

Negotiating with the Russian Bear: Lessons for the EU?

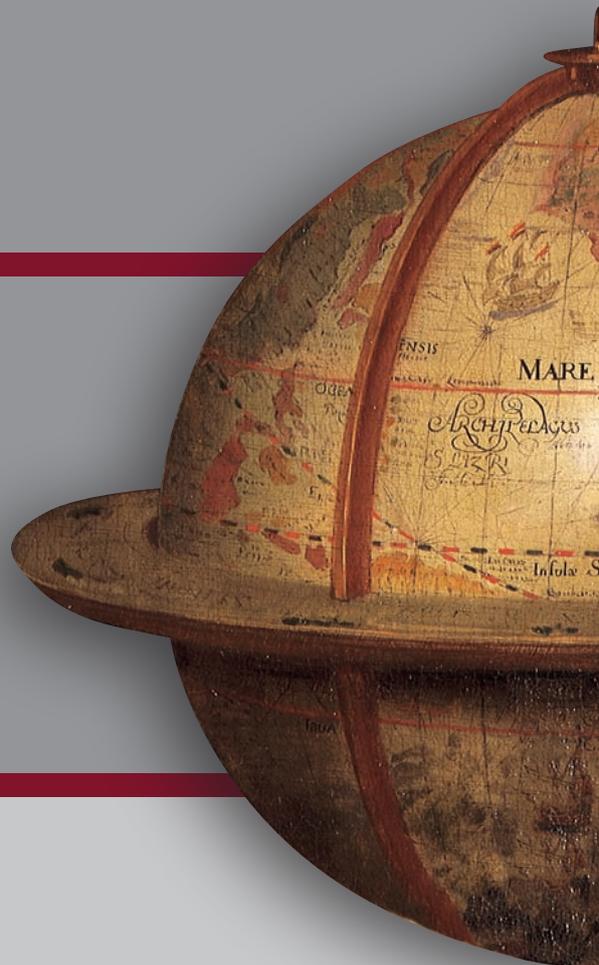
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Paul Meerts (ed.)

Department of EU International
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Paul Meerts (ed.)

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Views expressed in the *EU Diplomacy Papers* are those of the authors only and do not necessarily reflect positions of either the series editors or the College of Europe.

Abstract

Negotiations between the European Union and the Russian Federation are instrumental in forging fruitful and balanced cooperation between the two giants. However, the EU seems to run up against the same stone-walling as the United States did during the Cold War. Soviet negotiation style – perceiving bargaining as ‘mobile warfare’ – appears to be identical with the Russian mode of ‘give and take’, while EU negotiators tend to use less distributive and more integrative strategies and tactics. This collision does not make life easy. The EU is therefore well advised to try to change the context of the relationship whenever possible before entering substantial negotiations with the Russian Federation. Besides the introduction setting out Russian negotiation style in general, this *EU Diplomacy Paper* offers five case studies which illustrate this style in practice. They were written by students of the College of Europe’s *EU International Relations and Diplomacy Studies* programme, Marcus Aurelius Promotion 2008-2009. Two cases deal with direct negotiations between Russia and the EU (Kaliningrad transit, new bilateral agreement), while two other contributions use negotiations in the field of energy to highlight Russian strategies and tactics (E.ON-Gazprom asset-swap, Shell and Sakhalin-II negotiations), and one essay analyses the Transnistrian conflict.

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Introduction: 'Bearing' the Burden

Paul Meerts

The Russian Federation is the most important neighbour of the European Union (EU), the most powerful, and the most difficult to handle. The two main reasons for this are the asymmetry of interdependency and the Russian negotiation style. First of all, there is an imbalance in the field of security. The EU is dependent on the United States to counterbalance Russian military power, while the Russians are not dependent on a third power. Secondly, the economic equilibrium is not a stable one. Though Russia is very dependent on EU imports and EU payments for its natural resources, the EU does not have the option of short-term punishment. Russian sanctions on oil and gas deliveries have an immediate effect on EU member states, while EU sanctions will only do their work in the long run. Timewise, the 'Russian stick' is more effective than the 'EU carrot'. This is all the more true as Russia can try 'divide and rule' tactics against an inherently divided EU. This has to do with the segmented and democratic character of the EU vis-à-vis a centralised, autocratic Russia. Then there is the question of culture.

It is difficult to determine EU culture; actually, there is no single EU culture. Indeed, we can distinguish EU systemic, political and bureaucratic culture. But societal culture is just a basket of Western, Central and Southern European cultures, where one might want to add Northern and perhaps Eastern European cultures as well (though they can also be seen as subsets of Western and Central European value systems). Maybe we could determine a European civilisation, but for sure the Russians would claim they are part of that. And there are good historical and other reasons to defend that position. In fact, the European civilisation stretches far beyond the European subcontinent, to Siberia and the Americas. In any case, one of the expressions of cultural differences between the European cultures within the European civilisation is negotiation style.

Russian Negotiation Style?

We may define negotiation style in terms of individual personal character or as the expression of national culture in the behaviour of negotiators. Research into the Russian negotiation style as collective behaviour is quite limited because Russian national culture has not been included in a comprehensive study like Geert Hofstede's *Culture's Consequences*.¹ He has estimated values, but due to the secretive character of the Soviet system, Russian style has not been included in the

¹ Geert Hofstede, *Culture's Consequences*, Beverly Hills, Sage Publishers, 1980.

wave of cultural surveys in the second part of the twentieth century. One of the few sources is Hans Binnendijk's edited volume *National Negotiation Styles*. Although the chapter by Leon Sloss and M. Scott Davis deals with the Union of Soviet Socialist Republics' negotiation style, can we to a great extent translate this into Russian negotiation style.² First of all, the Russians and foremost Russian culture dominated the USSR. Secondly, all the Soviet styles mentioned in Binnendijk's book can be found in the negotiation styles of the present-day Russian Federation. All five cases in this *EU Diplomacy Paper* bear witness to that, though in one of them it is the exception that seems to prove the rule.

Sloss and Davis start their exposé with the "burden of history".³ That burden is, of course, the same for the Soviet Union as it is for the Russian Federation: the feeling that nature and mankind are a threat to the survival of the peoples between Poland and the Pacific. Therefore, trust is an issue, as is the willingness to give in. In a harsh political and environmental climate trust is a precious thing and tough defence an absolute necessity. Remember the Mongols! And not only them, the Huns and the Turks, but also the Poles and the Germans, Catholicism and Islam. The fear of being overwhelmed seems to be an important drive in the strategy to keep everybody at a distance, for example through imperialism. Sure, this is stereotyping, but it is in line with the experiences noted by many Western negotiators, as well as the case studies in this paper. These observations are also in line with my own experiences, both with students – but certainly not all! – in my classes in Eastern Europe, but also in my dealings with some Russian researchers of international negotiation processes .

The second main factor mentioned by Sloss and Davis is "revolutionary ideology".⁴ Here we will find a difference between the Soviet and the Russian Federation negotiation styles, but I argue that revolutionary rhetoric was only a sauce over Russian behaviour. Indeed, the tactics mentioned in Binnendijk's book and those recorded by the authors in this paper are similar. It seems very likely that Soviet style has been Russian style in the end. Especially as the third main underlying factor mentioned by Sloss and Davis is an "oligarchical decision-making system".⁵ We could have had our doubts about this under President Yeltsin, but not under Putin. There might be some changes under Medvedev, perhaps, but these signals are still very weak.

² Leon Sloss and M. Scott Davis, *The Soviet Union*, in Hans Binnendijk (ed.), *National Negotiation Styles*, Washington, D.C., Centre for the Study of Foreign Affairs of the Foreign Service Institute, US Department of State, 1987.

³ *Ibid.*, p. 17.

⁴ *Ibid.*, p. 20.

⁵ *Ibid.*, p. 21.

Sloss and Davis describe the following tactics, shaping the Russian profile:⁶

1. a preference for generally worded agreements and the tendency to equate compromise with weakness;
2. a drive to promote a broad range of interests at the same time, thereby strengthening the Russian position through package deals between issues where the Russians have stronger and weaker positions;
3. careful preparation – and the Russian diplomatic education is one of the best in the world – while manipulating its environment as much as possible;
4. a tendency to instruct Russian negotiators very tightly – which is in line with the extremely dominant role of leaders and bosses in Russian society – in a steep hierarchical order;
5. a combative negotiation style, confrontational – blunt – stubborn: negotiation is war by other means;
6. divide and rule, being very patient if needed, a love for ‘drama’;
7. very skilled in secretive and back-channel negotiation.

Jerrold L. Schechter, in his book *Russian Negotiation Behaviour*⁷, comes to similar conclusions. “Byzantine and Mongol rule served as models for Russia”⁸ and these examples of authoritarian statecraft highlighted the importance of authority, power and submission. Schechter deplors the fact that Moscow prevailed over Novgorod, which had a much more ‘democratic’ state system,⁹ having the Hansa cities as its reference for state organisation. In short, he concludes that (in negotiation) the Russians have a ‘winners-take-all’ mentality aiming at dominating or destroying their opponent.¹⁰

In September 2009, twenty-six young Russian civil servants from across-the-board Russian Ministries and Agencies came to the College of Europe in the context of its collaboration with MGIMO, the Moscow State Institute of International Relations in Moscow. Under the guidance of the editor of this *EU Diplomacy Paper* the group simulated negotiations of the new Partnership and Cooperation Agreement (PCA) between Russia and the EU. Or, as they formulated it in their final document “between the European Communities and their member states, of one part, and the Russian Federation, of the other part”. I thought ‘the EU’ would be adequate, but the Russian participants rightly said that the Lisbon Treaty had not been fully ratified yet. A dispute then followed between *de facto* and *de jure* perceptions, the pragmatism

⁶ *Ibid.*, pp. 25-34.

⁷ Jerrold L. Schechter, *Russian Negotiation Behavior*, Washington, D.C., United States Institute of Peace, 1998.

⁸ *Ibid.*, p. 18.

⁹ *Ibid.*, p. 19.

¹⁰ *Ibid.*, p. 115.

of a Western European (Dutch) versus a more legalistic approach by the Russian participants. They negotiated a substantial and realistic agreement, not having any problem in representing both sides very empathically and insightfully. The EU should rejoice in their capability to understand the EU side so well and to be ready to fight for EU interests without taking into account their own cultural background. In that sense, the behaviour of the new generation of Russian civil servants comes close to that of the young diplomats of the European Union – according to my experience in training them in the context of the European Diplomatic Programme. This might mean more fruitful interaction and maybe give-and-take between the two sides, at least in the near future.

The Russian group were good sports and they were ready to do the self-assessment exercise connected to the Thomas and Kilmann model.¹¹ They distinguish Competition, Collaboration, Compromise, Avoidance and Cooperation as modes of conflict management, or in other words: as negotiation strategies. The outcome of this exercise – group averages on the basis of individual male and female scores – confirmed the main feature of Russian negotiation style: a combative style. Though Compromise was the highest score – this is the case with any group as it is a kind of non-choice outcome – Competition/Domination scored second. This is very unusual; in general young male EU diplomats have Avoidance as their next highest score, while with females it is Accommodation. While the group scored highly on dominant behaviour, the Russian women scored even higher than the men (7.4 against 6.8 on a scale of 10). The lowest scores were for Collaboration (4.3) and Accommodation (4.5). The women scored even weaker (4.1 and 4.2) on these dimensions than the men (4.4 and 4.8 respectively). Avoidance scored middle of the road (5). To wrap-up: the group scored high on assertive and uncooperative behaviour. On the basis of the results of the conflict-mode exercise, combined with my observations of the PCA simulation exercise, the conclusion would be that – like in the past – the European Union will still be confronted with stiff negotiation behaviour of Russian negotiators as far as content is concerned, but their behaviour might be more flexible and empathic. This could be the fruit of the changes in Russian society in the late twentieth century, no overall inflexibility anymore, *distributive on interests, integrative on process*.

