenues puts Russia, and

\textsuperscript{131} The fact that Armenia is seeking to join the Customs Union carries extra significance because “Armenia had long negotiated a potential Association Agreement with the EU, . . . but reversed course towards Russia in September [2013].” \textit{Id.}

\textsuperscript{132} \textit{See} Heritage, \textit{supra} note 66 (“Kyrgyzstan and Armenia say they will join but other former Soviet republics such as Azerbaijan, Georgia and Moldova, which are being wooed by the EU, have reservations. So do Uzbekistan, a large market of 30 million, Turkmenistan and Tajikistan.”); \textit{see also} Schenkkan, \textit{supra} note 129.

\textsuperscript{133} \textit{See} Armenia signs Customs Union roadmap, Kyrgyzstan needs more talks, \textit{supra} note 55 (emphasis in original) (quoting Almazbek Atambaev, the president of Krygyzstan).

\textsuperscript{134} Chris Morris, \textit{Ukraine throws \textit{EU’s} ‘Eastern Partnership’ into doubt}, BBC NEWS (Nov. 21, 2013), http://www.bbc.co.uk/news/world-europe-25039630 (arguing the whole eastern partnership “essentially falls apart without Ukraine”).

\textsuperscript{135} Russia uses pipelines partially located in Ukraine to ship gas to Austria, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Germany, Greece, Hungary, Moldova, Poland, Romania, Slovakia, and Turkey. \textit{Ukraine: Country Analysis Note}, U.S. ENERGY INFORMATION ADMINISTRATION (last updated Mar. 2013), http://www.eia.gov/countries/country-data.cfm?fips=up.

\textsuperscript{136} Putin: Hydrocarbons can no longer drive economic growth in Russia, ITAR-TASS (Feb. 12, 2014, 8:32 PM), http://en.itar-tass.com/russia/718901.
with it the CU's economy, in a vulnerable position. It is possible that some of that vulnerability could be alleviated if Ukraine opted to become more integrated with Russia through the CU.

Upon Russia's reemergence into the international sphere, the CU needs to entice Ukraine to join in order to succeed. Aside from the reputational and legitimacy-related gains the CU would achieve by having Ukraine join, the CU's market, population, and economy would be larger too. If the CU were to succeed, President Putin's goal of establishing a Eurasian Union, a "'powerful, supra-national union' of sovereign states like the European Union, uniting economies, legal systems, customs services and military capabilities to form a bridge between Europe and Asia and rival the EU, the US and China," could be closer to becoming a reality.

C. Next Steps for Russia and the CU

With Ukraine's potential membership in the CU in a precarious position, Russia is at a crossroads. Among the choices available to Russia are that it can choose to use soft power to try to entice Ukraine back into its arms, it can use its hard power to force Ukraine into the CU, it can allow Ukraine to associate with the EU and move onto adding other members, or it can repair its relationship with Ukraine and use it as a bridge between Europe and Russia.

The most worrisome path for Ukraine, the West, and other former Soviet states would be for Russia to use hard power to realign Ukraine with the Russia and the CU. The first hard power option for Russia is for it to use its military to invade Ukraine and install a new regime that is more friendly to Russia. There is already evidence that this is a real possibility because President Putin has the permission of Russia's parliament to use military force in Ukraine, and the Russian military is perceived to be amassing near the border of Ukraine. According to the West, Russia's annexation of Crimea violated its agreement to "respect

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137 See Dietl, supra note 127, at 22.


139 See supra Part II.A.2.
the independence and sovereignty and the existing borders of Ukraine” under the Budapest Memorandum, which Russia signed in 1994. Taking this path could have disastrous effects on the long-term success of the CU and the forthcoming EEU, because of the international sanctions that would fall on Russia. Currently, the EU and the United States have implemented sanctions that essentially result in “travel restrictions and asset freezes against those responsible for violating the sovereignty of Ukraine.” These sanctions are narrowly tailored to individuals, but far-reaching economic sanctions calling for the isolation of Russia have been considered. While some EU member states have been reluctant to pursue harsh economic restrictions, this would likely change if Russia were actually to invade eastern Ukraine. Russia is a major trade partner of many EU states, and as such, it


141 See Schenkan, supra note 129. (“The diminishing commitment of former Soviet Union countries to regional integration is a little noticed but critical side effect of Western sanctions on Russia. Russia remains the economic linchpin of the region, and costs imposed on the country are trickling down to Belarus, Kazakhstan, and beyond.”).