Lessons to Be Learnt by the European Union?

Though the Russian bargaining style does have a cultural, political and historical basis, context remains the dominating factor. Like any negotiation style, the Russian one is contextual indeed. Where the Russians are in a dependent position, they will be

¹¹ Kenneth W. Thomas and Ralph H. Kilmann, *Thomas-Kilmann Conflict Mode Survey*, Tuxedo, Xicom, 1974.

more accommodative, whereas in an independent position, they will be competitive. They may try to avoid those issues that cannot be dealt with immediately and threaten the security of the state (see Yeltsin's initial and follow-up strategies on Chechnya). Compromise will only be made if any other strategy cannot be effective. Collaboration, the final and most positive of Thomas and Kilmann's five strategy models will only be doable if the European Union and the Russian Federation become more entangled than they are today.¹²

Collaboration, or a win/win integrative relationship, is probably the EU's preferred outcome of a new Partnership and Cooperation Agreement with the Russians. However, this point can only be reached if the EU approaches Russia, and Russia approaches the EU, packaging the main interdependencies on a broad front. But as Russia's historic strategy seems to be as autarchic as possible – given traumas from the past – the negotiation road ahead will be bumpy at least. For the EU it is therefore advisable to take a competitive stance at the start of these negotiations and work its way towards collaborative behaviour, though compromise will probably be the final outcome. In any case, Russia will have to be more of a priority in EU policy-making than before, and avoidance cannot possibly be the answer. This is neither in the interest of the EU, nor of Russia – even, I dare to say, if this is not to the liking of some former Soviet 'allies' who have since become EU member states. Accommodation is not the answer either, as the Russians will see this as weakness and they will therefore disrespect the European Union. To be respected by the Russians is, given their experiences in the past, an absolute precondition for fruitful negotiations in the future. One might hope that these negotiation processes will, in the end, socialise Russia into 'European' negotiation culture: integrative instead of distributive bargaining. But even if stonewalling does continue, "this does not necessarily mean that the [...] response [...] should be to adopt the same tactics".¹³ But it is important for EU negotiators to show strength at the same time as "negotiators who are perceived as confused, weak, vacillating, or uncertain will be both exploited and scorned".¹⁴

About this Paper

This *EU Diplomacy Paper* focuses on Russian negotiation style as a determinant in EU-Russian relations. The paper tries to shed some light on the impact of Russian negotiation style on its dealings with the European Union by looking at five cases, written by students of the College of Europe's EU International Relations and

¹² Thomas and Kilmann, *op.cit.*

¹³ Raymond F. Smith, *Negotiating with the Soviets*, Indianapolis, Indiana University Press, 1989, p. 119.

¹⁴ *Ibid.*

Diplomacy Studies programme, Marcus Aurelius Promotion 2008-2009. Two cases deal with negotiations between the Russian Federation and the European Union. Two other cases use negotiations on energy to highlight Russian strategies and tactics, while one uses the example of Transnistria. This sample of cases thus provides examples of inner-public sector bargaining, the public sector-private sector dimension of international negotiation processes as well as inter-public-sector negotiations concerning a third party problem.

- I. Adam Harrison, 'Solving the Kaliningrad-Russia Transit Conundrum'
- II. Iana Stantieru, 'Kremlin Tactics in the Transnistrian Conflict'
- III. Elmar Hellendoorn, 'Shell and Sakhalin-II: Negotiations Russian Style'
- IV. Chloe Middleton, 'The Interaction of Political and Economic Objectives in the E.ON-Gazprom Asset-Swap Negotiations, 2004-2008'
- V. Anna Panczocha, 'Negotiating a New EU-Russia Agreement: A Three-level Game'

The first contribution to this paper, concerning Kaliningrad, seems to show us a much more lenient Russian behaviour, out of line with the 'regular' competitive style of Russian negotiators. My explanation would be that even the Russians will follow a more accommodative line if they have a clear power problem, as the Federation did under Yeltsin because of its internal chaos. This might be the case again – momentarily – if the economic crisis hits Russia hard.

In the second contribution we find several examples of stonewalling tactics in the Transnistrian conflict: delay settlements if needed, apply sanctions if possible – a recent example being the Russian dealings with Ukraine – and combining those with incentives. Another tactic is using precedents – in this case Abkhazia and South Ossetia – as a means of broadening the negotiation into other issue areas. Third, the Sakhalin case adds tactics like 'salami' or bit-by-bit bargaining, escalation, drawing in side issues like the environment in order to threaten the other party, but also points to the effect of underestimating the Russians by Shell. Fourth, the E.ON/Gazprom study does not only refer to 'salami tactics' again, but also deals with BATNA ('best alternative to a negotiated agreement') issues: what are the available alternatives and to which extent do they influence the power balance in the negotiation? The last contribution, dealing with questions like the 'zone of possible agreement' (ZOPA), adds interesting comments on the individual EU member states' reactions to the Russian moves, from fellow-travellers to iron-clad opponents.

I. Solving the Kaliningrad-Russia Transit Conundrum

Adam Harrison

Introduction: the Kaliningrad Conundrum

By September 2002, with enlargement just around the corner, the EU and Russia sat down to negotiate on the issue of transit of people between Kaliningrad oblast (administrative region) and Russia 'proper'.¹⁵ On the table were a variety of solutions designed to resolve the singular matter of freedom of movement between the soon-to-be Baltic Sea exclave and Russia. One such solution was to install a high-speed train line across Lithuania. At talks in Brussels in 2002, Moscow's Special Representative on the Kaliningrad problem, Dmitry Rogozin, unhappy with the rail speed that the EU deemed necessary, declared that the proposed 60-70 kilometres per hour would be more than enough to prevent migrants leaping from the moving train. Only three people, he said, would be able to manage this: James Bond, Batman and the Terminator.¹⁶

This essay examines how the EU and Russia managed to move beyond discussion of train speeds and superhero rhetoric to reach a negotiated solution to the matter of Kaliningrad-Russia transit. It locates these negotiations within the broader web of issues and themes that affected their course and outcome. Using Zartman and Berman's three-part model problem for solving bilateral negotiations,¹⁷ the Kaliningrad negotiations can be examined by looking at how the parties diagnosed the issue to resolve, defined a formula for resolution, and decided details of the agreement itself. The essay finds that the transit issue – a rather legalistic and technical matter – was not resolved using solely legal and technical means. Political concessions and compromise remained tools used by both the EU and Russia in pursuit of good relations, but also in the interests of winning broader assurances on migration – a promise of future visa-free travel for Moscow, and a readmission agreement for Brussels. Kaliningrad-specific matters such as socioeconomic development and cross-border trade were largely swallowed up in broader migration and security issues.

¹⁵ When talking about the Russian 'mainland', to avoid a preponderance of quotation marks, and the awkward phrases 'Russia proper', and 'big Russia' (as is often used in the English-language literature) the paper will henceforth refer to 'Russia', with an understanding that Kaliningrad is, of course, part of the Russian Federation.

¹⁶ 'Kasyanov against Kaliningrad Visas', *BBC*, 27.09.02, retrieved 23.11.08, http://news.bbc.co.uk/1/hi/russian/news/newsid_2284000/2284756.stm.

¹⁷ I. William Zartman and Maureen R. Berman, *The Practical Negotiator*, New Haven, Yale University Press, 1982, p. 93.

Pre-negotiation: Working out the Question

With the prospect of EU enlargement, it was clear that an answer would be needed to the 'Kaliningrad question'. But what exactly was the question? In fact, what posed itself to the EU and Russia was always more of a collection of questions, inter-related matters of a practical and technical nature, but which were far-reaching in their implications for the EU-Russia relationship. This was the first major occasion on which the EU and Russia were obliged to negotiate extensively on legal-technical matters which were not mostly economic in nature. The three key themes which concern Kaliningrad are: socio-economic development of the oblast, the construction of an Area of Freedom, Security and Justice (AFSJ) in the EU, and the principle of the freedom of movement of persons in the Schengen area and in the Russian Federation. All three could have formed part of the final negotiated package to the Kaliningrad question. However, it was freedom of movement and security matters which constituted the formula of the final agreement, with the development strand neglected.

Development

Kaliningrad has long been known to suffer from a number of problems, including an "exceptionally high level of prostitution, drug trafficking, AIDS and organised crime" in the oblast.¹⁸ The European Union had long been a donor to Kaliningrad, but the EU did not have a concerted strategy towards the region within the framework of EU-Russia ties. Despite enlargement looming, there was no 'pre-accession' programme for Kaliningrad, and the EU-Russia Partnership and Cooperation Agreement itself focused only on EU-Russia relations, without mentioning any specific regions, even Kaliningrad,¹⁹ although a 'Special Programme for the Kaliningrad Oblast' was developed post-enlargement.²⁰

There had previously been signs that Moscow recognised the need to help the oblast escape the socio-economic doldrums it drifted in. Testament to this are the capital's plans for Kaliningrad as a 'pilot project' for cooperation with the EU in its

¹⁸ Igor Leshukov, 'The Regional-Centre Divide: The Compatibility Conundrum', in James Baxendale, Stephen Dewar and David Gowan (eds.), *The EU & Kaliningrad: Kaliningrad and the Impact of EU Enlargement*, London, Federal Trust for Education and Research, 2000, p. 137.

¹⁹ Stephen Dewar, 'What Is to Be Done?', in Baxendale, Dewar and Gowan (eds.), *op.cit.*, p. 236.

²⁰ European Commission Delegation to Russia, 'Kaliningrad', retrieved 30.08.09, http://www.delrus.ec.europa.eu/en/p_575.htm.

'Mid-term Russia-EU Strategy Paper',²¹ which not only recognised the need for development, but placed the region firmly within the context of EU relations. Unfortunately, such pilot cooperation never emerged. Commenting on the subsequent transit negotiations, one analyst remarked that "many offers of turning the region into a more prosperous zone through special trade privileges or assistance by the EU were stalled in Moscow, apparently for fear of fuelling separatist tendencies".²² This is despite the fact that Kaliningrad separatism is and was "virtually non-existent".²³ But, with development low on Moscow's agenda, and the transit question becoming ever more urgent, socio-economic reform did not form part of the formula of negotiations.

Enlargement presented a challenge to the EU in the form of the contradiction in the Union's professed desire for new neighbours to share in the benefits of enlargement by ensuring borders did not serve to exclude. In fact, the encirclement by Schengen posed two problems for Kaliningrad. First, the loss of small cross-border trade into Lithuania and Poland, on which much of the local economy depended. Second, actual transit of persons between Kaliningrad and the rest of Russia. As will become clear, the final negotiated arrangement made provisions for the latter, but not the former. This too marked a sidelining of local development issues in favour of the more big ticket gains of facilitated travel for Russian citizens in general. For the EU's part it did little to live up to its desire to avoid new dividing lines, nor to reconcile the tension between its emerging concepts of 'Freedom' and 'Security', to which this article now turns.

Security and Freedom of Movement of Persons

The prospect of Kaliningrad acting as a 'Trojan Horse' for Russian citizens to enter the Schengen Area illegally was an evident concern, particularly since the EU continued to harbour concerns about Russia, and Kaliningrad in particular, as a source of criminality and potential immigration impacting on the 'Security' plank of the emergent AFSJ. Potemkina notes that the EU's view of Russia as a "potentially unstable regional power"²⁴ raised the prospect that the Union's internal and external goals come into conflict with each other, in terms of finding a satisfactory solution

²¹ Olga Potemkina, 'Ramifications of Enlargement for EU-Russia Relations and the Schengen Regime', in Joanna Apap (ed.), *Justice and Home Affairs in the EU*, Cheltenham, Edward Elgar, 2004, p. 304.

²² Holger Moroff, 'EU Policies towards Russia: Secondary Integration by Association?', in Katlijn Malfliet, Lien Verpoest and Evgeny Vinokurov (eds.), *The CIS, the EU and Russia: the Challenges of Integration*, Houndmills, Palgrave Macmillan, 2007, p. 106.

²³ CEPS, 'Kaliningrad's Borders and Transit to Mainland Russia: Practicalities and Remaining Bottlenecks', CEPS, 19 February 2007, retrieved 18.11.09, http://epin.org/Article.php?article_id=264.

²⁴ Potemkina, *op.cit.*, p. 300.

with Russia but also maintaining the integrity of the AFSJ. Meanwhile, the 'Freedom' plank of the AFSJ aimed for freedom of movement of persons across the Schengen space. At the same time, however, the Russian Federation's Constitution guaranteed freedom of movement to its citizens across the federal territory. Another conflict therefore emerges: that the Schengen visa requirements would require Russian citizens to obtain visas from a foreign authority to travel within their own country. The need to find a workable solution for freedom of movement of Russian citizens sat uncomfortably with the EU's heavily securitised discourse of 'illegal immigration' (the only major international organisation to do so) and its transfer of control of the movement of persons to its external frontier. The impending negotiations therefore shone the spotlight on a number of issues that were tricky and still in a state of development themselves within the EU.

Getting to the Table

Although three issue areas – development, security and freedom of movement of persons – impinged upon the EU-Russia relationship, these did not neatly resolve themselves into a single negotiating package. A clear diagnosis of what should be discussed emerged only gradually. At a 1998 Ministerial meeting between the EU and Eastern candidate countries it was made clear that full implementation of the Schengen provisions was envisaged for all candidates. This would naturally impact on Kaliningrad, but there had still been no official move to discuss the region in depth.

At the EU Troika-Russia meeting in June 1999 Russia finally proposed that discussions take place regarding Kaliningrad within the framework of the PCA, a move which apparently took the Union by surprise.²⁵ It does not appear that the various matters swirling around the Kaliningrad question prompted the EU to form a coherent position on what issues to discuss. The Commission "did not yet recognise the need to make special arrangements for the movement of people in and out of the Kaliningrad Region",²⁶ which was clear from the Commission's Communication on 'The EU and Kaliningrad' as late as 2001.²⁷ Third-party commentators at that stage felt it clear that the question of transit would be central, and also "the most likely to create tensions".²⁸ Russia, too, had already devised a policy position, opting in 2001 for "facilitated cross-border regime [...] so that people could maintain their

²⁵ René Nyberg, 'The Baltic as an Interface between the EU and Russia', in Baxendale, Dewar and Gowan (eds.), *op.cit.*

²⁶ CEPS, *op.cit.*

²⁷ European Commission, 'The EU and Kaliningrad', Communication from the Commission to the Council, COM(2001) 0026 final, Brussels, 18 January 2001.

²⁸ Nyberg, *op.cit.*, p. 55.

economic and social contacts".²⁹ Moreover, the role of then accession state Lithuania deserves mention as crucial third party to the talks. Nyberg believes that Lithuania played a key role in persuading Russia to discuss Kaliningrad. Indeed, as an immediate neighbour Lithuania had a crucial interest in the oblast, both in ensuring the matter of freedom of movement did not interfere with its EU accession or eventual entry into the Schengen zone, and as a country interested in the economic welfare of its near neighbour.³⁰ It might also be added here that the Kaliningrad authorities do not appear to have played a key role in the transit negotiations, the lead negotiator coming from Moscow.

Political versus Legal Solutions

One apparent tension that would mark the progress of talks was that between the exigencies of the law on the one hand, and the scope for political compromise on the other. In its 2001 Communication, the Commission made clear its insistence on full implementation of the *acquis* without exception. However, at the EU-Russia summit in Moscow in May 2002 it became clear that the Russians would insist on actually retaining visa-free travel to the exclave. Former Foreign Minister Kozyrev stated that "[w]hat the president has said is that not only will we keep Kaliningrad, but we will continue to go there freely".³¹ Russia thereby abandoned the policy it had held in 2001 for a "facilitated cross-border regime".³² The Russian shift meant that transit was still at the heart of the matter, but that Moscow had widened the package by proposing privileged rights for Kaliningraders to travel freely through future EU and Schengen territory which, given other concerns about the construction of an AFSJ, the EU was highly unlikely to concede on. The two sides thus moved further apart.

Reviewing the situation, Makarychev argues that "the Russian government insisted on a predominantly political – as opposed to technical – solution, presuming that the EU should make a number of exceptions from the existing rules regulating border-crossing procedures".³³ This is further evident in a 2001 Russian document which envisaged that for Community policies on visas and on external borders "we rather need the principal political decision, while technicalities may be settled later on".³⁴ Some, including several Russian analysts, doubted whether Moscow understood the legalistic nature of the matter at hand: "the problem is that up to the present time

²⁹ Potemkina, *op.cit.*, p. 307.

³⁰ Lithuania has been a consistent advocate of facilitating a small border traffic regime for Kaliningraders, and helped broker the eventual 2003 transit agreement.

³¹ John Daniszewski, 'Putin Balks at Visa Plan for Kaliningrad', *LA Times*, 30 May 2002, retrieved 18.11.09, <http://8.12.42.31/2002/may/30/world/fg-russia30>.

³² Potemkina, *op.cit.*, p. 307.

³³ Andrey S. Makarychev, 'EU-Russian Intersubjective (Dis)connections', in Michael Emerson (ed.), *The Elephant and the Bear Try Again*, Brussels, CEPS, 2006, p. 29.

³⁴ Quoted in Potemkina, *op.cit.*, pp. 306-307.

there are few politicians in Russia who know what the Schengen *acquis* is".³⁵ Whether true or not, by 2002 negotiations had become highly politicised. President Putin declared at the Moscow summit that with regard to the Kaliningrad transit "[i]t is no exaggeration to say that our overall relations with the European Union depend on how this issue, of vital importance to Russians, is resolved".³⁶ In the meantime Lithuania and Poland had begun to tighten up on requirements for entry in preparation for EU accession, which no doubt sharpened Moscow's attention on the issue. Kaliningrad residents were due to lose the right to enter Lithuanian territory visa-free from the start of 2003. Bearing in mind the differing political and technical approaches, at that summit the EU did attempt to create a workable political package by placing recognition of Russia as a market economy on the table.³⁷ This was unsuccessful, and the rift between the two sides remained. Commissioner Patten declared in a face-to-face meeting with the Russian Prime Minister and Foreign Minister that the EU was not going to "override its basic rules here, including Schengen, nor undermine the enlargement negotiations themselves".³⁸

Russian Prime Minister Kasyanov continued to push hard publicly for an entirely visa-free regime for Kaliningrad residents. Nevertheless, as Jönsson remarks, one "common understanding of negotiations is that the parties initially ask for more than they expect to get".³⁹ It may appear that the EU, in sticking to a purely legalistic approach, had not followed this standard procedure. However, it soon brought to the table other issues related to migration and the AFSJ. The Union managed to persuade Russia to look into concluding a readmission agreement. This had been one of the "unresolved issues in EU-Russia relations for some time",⁴⁰ and was a link made by the EU to a central concern of AFSJ construction. One analyst believes that the issuing of the 'Facilitated Transit Document' (FTD – the eventual cornerstone of the transit agreement), "was dependent on the results of the talks on readmission".⁴¹ Indeed, this was unusual, since readmission agreements had previously been signed only by partner countries receiving visa-free provisions in return. Consequently, in a reciprocal bid, Russia proposed it join the EU's 'visa-free list', a somewhat surprising development. In 2001 the Centre for European Policy Studies (CEPS) had designated Russia as the country most unlikely to receive visa-free status out of all eastern

³⁵ *Ibid.*, p. 301.

³⁶ Quoted in Daniszewski, *op.cit.*

³⁷ *Ibid.*

³⁸ Quoted in Potemkina, *op.cit.*, p. 308.

³⁹ Christer Jönsson, 'Conceptualizations of the Negotiation Process', Paper prepared for the 4th Pan-European International Relations Conference, Canterbury, 8-10 September 2001, in Paul Meerts (ed.), *Workbook on International Negotiation*, The Hague, Clingendael, 2008, p. 81.

⁴⁰ Potemkina, *op.cit.*, p. 308.

⁴¹ *Ibid.*, p. 315.

European countries,⁴² but the prospect for which found its way into the final negotiated agreement.

In the second half of 2002 these issues began to be hammered out in a package which had now gone beyond a mere transit agreement. Furthermore, over negotiations in the latter half of that year hung the threat communicated from Moscow that the scheduled November EU-Russia talks would be boycotted by President Putin in the absence of an agreement.⁴³ Incidentally, the EU accepted in principle the idea of a Schengen-compliant fast rail link, but said that its feasibility could only be assessed after Lithuania's accession to the EU.⁴⁴ In fact, the compromise reached at the November 2002 meeting gave grounds to observers to remark that the "EU uses 'technical' and 'political' approaches selectively, and Russia may do either too."⁴⁵ The Commission's September Communication, whose provisions were adopted at the imminent summit, had already made a step-change from the previous year in recognising that the "impact on the population [of Kaliningrad] may be greater [...] than in other parts of Russia".⁴⁶ It put forward a number of suggestions, including the development of a Facilitated Transit Document, which was to be "deemed equivalent to a multiple-entry transit visa".⁴⁷

Thus, a formula was found which satisfied both the EU and Russia, but also Lithuania which, as a candidate country, participated in the talks. It supported the EU in its insistence on maintaining the integrity of future Schengen implementation,⁴⁸ but eventually also agreed to the EU's FTD compromise, satisfied that this would not relegate the country to a "third- or second-tier member".⁴⁹ Finally, agreement was formally reached when the EU and Russia signed the 'Joint Statement on Transit between the Kaliningrad Region and the Rest of the Russian Federation' in November 2002. Negotiations on the details of the agreement continued on into the spring of 2003, though with the larger political issues agreed upon, the discussion

⁴² Joanna Apap, 'Friendly Schengen Borderland Policy on the New Borders of an Enlarged EU and its Neighbours', Brussels, CEPS, *Policy Brief*, no. 7, 2001, p. 12.