145 See Santa & Baker supra note 142 (“The EU has foreign direct investment worth approximately 170 billion euros in Russia and close trade ties: the total value of trade was 335 billion euros in 2012.”).
would suffer severely if economic sanctions were imposed. Because Russia’s economy makes up a majority of the CU’s economic output, there would be a real risk of collapse of the CU’s economy if Russia were to be sanctioned and harmed economically. As a result of the potential for Russian isolation and economic strife, potential member states would be less likely to join the CU and instead choose to associate with the EU.

Another realistic option could be for Russia to wait and encourage Ukraine to split in two. As stated above, Ukraine is generally ethnically divided along an east-west axis. In Ukraine, “[m]ost of the support for closer ties to Moscow . . . is in the Russian-speaking [e]ast” and south. Some have argued that Ukraine should go the way of Czechoslovakia and allow the state to be split based off a lawful referendum. If that were to occur, the western half of Ukraine might be able to pursue integration with the EU and the eastern half of Ukraine could either pursue integration with the CU as an independent state or be absorbed by Russia. This could set a bold precedent when it comes to former Soviet states that have areas with Russian ethnic groups, and could lead to the break-up of states along ethnic lines. It is

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146 See supra Part I.B.2.
147 While Russia has not officially invaded eastern Ukraine, Russia has been accused of actively working to destabilize eastern Ukraine by supporting the separatists in the region. See War by Any Other Name, THE ECONOMIST (July 5, 2014), http://www.economist.com/news/europe/21606290-russia-has-effect-already-invaded-eastern-ukraine-question-how-west-will.
148 See supra Part II.A
151 Transnistria in Moldova and Abkhazia and South Ossetia in Georgia are examples of such regions within former Soviet states. See Oleksandr V. Turchynov, Kiev’s Message to Moscow, N.Y. TIMES (Mar. 11, 2014), http://www.nytimes.com/2014/03/12/opinion/ukraines-president-rebuffs-russian-imperialism.html?ref=opinion&_r=0.
possible that the fear of losing territory either to independence or to Russia could affect a potential member state’s decision on which integration path to take.

Another hard power option that Russia has actively pursued is to further cripple the Ukrainian economy by shutting off Ukraine’s supply of Russian gas.\textsuperscript{152} On June 16, 2014, Gazprom, a Russian energy company, cut off natural gas supplies to Ukraine because Ukraine missed a Russia-imposed deadline “to pay a nearly $2 billion installment for past gas deliveries.”\textsuperscript{153} As a result of the gas shut off, it is not inconceivable that there could be a new wave of protests that could usher in a leader that is more likely to appease Russia and join the CU in exchange for financing and debt forgiveness.\textsuperscript{154} This sort of economic bullying could have implications for other states that are on the fence when it comes to joining the CU.\textsuperscript{155}

IV. Conclusion

For Russia to achieve its goal of a strong and integrated region, it needs Ukraine and other CIS states to join its customs union. If the CU is to be the solid foundation of a Eurasian Union, it must integrate most of the CIS states not already integrated with the EU and become a larger and more diversified union. In light of the current events in Ukraine, however, it appears that Russia is going to have a difficult task attracting the members it needs. One can only hope that Russia will begin to rely on soft power rather than hard power to achieve its goals.


\textsuperscript{153} Id.

\textsuperscript{154} It should also be noted that the tactic could also backfire and cause the people of the Ukraine to sway even more to the West because it would further worsen Ukrainian people’s views of Russia.

\textsuperscript{155} For example, Turkmenistan, a potential CU member and a leading gas exporter in the Caspian and Central Asian region, sends majority of its gas to Russia where it is consumed or transits through Russia to end markets in Europe. Turkmenistan Energy Data and Analysis, Energy Information Agency 5 (2012), available at www.eia.gov/countries/analysisbriefs/cabs/Turkmenistan/pdf/pdf. Conceivably, Russia could raise transport costs for Turkmen gas along Russia pipelines in a coercive effort to force Turkmenistan into the CU. That said, Russia could also offer Turkmenistan lower transport fees to entice it to join.
Ukraine and many other CIS states are facing the same dilemma Ulysses and his crew faced while attempting to decide which path to take. Although both options have their costs and benefits, it is important to consider the long-term ramifications of either deal. Each state faces a tough decision. However, the danger is not over after the choice is made, as Ulysses lost his entire crew after they survived the trials of Scylla and Charybdis.¹⁵⁶

¹⁵⁶ See HOMER, supra note 1.
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