⁴³ 'Several EU Countries to Reject Commission Proposal on Kaliningrad', *Euractiv*, 27 September 2002, retrieved 23.11.08, <http://www.euractiv.com/en/enlargement/eu-countries-reject-commission-proposal-kaliningrad/article-111059>.

⁴⁴ This option was later rejected for lack of compliance with the Schengen regime, ahead of a 2004 report demonstrating the scheme's lack of cost-effectiveness. See: Gerhard Lohan, 'Kaliningrad Transit: Achievements and Perspectives', *Kaliningrad Expert*, 6 September 2006, retrieved 23.11.08, <http://kaliningradexpert.org/node/2980>.

⁴⁵ Makarychev, *op.cit.*, p30.

⁴⁶ European Commission, 'Kaliningrad Transit', Communication of the Commission to the Council, COM(2002) 510 final, Brussels, 18 September 2002, p. 6.

⁴⁷ *Ibid.*

⁴⁸ Potemkina, *op.cit.*, p. 308.

⁴⁹ *BBC, op.cit.*

concentrated on who would foot the bill of the issuance of FTDs on the Lithuanian side; the EU eventually agreed to fund the full costs.⁵⁰

Assessment

It did not go unnoticed by onlookers that the FTD bore a close resemblance to the old visa; President Lukashenko of Belarus weighed in on the debate with a swipe at Russia: "A visa was pink, and now it will be blue and a bit cheaper – what success is Russia speaking about?"⁵¹ Nevertheless, the deal permitted the EU to uphold the principles of the *acquis*, reassured Lithuania that its position regarding enlargement would not be undermined, and provided Russia with a *de facto*, rather than a *de jure*, visa, which would allow the government to claim a victory back home.

One essential and much-criticised weakness of the package, however, was that it left open-ended the future of the agreement in the light of anticipated expansion of the Schengen area to encompass Lithuania. Although other issues, such as a fully visa-free regime for all Russians at an unspecified point in the future, were brought into play at the negotiations in order to reach a compromise, other matters were put to one side, but have reared their head again in current EU-Russia relations. For example, the matter of small border traffic in the context of the Schengen visa regime, for which Russia and Lithuania currently would both like to introduce provisions, was not tackled. The extent of this small tolerance zone into both EU and Kaliningrad territory remains disputed. Meanwhile, the FTD operates to this day, but the somewhat exceptional nature of this measure within the Schengen zone has not gone unnoticed by Russian negotiators who are attempting to win free Schengen visas for Kaliningrad residents, making open reference to the exception that the FTD appears to constitute in order to bolster their case.⁵²

Much has been made of the Russians' desire for a 'political' solution and the resultant clash with the EU's 'legal-technical' position. However, the division was never as clear-cut as this, as evidenced by the outcome and concessions made by both sides. The EU maintained the integrity of the freedom and security elements of the Schengen system by finding a legally and politically acceptable compromise, and Russia had a valid cause in defending the freedom of movement of persons on its own territory. Politically, it could not succeed in achieving exceptions from the EU on transit, nor for winning visa-free travel outright, though the inclusion of this demand broadened the negotiating zone considerably, giving it greater leeway for

⁵⁰ 'Kaliningrad's Borders and Transit to Mainland Russia: Practicalities and Remaining Bottlenecks', *op.cit.*

⁵¹ *Izvestiia*, in Potemkina, *op.cit.*, p. 315.

⁵² 'MID Authorised to Make an Offer', *Vremya*, 24 October 2008, retrieved 23.11.08, <http://www.vremya.ru/2008/198/4/215563.html>.

later compromise. The negotiations should also be understood as the prelude to a more long-term, evolving relationship between the EU and Russia encompassing questions of the relationship between territory, freedom of movement and migration. Other issues were left unresolved by the 2003 deal and left to fester, while matters of economic and social reform for the oblast were sidelined. These will not disappear.

Kaliningrad recently hit the international headlines again thanks to Russia's proposed deployment of Iskander missiles there. From Russia's perspective this is part of a much broader interplay between Russia, the US and NATO. With the US more tightly involved and keen on a resolution of the matter, and with discussion on a 'new security architecture for Europe', dealings around this patch of land on the Baltic may yet grow more intricate. From the EU's point of view, the migration and crime challenges from Kaliningrad remain issues more firmly within its competence. Referring to the original round of negotiations on Kaliningrad transit, Finnish Prime Minister Paavo Lipponen had concluded that the Kaliningrad question would be solvable "if it doesn't get linked in with larger complex of problems".⁵³ In fact, the 2003 agreement was reached by moving away from a purely technical approach, and was reached by issue linkage to related areas. The Kaliningrad question indeed – perhaps inevitably – grew beyond the question of mere transit. The region became the scene of a host of internal security concerns and external security challenges thanks to the sad state of Kaliningrad itself and its usefulness to Moscow on a broader scale. Its Trojan Horse-like nature within the EU's Troy may yet facilitate further issue linkage, whether involving the aforementioned issues that remain unresolved, or broader issues of bilateral or multilateral concern.

⁵³ *BBC, op.cit.*

II. Kremlin Tactics in the Transnistrian Conflict

Iana Stantieru

The Transnistrian conflict, between the Republic of Moldova and its breakaway region on the left bank of the Dniester River, has already been analysed from many perspectives; this contribution focuses on how Moscow is using tactical instruments in dealing with this issue. Since one third of the population in this region is Russian, one third Ukrainian and one third Moldovan, Moscow tries to control this region directly and indirectly, using diverse strategies and tools. This essay aims at analyzing various coercive measures or tools used by Russia in this conflict and the consequences of these instruments on Moldova's economy, social life and political situation. For this purpose, I employ as a theoretical approach the use of tactical instruments in international negotiations, in this case, the negotiations on the Transnistrian conflict.

The first part is dedicated to a short analysis of the conflict and the implications it has on the parties involved, with a special focus on the real parties involved in this dispute. Secondly, the paper discusses the use of tactical instruments in negotiation processes. The third part embarks on an investigation of how these tactical instruments are used by Russia in the case of Moldova and implicitly in the Transnistrian region. Finally, the paper foresees a possible scenario which would contribute to the settlement of the Transnistrian conflict and would avoid further pressure on Moldova.

Understanding the Reality of the Transnistrian Conflict

The nature of the Transnistrian conflict can be understood as many other post-Soviet conflicts. Therefore, the focus has to be on the complexity of the game played by the actors involved in this scenario. The Transnistrian region, consisting of several districts on the left side of the Dniester River, in the past was an integrated part of Moldova. Since this area is of crucial geo-strategic importance, it was often traded between the winners of wars and used as a pawn in negotiation processes. Hence, the Transnistrian conflict must be considered a strategic theatre through which the Russians want to maintain their control in the region as well as blocking the extension and consolidation of the EU and NATO in this area. The case of Transnistria is usually referred to as a 'frozen conflict'. The term is still appropriate since the conflict remains unsolved and the talks and negotiations on this issue have not progressed significantly. From another angle, considering the consolidation of the regime installed in the region of the left side of the river, the conflict does not seem to be that 'frozen'.

Most scholars consider the conflict as taking place between the Moldovan side and the Transnistrian leaders of the Russia-backed breakaway strip of Moldova. However, about 99% of the leaders conducting politics and business in Transnistria are Russian nationals. Even the so-called 'president' of the 'Pridnestrovskiaia Moldavskaia Respublica' (Prednestrovian Moldovan Republic) Igor Smirnov, entered Transnistrian territory for the first time in 1986. The other leaders came or were sent by the Kremlin to Transnistria even later and now they are ruling this region. Moreover, there is not a direct dispute between the Moldovan and the Transnistrian population, given the fact that they have the same ethnic, religious, linguistic and cultural composition.

Since Transnistria has strong political and economic support from Russia and all the laws implemented in Transnistria are made by the Kremlin, this regime can be called an occupational regime. When Moldova declared its independence, the Russians had encouraged the Transnistrian population and its leaders to view this as a violation of their language rights and the perspective of unification with Romania. Consequently, the conflict was manoeuvred by Moscow from the beginning until now which implies that the conflict is principally one between Moldova and Russia. However, the Russian administration 'puts the blame' only on the Transnistrian separatists who want to gain their independence from the Moldovan authorities. The only time Russia has recognised that it is the one involved in this conflict and not Transnistria, was when the cease-fire agreement was signed in July 1992 between the Moldovan president Mircea Snegur and his Russian counterpart Boris Yeltsin. Analyzing all these reasons we can conclude that "Transnistria is not part of the conflict"⁵⁴ and the conflict is mainly between the Republic of Moldova and its 'elder brother', the Russian Federation. For that reason, the negotiations⁵⁵ in the case of the Transnistrian conflict are to take place between the Moldovan side and the Russian side.

The Concept of Tactical Instruments in International Negotiations

In the context of international negotiations, "sovereign partners meet to find a joint and mutually acceptable solution to a dispute".⁵⁶ In order to gain as much as possible, the negotiators or the parties involved use different tactics, in particular

⁵⁴ Nantoi Oazu, 'Cazul Republicii Moldova: ce ar putea face UE și SUA?', Chisinau, Institute for Public Politics, 2005, p. 1, retrieved 29.11.08, <http://www.ipp.md/public/comentarii/39/ro/Cazul%20Republicii%20Moldova-UE%20si%20SUA.rom.doc>.

⁵⁵ The current negotiating formula is '5+2' where the five are represented by the Republic of Moldova, the Russian Federation, Ukraine, OSCE and the representatives from the Moldovan Transnistrian Republic. The European Union and the United States are part of this formula as observers.

⁵⁶ Victor Kremenyuk, 'The Emerging System of International Negotiation', in Victor Kremenyuk (ed.), *International Negotiation: Analysis, Approaches, Issues*, San Francisco, CA, Jossey-Bass A Wiley Company, 2002, 2nd edition, p. 23.

when one or both parties are not willing to give priority to a compromising solution. Raymond Saner points out that "a number of tactics are however much less suited to the cooperative approach than to a confrontation".⁵⁷

The tactics used in international negotiations depend on several factors such as the negotiator's experience and self-confidence, the political and economic power of a country on the international stage and the extent to which it can afford to use extreme tactics, or how far the negotiators can go in reaching a compromise. The main tactics mentioned by Saner are: agenda control, time constraints, delaying tactics, adjournment, taking a short break, location of the talks, limits of authority, precedent, regulations and standards, threats, promises, false compromises, flattery and charm, interpreters, impasse and deadlock, secrecy, etc.⁵⁸ Additionally, other tactics have to be mentioned, such as economic and political pressure or manipulation, and economic incentives and sanctions have a crucial role in "the conduct of international affairs"⁵⁹ and implicitly in international negotiations. In the following, I will focus on those tactical instruments relevant to the case study.

One of the most known and used instruments in international negotiations is a delaying tactic; one party prolongs the negotiations in order to gain more or to come to a favourable point in order to conclude the negotiations. This tactic is especially used by the party which "prefers the status quo" and therefore that party "has absolutely no interest in negotiating".⁶⁰ If the status quo is convenient for both parties, it is even more improbable that a solution will be reached. This tactic is very relevant for our case and it is used by negotiators as they evoke a precedent. Even if some cases have many differences in the context, actors involved or timing, negotiators use this tactic of precedent if this precedent case "suits them"⁶¹ and their interest. In exceptional cases, the parties can use threats such as terrorism, military attacks, violence and even war. In a 'lighter' sense, the threats can serve "as a tactical confrontational tool, an instrument of a strategy that uses pressure and exhortation".⁶²

As far as the economic measures are concerned, we can include here as further tactical instruments the economic sanctions used (and the lack of economic

⁵⁷ Raymond Saner, *The Expert Negotiator*, Leiden/Boston, Martinus Nijhoff Publishers, 2008, 3rd edition, p. 135.

⁵⁸ *Ibid.*, pp. 137-152.

⁵⁹ David Cortright, 'Sanctions and Stability Pacts: The Economic Tools of Peacekeeping', in I. William Zartman (ed.), *Peacemaking in International Conflict: Methods and Techniques*, Washington D.C., United States Institute of Peace, 2007, revised edition, p. 385.

⁶⁰ Saner, *op. cit.*, p. 139.

⁶¹ *Ibid.*, pp. 142-143.

⁶² *Ibid.*

incentives). In other words, the tactic employed features many 'sticks' but offers few 'carrots'. In the case of economic sanctions "pressure is generated for smuggling and the circumvention of trade restrictions".⁶³ These sanctions can take the form of embargoes, discriminatory tariffs or the cut-off of gas and oil supply. As far as 'carrots' are concerned, we talk about incentives consisting of providing assistance and preferential agreements or offering long-term credits.⁶⁴ Most of the above tactical instruments have been used by the Kremlin towards the Moldovan side in the Transnistrian conflict.

The Kremlin's Successful Use of Tactical Instruments

As far as Russian negotiators are concerned, they are willing to achieve their objectives "by one means or another including the use of threats, agitation, bribery, inducements, or any other number of things".⁶⁵ The easiest instrument to apply to the Transnistrian conflict is delaying its settlement – creating a 'frozen conflict'. Delaying and maintaining the status quo is favourable for all parties involved. This way, Russia can maintain its political and geo-strategic control in the former Soviet space "because Moldova is still viewed by many in Moscow as a sphere of exclusively Russian geopolitical interest".⁶⁶ On the other hand, the Transnistrian leaders profit from the situation to pursue their economic and political goals. The delaying tactic has been used very successfully by Russians considering the fact that the conflict has been unsettled since 1991 and no concrete plan for conflict resolution is foreseen in the near future.

A second tactical instrument used by Moscow is precedent, in our case the precedent of South Ossetia and Abkhazia. During the August 2008 meeting between the Russian President Dmitri Medvedev and his Moldovan counterpart Vladimir Voronin, the former subtly warned the Moldovan president that the Transnistrian conflict had to be seen in the context of the Georgian conflict. The Russian president suggested that the Transnistrian region shall follow the South Ossetian example. This would mean that the Moldovan government would take into consideration the draft law on the status of Transnistrian autonomy "which was voted through a political consensus on July 22, 2005" in a referendum⁶⁷ in which more than 90% of the

⁶³ Cortright, *op.cit.*, p. 404.

⁶⁴ *Ibid.*, pp. 386-404.

⁶⁵ Leon Sloss and M. Scott Davis, 'A Game for High Stakes: Lessons Learned in Negotiating with the Soviet Union', in Peter Berton, Hiroshi Kimura and I. William Zartman (eds.), *International Negotiation: Actors, Structure/Process, Values*, London, Macmillan Press, 1999, p. 67.

⁶⁶ International Crisis Group, *Moldova: Regional Tensions over Transdnestrria*, Chisinau/Brussels, ICG Europe Report no. 157, 2004.

⁶⁷ Maxim Kuzovlev, "'Kozak-2 Plan" or Recognition of Transnistria?', *e-journal*, year VI, issue 124, September 2008, retrieved 29.11.08, <http://www.e-democracy.md/en/comments/political/200809151>.

Transnistrian population opted for independence. This precedent tactic went even further: Abkhazian and South Ossetian representations opened in Tiraspol, while Transnistria opened its representations in Tzhinval and Sukhumi. All these were possible thanks to “the consent of the ‘elder friend’, that means Moscow”.⁶⁸

Additionally, during the presidential meeting in August 2008, the Moldovan president was warned to rule out a potential Moldovan military intervention in the self-proclaimed region of Transnistria. Another tactical instrument used by the Kremlin is military control over the region. As a concrete example, Russia has refused several times to respect the Istanbul commitments,⁶⁹ which foresaw the withdrawal of Russian troops from the Transnistrian territory, recognizing only the 1992 agreement which views the Russian troops as ‘peacekeeping forces’. Russia additionally suspended its participation in the Conventional Armed Forces in Europe Treaty on 12 December 2007,⁷⁰ which would have required Russia to withdraw its “troops from breakaway regions in the former Soviet states of Georgia and Moldova”.⁷¹

The most effective tactical instruments used by Moscow are economic sanctions which “are sometimes associated with general trade embargoes, [...] the use of targeted and selective measures”.⁷² Every time Moscow is not satisfied with a Moldovan decision regarding the withdrawal of the 14th Russian army, or other issues related to the Transnistrian dispute, it applies economic sanctions to Moldova. One of these sanctions was the wine embargo applied to Moldova in 2006. The Russian side justified its embargo by invoking the low quality of the Moldovan wine and the peril it represented to the Russian population’s health. Therefore, thousands of wine bottles of Moldovan wine were destroyed, while the Moldovan producers were not reimbursed. This health ‘danger’ conveniently arises only in those situations where Moscow finds domestic Moldovan political decisions unpalatable. Immediately after the export restrictions were imposed on Moldovan wine, new favourable treatment was applied to the Transnistrian wine by Russian authorities. These economic restrictions come also when the Moldovan government tries to impose stricter rules to the Transnistrian products in order to reduce the black market. The embargo was lifted once Moldovan-Russian relations became warmer and the issue related to the Russian 14th army was temporarily excluded from the agenda. This embargo cost

⁶⁸ *Ibid.*

⁶⁹ In the framework of the 1990 Treaty on Conventional Forces in Europe (CFE), Russia committed herself (Istanbul commitments in 1999) to withdraw its troops from Moldova (from the occupied territory of Transnistria) and Georgia.

⁷⁰ ‘Russia Suspends Participation in Conventional Arms Treaty’, *eNews 2.0*, 13 December 2007, retrieved 30.11.08, http://www.eneews20.com/news_Russia_Suspends_Participation_in_Conventional_Arms_Treaty_04456.html.

⁷¹ *Ibid.*

⁷² Cortright, *op.cit.*, pp. 386-388.

Moldova 21 billion US dollars, as the former prime minister Vasile Tarlev declared.⁷³ It led to a destabilisation and deterioration of the Moldovan economy at least for a short period of time. The income from wine exports to Russia represents almost 4% of Moldova's budget and such an embargo consequently has a considerable impact on the economy.⁷⁴ A similar economic sanction imposed by Russia on Moldova was the gas cut-off in January 2006. Since around 90% of Moldova's energy imports come from Russia, this sanction had significant repercussions on the economy and on the future security of supply.⁷⁵ Therefore, Moldova had to reach "an agreement over gas prices with Russia, ending a spat that led to supplies being cut off".⁷⁶

On the other hand, Transnistrian leaders benefited from various incentive instruments coming from Moscow. Firstly, the oil and gas prices are lower than those paid by other former Soviet republics. Secondly, in 2007 the Russian Federation has offered a financial aid consisting of 26 billion US dollars to the separatist region of Transnistria.⁷⁷ The aim of this donation was financial support to the Russian population living in Transnistria, since a large number of people have obtained Russian passports in recent years. Once the population from this region gets Russian citizenship, Moscow has an excuse for protecting its citizens when offering all kind of financial and political support to the Transnistrian separatists.

Next Steps...

The examples mentioned above illustrate that Russia has been very successful in using a variety of tactical instruments in the Transnistrian conflict. These range from political tactics such as reference to the precedent cases of South Ossetia and Abkhazia to financial tactics such as embargoes and economic incentives for the Transnistrian authorities. As we can see, "power is one of the most important determining factors"⁷⁸ in negotiations for Russia, be it economic or political power. Moreover, Russians tend to "test the authority [of their counterpart and once] is not

⁷³ 'Embargoul rus pe vinurile moldovenesti ameninta puternic economia Moldovei' (Russian Embargo on Moldovan Wine Seriously Threatens Moldova's Economy), *Smart Financial*, 28 July 2006, retrieved 28.11.08, <http://www.smartfinancial.ro/smartfinancial/business+moldova/embargoul+rus+pe+vinurile+moldovenesti+ameninta+puternic+economia+moldovei>.

⁷⁴ *Ibid.*

⁷⁵ Steven Woehrel, 'Moldova: Background and U.S. Policy', Washington, D.C., CRS Report for Congress, Foreign Affairs, Defence, and Trade Division, 2009.

⁷⁶ 'Moldova Agrees Russian Gas Deal', *BBC*, 17 January 2006, retrieved 30.11.08, <http://news.bbc.co.uk/2/low/business/4620844.stm>.

⁷⁷ 'Rusia acorda ajutor militar regiunii separatiste Transnistria', *Mediafax*, 21 December 2007, retrieved 30.11.08, <http://www.zf.ro/politica/politica-externa/rusia-acorda-ajutor-financiar-regiunii-separatiste-transnistria-3055998>.

⁷⁸ Hiroshi Kimura, 'The Russian Way of Negotiating', in Berton, Kimura and Zartman (eds.), *op.cit.*, pp. 68-69.

firm and consistent, it will be first disregarded and then cast off".⁷⁹ Since Moldova has no economic self-sustainability, trade power or political influence on the international stage, the Kremlin could easily impose these negotiating tactics to Moldova's disadvantage.

In order to increase their political control and prevent the continued application of these unfair tactics in the future, the Moldovan authorities have to seek more Western support, especially coming from the European Union. In this perspective, the EU would have to increase its "involvement in diplomatic efforts to solve the Transnistrian conflict [...] first by invitation and then later by its own initiatives".⁸⁰ The European Union has to have a more active role in the new negotiating formula '5+2' (which is formed by the Republic of Moldova, the Russian Federation, Ukraine, the OSCE and the Transnistrian representatives, while the EU and the US are observers), beyond being a passive observer during the negotiations. The EU could even perform the role of a mediator which would lead to the settlement of the Transnistrian conflict, trying to find an acceptable solution for all the parties involved. Even though the EU is present in the region through its border mission EUBAM and through a Special Representative and the Commission delegation, its role and interest in solving the conflict seems rather limited. The EU would have enough instruments at its disposal such as high-level diplomacy, a more active role of its Special Representative or the use of shuttle diplomacy. However, since EU-Russia relations are already complicated enough such a scenario might have to be postponed for better times. The EU could use more of its 'sticks' and 'carrots' when negotiating with Russia on this issue, or even include this issue in the framework of other negotiation processes. For now, suffice is to say that without any external help or without Russia's political will, the conflict will remain 'frozen'.

⁷⁹ Geoffrey Gorer, 'The Psychology of Great Russians', in Margaret Mead, Geoffrey Gorer and John Rickman (eds.), *Russian Culture*, Oxford, Berghahn Books, 2001 (first published in Geoffrey Gorer and John Rickman (eds.), *The People of Russia*, London, The Cresset Press, 1949), p. 119.

⁸⁰ Marius Vahl, 'The Europeanization of the Transnistrian Conflict', Brussels, CEPS, *Policy Brief*, no. 73, 2005.

III. Shell and Sakhalin-II: Negotiations Russian Style

Elmar Hellendoorn

Introduction: a Public-Private Game

In late 2006 it became clear that Russia's President Putin had set his eyes on obtaining the majority stake in the world's and Russia's largest gas project, Sakhalin-II. During the 1990s an oil consortium, led by Royal Dutch/Shell, was awarded the rights to develop this project, seemingly a very profitable and prestigious undertaking. But President Putin wanted to renegotiate the deal, get Gazprom to take charge of Sakhalin-II and give the control over its natural resources back to Russia. He succeeded and Shell seemed 'humiliated'.⁸¹

How did Russia negotiate with the Western energy giant and its Japanese partners so that Shell's CEO, Van der Veer, in the end even thanked Putin for the 'humiliating' deal?⁸² Probably, the Russian success in negotiating was based upon a process of continuous escalation, whenever Shell and Western governments threatened or vowed to compromise. This contribution aims to provide better insight of this particular negotiation process, first through a short introduction to what is theoretically perceived as the Russian style of negotiation; and secondly, by providing a chronological overview of the Sakhalin-II negotiations, in order to better understand what happened. In the conclusion the Russian negotiation style will be held against the empirics. Since the negotiations were conducted in secret, and only public sources could be accessed for this research, the analysis depends on publicly known facts.

The Russian Style of Negotiation

First, some attention shall be paid to what has been recognised as features of a 'Russian negotiation style'. If not indicated otherwise, this characterisation will be based on Sloss and Davis' work.⁸³ The first point that is addressed is the humiliation that Russia suffered by being invaded many times during her history. Therefore, the Russians "consider the status of their lands [...] presently under their control entirely beyond discussion [...]. They have nothing to lose and always something to gain from negotiations".⁸⁴ The Russians begin their negotiations well-prepared and try to push

⁸¹ Chris Noon, 'Russia Shows Sakhalin Partners Who the Boss Is', *Forbes.com*, 28 December 2008.

⁸² Lucion Kim, 'Gazprom Woes Could Hurt Putin's Drive for Energy Dominance', *International Herald Tribune*, 4 June 2007.

⁸³ Sloss and Davis, 'The Soviet Union', *op.cit.*

⁸⁴ *Ibid.*, p. 19.

the other party to be the first to compromise, using the threat of force, agitation and (sometimes) inducements. They will normally start with an extreme position and hold to it stubbornly, trying to force the opponent to make the first proposal. Since compromise is seen a sign of weakness, the Russian negotiator will try to 'pocket' the opponent once the latter has made a first concession, and, without himself giving anything up, push vehemently for further concessions. However, because Russians like to be perceived as equal to the West, they will usually stick to their contractual obligations. Therefore, it is extremely important to try to pin the Russians down on details. It is interesting to see to what extent this description is reflected in the Sakhalin-II negotiations with Shell.

Setting the Stage

After the breakdown of the Soviet Union, Russia entered a period of instability and perceived weakness under President Yeltsin. Foreign companies and investors were needed to provide necessary capital for the development of the country's abundant natural resources. In order to sweeten the deal for the foreign investors, so-called 'product sharing agreements' were concluded. They implied that foreign companies only needed to pay taxes and royalties to the Russian state once the costs of starting their projects had been covered by the profits.⁸⁵ This clearly offered a perspective for interesting deals.

At the end of the 1990s Shell decided to start the Sakhalin-II project in a partnership with the Japanese corporations Mitsui and Mitsubishi. In early 2005, Shell held a controlling stake of 55% (initially investing 10 billion US dollars) in the Sakhalin Energy Investment Corporation (SEIC), with Mitsui and Mitsubishi holding 25% and 20% respectively. The latest and most sophisticated hydrocarbon exploitation technologies would be put to use in the difficult Siberian environment.⁸⁶ It was the only project in Russia without Russian participation at the time.⁸⁷

Negotiations Begin

In the course of 2005 Gazprom made it clear that it wanted to get a controlling 25% stake in SEIC and offered to swap half of its Sakhalin-II stocks with Shell for a 50% stake in another gas field in Western Siberia, the Zapolyarnoye field.⁸⁸ In the beginning of

⁸⁵ Mark Stoleson, 'Investment at an Impasse: Russia's Production-sharing Agreement Law and the Continuing Barriers to Petroleum Investment in Russia', *Duke Journal of Comparative & International Law*, vol. 7, 1997, pp. 671-689.

⁸⁶ John Helmer, 'Sakhalin Gas: Shell Loses, Whales Win', *Asia Times Online*, 15 December 2006.

⁸⁷ Arkady Ostrovsky, 'Shell Offers to Cut Sakhalin-2 Stake by 30%', *Financial Times*, 11 December 2006.

⁸⁸ Thomas Catan and Arkady Ostrovsky, 'Shell and Gazprom Agree Swap', *Financial Times*, 8 July 2005.

July 2005 both parties signed a memorandum of understanding in which they agreed on this exchange. However, it did not seem a fair deal for Shell, since it had to pay for 50% of the sunken development costs of the Zapolyarnoye field, but Gazprom would not pay anything for the 25% stake in the Sakhalin-II project.⁸⁹ Commentators suggested that Shell felt political pressure to accept this relatively disadvantageous deal.⁹⁰

However, Shell announced that the Sakhalin-II project proved to be more difficult than foreseen. Its development costs were to be increased by 67%, and Shell had to double its investments (officially) to 20 billion US dollars. For the Russian government this meant two things: firstly, since the Sakhalin project would also become more expensive for Gazprom, it wanted Shell to pay more for the Zapolyarnoye swap. This move could be perceived as a Shell bargaining trick; they were already aware of the fact that Sakhalin would be more costly⁹¹ and perhaps sought a way to improve the initial Zapolyarnoye deal they had felt forced into by the Russian political pressure. Secondly, this meant that Shell told President Putin to wait just a bit longer for Sakhalin's oil and gas revenues to flow to the Russian treasury, as concluded in the initial 'production sharing agreement' (PSA).⁹²

It seems that the Russian President liked neither being tricked by Shell nor being told by this Western corporation that he had to wait for his money. It is said that Putin was 'enraged'.⁹³ Russia had offered the company a very advantageous PSA and now the state had to pay for Shell's internal problems. The first reaction from the Russian government was to block Shell from participating in the exploration and exploitation of the Shtokman gas field in the Barents Sea.⁹⁴ Afterwards, it tried to prevent Shell from making further investments required to proceed in Sakhalin. During a state visit to the Netherlands in November 2005, President Putin said that rising project costs would not be accepted.⁹⁵ In May 2006, the Russian Natural Resources Minister

⁸⁹ 'Company News: Pogo to Acquire Unocal's Canadian E&P Assets', *Oil & Gas Journal*, vol. 103, no. 27, July 2005.

⁹⁰ Thomas Catan and Arkady Ostrovsky, 'Shell and Gazprom Agree Swap', *Financial Times*, *op.cit.*

⁹¹ According to revealed internal e-mails between Shell-engineers, it was already known in 2002 that the Sakhalin-project was much more difficult than foreseen. Besides, it is quite unlikely the 67% cost increase was totally unforeseen for a company as professional as Shell. See: 'The Hans Bouwman, Engel van Spronsen Sakhalin emails', *RoyalDutchShellPlc.com*, 23 October 2006.

⁹² 'Sakhalin II Project's Phase 2 Cost Estimate Rising', *Oil & Gas Journal*, vol. 103, no. 28, July 2005.

⁹³ Arkady Ostrovsky, 'Kremlin Makes Life Difficult on Sakhalin', *Financial Times*, 22 November 2006.

⁹⁴ David Wood, 'Russia's Drive for Power-2: Gazprom Controls Gas Exports to Europe, Asia', *Oil & Gas Journal*, vol. 105, no. 7, February 2007.

⁹⁵ 'Poetin accepteert van Shell geen kostenoverschrijdingen', *Het Financieele Dagblad*, 4 November 2005.

backed a report from a Russian natural science institute that suggested “boosting the presence of Russian companies in [the Sakhalin Energy Investment Cooperation] to 51 per cent as one of the measures to boost efficiency”, thus making sure that royalties started flowing to the Russian state.⁹⁶ One month later Shell was invited to participate in the construction of a gas liquefying factory, a project unrelated, or at least physically not connected, to the Sakhalin-II undertakings.⁹⁷ These first steps by the Russians coincide with the characteristics expected by Sloss and Davis, since it was proposed that the Russian lands should be under Russian control. However, contrary to what Sloss and Davis predict, the Russian negotiators began rather ‘soft’, only to become more extreme during later phases of the negotiations.

Endgame

The opening shots of the final battle between Shell and the Russian state over Sakhalin-II were fired in the first week of August 2006. The Russian Natural Resources Ministry announced that it would stop the construction of pipelines by the Shell-led consortium because of environmental concerns.⁹⁸ A few weeks later, on 19 September 2006, the Russian environmental agency ‘Rosprironadzor’ officially filed a complaint against the Shell-led consortium for violating environmental standards. Consequently, the operating permit for the consortium was withdrawn, effectively stopping all work at Sakhalin-II.⁹⁹

Immediately, the European Commission and the Japanese government stated their concerns regarding the Russian move. Energy Commissioner Piebalgs made clear that “a secure and predictable investment climate is necessary in Russia. [...] This applies as much to the ability of EU companies to invest in Russia as to the right of Russian companies to sell gas and oil freely at both upstream and downstream levels in the EU.”¹⁰⁰ In other words, Commissioner Piebalgs threatened that if Shell were not treated in a ‘fair way’, the imports of Russian gas to the EU would be lowered. This was a bold (in fact quite empty) statement because of the high dependence of the EU on Russian gas.¹⁰¹

⁹⁶ Andrew Osborn, ‘Russia Seeks Control of Sakhalin’, *The Independent*, 26 May 2006.

⁹⁷ ‘Shell weer in de race bij gasprojecten in Rusland’, *Het Financieele Dagblad*, 20 June 2006.

⁹⁸ Lyuboc Pronina, ‘Movers: Russia Stops Shell Project; State May be Seeking Stake’, *International Herald Tribune*, 4 August 2006.

⁹⁹ Arkady Ostrovsky, ‘Concern at Threat to Shell-led Scheme’, *Financial Times*, 23 September 2006.

¹⁰⁰ Delegation of the European Union to Japan, ‘Energy Commissioner Andris Piebalgs Reacts to Announcement of the Cancellation of an Environmental Permit for the Sakhalin-2 Project Led by Shell’, 19 September 2006.

¹⁰¹ Russia supplied 40% of the EU’s gas needs in 2006. Eurostat, ‘EU27 Energy Dependence Rate at 54% in 2006’, 10 July 2008.

In response, the Russian government told Shell that the initial contract and the PSA would be respected. The Russian Ambassador in The Hague confirmed that Russia's contract with Shell would be honoured.¹⁰² The original statement made by President Putin, almost a year beforehand, was repeated by his Minister of Economic Affairs: "I have told Shell that we can't simply swallow this figure and that they need to come up with some kind of solution".¹⁰³ Observers commented that Russia could not change the terms of the original contract, but that it is was creating conditions where Shell and its partners wanted to renegotiate "under the point of a gun".¹⁰⁴ The rising costs seemed thus to be a focal point of the Russian negotiation efforts because these costs forestalled payment of royalties to the Russian state.

Further political pressure by some European heads of government did not appear to make any impact on the Kremlin. On 22 September 2006 the Dutch Prime Minister Balkenende phoned President Putin to voice his concern and agreed that the Sakhalin-II partner would work together with the Russian government to "find a solution".¹⁰⁵ Obviously, Prime Minister Balkenende had not been able to produce a less ambiguous outcome of his phone call with his Russian homologue. On 12 October 2006, Russia gave Germany the role of 'strategic partner' for Gazprom's gas deliveries.¹⁰⁶ This was timed in an excellent way, dividing European interests at the European Council meeting in Finland on 20 October 2006, to which President Putin was also invited. British Prime Minister Blair asked Putin to treat European investors in Russia in the same way as Russian investors were treated in the EU. Putin, however, called Shell's increased cost projection for Sakhalin "scandalous"¹⁰⁷ and said that "he had no intention of bowing to European demands".¹⁰⁸

Russia's stance on Shell escalated during and after this political pressure. On 20 October 2006 the Russian tax collectors' office laid down a tax claim against the company.¹⁰⁹ Furthermore, although Shell came forward with proof of its improvements in the ecological situation in Sakhalin, on 26 October 2006 the Russian environmental agency threatened the oil company with criminal charges for the environ-

¹⁰² Karel Beckman and Bert Koopman, 'Rusland zal contract met Shell nakomen', *Het Financieele Dagblad*, 29 September 2006.

¹⁰³ Roy Op het Veld, 'Shell moet er nog maar eens goed naar kijken', *Het Financieele Dagblad*, 20 September 2006; and Arkady Ostrovsky, 'Sakhalin-2 Fell Foul of Zealous Official', *Financial Times*, 29 September 2006.

¹⁰⁴ Andrew Kramer, 'Gazprom Reaps the Benefits of Friends in the Kremlin', *New York Times*, 23 September 2006.

¹⁰⁵ 'Balkenende belt Poetin om Sachalin', *Het Financieele Dagblad*, 23 September 2006.

¹⁰⁶ Judy Dempey, 'Russia Gives Germany a Role of Strategic Partner', *International Herald Tribune*, 13 October 2006.

¹⁰⁷ H. Hekking, and W. Van Oosterom, 'Poetin verkettert hoge kosten Shell', *Het Financieele Dagblad*, 21 October 2006.

¹⁰⁸ George Parker, 'EU Urges Putin to Honor Oil Contracts', *Financial Times*, 21 October 2006.

¹⁰⁹ 'Shell krijgt claim fiscus Rusland', *Het Financieele Dagblad*, 21 October 2006.

mental damage caused.¹¹⁰ As soon as Shell complied with the standards set by the regulators, the Russian side came up with new irregularities.¹¹¹ Interestingly, on 22 October 2006 a leaked internal Russian government report predicted that the costs for Sakhalin-II would rise to 28 billion US dollars, instead of the 20 billion US dollars officially projected by Shell.¹¹²

When these Russian negotiation moves are held against the theory provided by Sloss and Davis, it is interesting to see that the Russians indeed respected the contractual obligations. Furthermore, there was no sign of any willingness of the Russian side to compromise. However, what is not covered by Sloss and Davis is the escalating nature of the Russian negotiation strategy. Nevertheless, this might be analogous to the Russian tendency to push for further concessions once a first concession is made by the other party.

Payback Time

After three months of being pushed by the Russians, Shell threw in the towel. On 11 December 2006, Shell offered to sell a 25% stake plus blocking rights in Sakhalin-II to Gazprom. Furthermore, it agreed to pay for future cost overruns in the project, so that those costs would not fall upon Gazprom. Lastly, it promised to pay the Russian state some hundred million dollars for the environmental damage done.¹¹³ The Russian side was not satisfied with this deal and the next day it threatened to fine Shell 30 billion US dollars for violation of environmental standards.¹¹⁴

The European Council convened on 14 and 15 December 2006 and again discussed the Sakhalin-II problems. Commission President Barroso informed participants that he had spoken with Moscow about the case. Again, no concerted European action was taken.¹¹⁵ On 18 December 2006 both Shell and the Russian government announced progress in the negotiations and both said they expected an outcome in a few days. The deal was struck on 22 December 2006. Shell and its Japanese partner each sold 50% of their holdings to Gazprom for 7.45 billion US dollars in cash,

¹¹⁰ Andrew Kramer, 'Shell Could Face Criminal Charges in Russia', *New York Times*, 26 October 2006.

¹¹¹ Michael Klare, *Rising Powers, Shrinking Planet: The New Geopolitics of Energy*, New York, Metropolitan Books, 2008, p. 99.

¹¹² Nick Mathiason and Heather Connon, 'Shell's Costs on Sakhalin Spiralling', *The Observer*, 22 October 2006.

¹¹³ Andrew Kramer, 'Under Pressure from Moscow, Shell Offers to Sell Stake in Big Oil and Gas Project', *New York Times*, 12 December 2006.

¹¹⁴ 'Gazprom aast op helpt Shell-project; Rusland dreigt met miljardenclaim', *Het Financieele Dagblad*, 13 December 2006.

¹¹⁵ 'Internationaal topperleg over Sachalin', *Het Financieele Dagblad*, 16 December 2006.

a sum below market price. The PSA was not changed. Shell did not get a stake in the Zapolyarnoye field.¹¹⁶

Russia was the clear winner. Its proxy Gazprom obtained 50% plus one stock in the Sakhalin-II project, giving it final control over the project. It gained access to the latest technologies the consortium had employed there. Although Gazprom was not directly paid the royalties, it kept the Zapolyarnoye field under full control. On a higher political level, this meant that Russia now controlled future gas deliveries to East Asia. More important for the Russians was the restored national pride in the light of the humiliating experience of the Yeltsin era. Putin showed the world that Russia could do whatever it wanted domestically, humiliating and getting back at a prominent Western company that had tried to trick him. He had even been able to divide and bully European leaders on their approach to the case.

During this final stage of the negotiations, one can discern that the Russians became more and more extreme once Shell agreed to meet the first demands of the Russian government. According to the approach of Sloss and Davis, the Russians see the willingness to compromise as a weakness and therefore feel that they can get more out of the other party once it makes a first concession.

Conclusion

When analyzing the development of the negotiations, it becomes apparent that after the failure of the gas field swap, Russia was looking for revenge, due to the perceived 'trick' by Shell. Slowly it increased pressure on Shell by directly punishing it (excluding it from the Shtokman field) and signalling that the Sakhalin-II situation was not acceptable (the May 2006 report). On the other hand, it made ambiguous approaches to Shell, inviting the company to participate in the gas liquefying factory in Siberia, probably to puzzle Shell. Then, Russia threatened to withdraw the operating licenses due to environmental concerns. Once European politicians started exerting pressure on Russia, its leadership reacted against European wishes: they escalated the situation time and again, pushing Shell to desperation. Once Shell was openly ready to give in, the Russians pushed even further, with the threat of an enormous multi-billion fine for environmental damages.

When these tactics and the general Russian approach to this situation are held in the light of the contentions made by Sloss and Davis on the characteristics of the Russian (Soviet) negotiation style, their assertions seems to be quite correct. Russia acted

¹¹⁶ 'Gazprom neemt de macht over op Sachalin', *Het Financieele Dagblad*, 22 December 2006; and Andrew Kramer, 'Shell Cedes Control of Sakhalin-2 to Gazprom', *International Herald Tribune*, 21 December 2006.

against Shell, partly out of a sense of humiliation and the wish to be seen as equal partner in the West. Once Shell came forward with a concession, it was clearly 'pocketed' and pushed for further concessions. Furthermore, Russia stated repeatedly that it would respect the original contract, just as it would have done according to Sloss and Davis. What was not covered by their assessment of the Russian negotiation style was the escalation in response to pressure by the other party.

In these negotiations the EU played only a secondary role. This case study might be useful to the EU when it comes to the defence of the interests of 'its' companies operating in Russia. The drawback, however, is that there are no real 'EU' companies, mainly national companies (as Shell was primarily Anglo-Dutch, secondarily perhaps European). In case of business conflicts, this allows Russia (and any other third country) to play off one member state against another, and by creating divergences undermine the support the EU can give to its companies. This fundamental weakness is a serious drawback in any EU-Russia negotiation, where the Russian side will try to play on the signs of weakness of the EU side. Compromises are seen as weaknesses and do not fit in the Russian zero-sum paradigm. Instead of compromising, those who negotiate with the Russians should try to escalate if the Russians do not accept the first offer. On the other hand, it should constantly be shown to the Russians that if they want to be perceived as European, they should negotiate as Europeans, shifting towards a 'win-win' paradigm that allows for compromises to be created. Most of all, any European negotiator should have a clear mandate, resulting from 'closed ranks' among the member states.

IV. The Interaction of Political and Economic Objectives in the E.ON-Gazprom Asset-Swap Negotiations, 2004-2008

Chloe Middleton

Introduction: Political or Commercial Interests?

On 2 October 2008 an asset-swap was signed between E.ON and Gazprom, concluding four years of negotiations. There was a distinct caesura midway through the process, after which the negotiating stakes were dramatically redefined. Whilst the Framework Agreement, signed in 2006, envisaged Gazprom acquiring E.ON downstream assets in a range of EU member states in exchange for E.ON acquiring a stake in the Siberian gas field Yuzhno Russkoye, the final deal involved the return of E.ON's 49% stake in a Russian company, rather than its European downstream assets.¹¹⁷ The reasons for the failure to reach a settlement in line with the original Framework Agreement and for the radically different structure of the final agreement two years later remain unexamined. Gazprom has made no secret of its desire to acquire downstream assets and its recent 'shopping spree' in Europe has raised concerns over the company's (and the Kremlin's) potential political ambitions in those countries.¹¹⁸ The central conundrum of this asset-swap, however, which has been largely neglected by other analysts commenting on the case,¹¹⁹ is why Gazprom relented on its demands on this occasion, given how keen it has been to secure European downstream assets in other cases.

I argue that the breakdown of the Framework Agreement can be attributed to financial difficulties in valuing the respective assets involved in the swap. The need for Gazprom to maximise profit has been constantly downplayed, to the extent that the discussion about Gazprom's motives in sealing deals with European firms focuses exclusively on the political dimension. Analysis of this case sheds light on *how* Gazprom actually negotiates with its European partners by looking at the interaction of motivation, process and outcome.¹²⁰ It suggests that far from "asset grabbing and

¹¹⁷ E.ON Press Release, 'Yuzhno Russkoye Gas Field: E.ON and Gazprom Reach Final Agreement on Asset Swap', 2 October 2008.

¹¹⁸ 'EU: Energy Official Downplays Gazprom Expansion Threat', *Radio Free Europe Radio Liberty*, 25 January 2008, retrieved 30.08.09, <http://www.rferl.org/content/article/1079396.html>.

¹¹⁹ Judy Dempsey, 'E.ON Ruhrgas Gets Stake in Russian Field', *International Herald Tribune*, 2 October 2008.

Chris Bryant, Charles Clover, Catherine Belton, 'Gas Deal Seals Moscow-Berlin Entente', *Financial Times*, 2 October 2008.

Kostis Geropoulos, 'Gazprom Takes Germany into its Confidence', *www.neurope.eu*, issue 803, 13 October 2008.

¹²⁰ An approach advocated by Stephen Weiss in 'International Business Negotiation in a Globalizing World: Reflections on the Contributions and Future of a (Sub) Field', *International Negotiation*, vol. 11, no. 2, 2006, pp. 306-307.

political meddling",¹²¹ Gazprom's priority in these negotiations was to gain maximum profit from the deal. European political circles have been so ready to ascribe to Gazprom political ambitions to dominate the European market, that this financial dimension has been almost entirely ignored.

It is in any case impossible retrospectively to assess the intentions of negotiating parties in general. As the negotiation theorist Matz points out, these are always "many, multileveled, morphing, floating, dissolving".¹²² Given this warning against imputing motive, the relative consensus about the two parties' motives in press reports surrounding the E.ON-Gazprom case suggested that these needed to be treated with caution and that further research from a wider source base was required.¹²³ This wider source base consists of telephone interviews with two E.ON employees involved in the negotiations and an independent analyst from an energy research centre, in addition to a review of media coverage.¹²⁴

Generally, international business negotiation takes place "outside the inter-state system, but is subject to its influence, while [it is] also a catalyst of new trends".¹²⁵ Asset-swaps in the energy sector deviate from this definition because whilst the companies themselves sign the agreement, they are not entirely removed from the inter-state system, given the implications these deals have for a country's energy security, for which the state is ultimately responsible. This is especially true of deals involving Gazprom, since the degree of state ownership and political influence in Gazprom is far greater than in its Western counterparts. The question in this particular deal is to establish how significant a role politics played compared to the two companies' economic and strategic interests. Moreover, an analysis of the negotiating tactics, mutual perception and long history of trust between E.ON and Gazprom in a deal involving the swap of Russian upstream and European downstream assets is very relevant at a time when reciprocity between the EU and Russia in accessing one another's energy markets is a highly controversial issue. On the one hand, Russia refuses to ratify the Energy Charter Treaty and has hindered European companies from accessing its upstream activities.¹²⁶ On the other hand, the European Commission has responded to pressure from some member states and is attempting to restrict third-country access to European downstream assets, via the

¹²¹ Katinka Barysch, 'Reciprocity Will not Secure Europe's Energy', *CER Bulletin*, issue 55, August/September 2007.

¹²² David Matz, 'How much Do We Know about Real Negotiations? Problems Constructing Case Studies', *International Negotiation*, vol. 9, no. 3, 2004, p. 366.

¹²³ *Ibid.*, p. 370.

¹²⁴ Interviews with Gazprom would provide a fruitful avenue for future research.

¹²⁵ Bertram Spector, 'Negotiation in an Insecure World', *International Negotiation*, vol. 11, no. 2, 2006, p. 227.

¹²⁶ Illustrated by the Shell-Sakhalin case (2006) and the TNK-BP-Kovykta case (2007).

contentious 'Gazprom clause' in its third legislative energy package.¹²⁷ There are lessons the EU can draw from the Yuzhno Russkoye asset-swap, in understanding what political and economic conditions encourage openness to reciprocity on the part of Russia.

The key events in the 2004-2008 asset-swap negotiations were as follows:

Time line	
08.07.2004	Gazprom and E.ON seal a Memorandum of Understanding to deepen cooperation on strategic projects. ¹²⁸
08.09.2005	E.ON, BASF and Gazprom sign the North European Gas Pipeline Agreement. ¹²⁹
13.07.2006	A Framework Agreement is signed by Gazprom and E.ON to exchange 25% minus one share in Yuzhno Russkoye for E.ON downstream assets in Hungary. ¹³⁰
mid-2006 to end 2007	Negotiations stall, E.ON seeks to adapt the package offered by adding assets from other Eastern and Western European countries, including ones from E.ON UK. ¹³¹
25.10.07	Gazprom seals a deal with E.ON's competitor BASF for a 25% stake in the field.
02.08	A 'new concept' for negotiations is launched by E.ON: E.ON to acquire same stake in Russian gas field in exchange for return of E.ON's 49% stake in the Russian firm ZAO Gerosgaz, which holds just under 3% of Gazprom shares. ¹³²
02.10.08	Asset-swap is signed in presence of state leaders Merkel and Medvedev.
05.06.09	Alexej Miller, CEO of OAO Gazprom, and Bernhard Reutersberg, CEO of E.ON Ruhrgas AG, finalise the deal in St Petersburg. ¹³³

Negotiation Analysis

The decision to launch negotiations on the Yuzhno Russkoye gas field were just one outcome of an agreement in 2004 between E.ON Ruhrgas and Gazprom to cooperate more closely and more intensively.¹³⁴ As these negotiations built on the two companies' thirty-five year working relationship, they were very much part of a "process of *continuous or post-agreement negotiation*, [which] is needed to develop

¹²⁷ "Gazprom Clause" Issues Russia Ultimatum for Energy Cooperation', *Euractiv.com*, 20 September 2007, retrieved 20.08.09, <http://www.euractiv.com/en/energy/gazprom-clause-issues-russia-ultimatum-energy-operation/article-166888>.

¹²⁸ E.ON Press Release, 'E.ON and Gazprom Deepen Business Relationship', 7 August 2004.

¹²⁹ E.ON Press Release, 'BASF, E.ON and Gazprom Sign Agreement on North European Gas Pipeline Through the Baltic', 9 August 2005.

¹³⁰ E.ON Press Release, 'E.ON and Gazprom Reach Understanding on Participation in Gas Field', 13 July 2006.

¹³¹ Energy analyst from an independent energy research centre, telephone interview, 28 November 2008.

¹³² Telephone interview with E.ON employees, 28 November 2008.

¹³³ E.ON Press Release, 'Yuzhno Russkoye Gas Field: Participation Agreement Signed', 5 June 2009.

¹³⁴ Interview with E.ON employees, *op.cit.*

and solidify long-term associations".¹³⁵ The companies were also seeking to "redefine the terms of their interdependence"¹³⁶ via other negotiations occurring at the same time, such as the North European Gas Pipeline and the joint construction of a power station in Lubim, Germany.¹³⁷ Success in one area therefore contributed to a wider building of trust. The thorniest issue from the outset was what E.ON could offer Gazprom in return for its stake in the gas field.

E.ON's Interests and Bidding Position at the Outset

Germany lacks substantial gas reserves of its own and in 2006 depended on foreign gas imports to meet 83.6% of its needs.¹³⁸ Given that foreign investors' access to Russian upstream extraction projects has become more and more restricted,¹³⁹ for E.ON, the prospect of jointly owning the Yuzhno Russkoye gas field represented a unique opportunity. The field's 700 billion cubic meters of gas reserves could meet Germany's entire gas requirement for ten years.¹⁴⁰ E.ON's already irrevocable financial commitment to the construction of the Nord Stream pipeline, which would be supplied by the Yuzhno Russkoye gas field, meant the 'cost of no agreement' in this case was even higher. Finally, E.ON Ruhrgas could only meet its ambitious targets to increase its own gas production from 5% to 20% by sealing this deal.¹⁴¹ While E.ON undoubtedly created an atmosphere of trust and openness at the start of negotiations by laying all its cards on the table, this also weakened its negotiating position, enabling Gazprom to raise its demands, since it was well aware of how much the deal meant to its partners.

Gazprom's Interests and Tactics on Opening Negotiations

Gazprom's strategy to secure assets in European energy firms, including storage facilities and electricity production, may indeed have a strong political dimension. But as a state-owned company, Gazprom's behaviour can always be interpreted as being 'politically motivated', which is in any case a very vague characterisation. The essence of Gazprom's strategy is to achieve economic dominance, which will in turn ensure Russia's position as a regional and global power.¹⁴² The acquisition of

¹³⁵ Spector, *op.cit.*, p. 227.

¹³⁶ Weiss, *op.cit.*, p. 288.

¹³⁷ E.ON Ruhrgas, 'Lubim', retrieved 06.11.08, <http://www.eon-ruhrgas.com/cps/rde/xchg/SID-3F57EEF5-76C379DE/er-corporate/hs.xml/4910.htm>.

¹³⁸ Fredrik Erixon, 'Europe's Energy Dependency and Russia's Commercial Assertiveness', *ECIPE Policy Briefs*, no. 7, 2008, p. 3.

¹³⁹ *Ibid.*

¹⁴⁰ H.-W. Bein, W. Kramer and M. Bauchmüller, 'Gazprom setzt Eon unter Druck', *Süddeutsche Zeitung*, 26 March 2006.

¹⁴¹ *Ibid.*

¹⁴² Vladimir Putin, 'Mineral and Raw Materials Resources and the Development Strategy for the Russian Economy', Saint Petersburg, 1999, translated from Russian by Thomas Fennell, 2008, retrieved 24.04.09, <http://www.docstoc.com/docs/1064312/Putins-Thesis>.

European downstream assets supports this strategy in two key ways. Firstly, it enables Gazprom to influence European companies which it partially owns in their choice of supplier, thereby maintaining Gazprom's market share. Secondly, Gazprom stands to benefit from the considerable mark-up in the price of gas by selling directly to European consumers.

Although E.ON's initial openness put Gazprom in a strong negotiating position, the 'cost of no agreement' was also very high for Gazprom, as it desperately needed German investment and technology in order to exploit the field. Russia's underinvestment in its gas infrastructure is so serious that it has been criticised by the International Energy Agency.¹⁴³ On the day the deal was signed, the German Chancellor, Angela Merkel, sought to dispel any notion that the win-sets were asymmetrical, stating that "although Germany has little in the way of natural resources, it has attractive technologies when it comes to harnessing these resources".¹⁴⁴ Nevertheless, at the very start of these negotiations, Gazprom made it clear that they intended to set the rules of the game. BASF, E.ON's German competitor, was also bidding for an equal stake in the Yuzhno Russkoye field, but Gazprom deliberately conducted these negotiations completely separately, a strategy which prevented any collaboration between the two German companies and may well have strengthened Gazprom's position with each of them.¹⁴⁵ Secondly, Gazprom resolutely insisted on an asset-swap, refusing to consider any other form of deal such as cash remuneration.¹⁴⁶ In July 2006, significant progress was marked by the signing of a Framework Agreement, according to which Gazprom accepted stakes in E.ON's Hungarian subsidiaries in exchange for granting E.ON a stake in Yuzhno Russkoye.¹⁴⁷

Why the Negotiations then Stalled

The Framework Agreement was, however, not implemented, and over the next one and a half years, E.ON made numerous proposals to adapt the package of assets being offered to Gazprom. In August 2007 it even offered Gazprom its gas-to-power plants in the UK.¹⁴⁸ Even now, it is unclear whether the talks broke down because of European political opposition or Russian objections to the assets being offered.

¹⁴³ IEA, 'The Natural Gas Market: Rapidly Globalising but Triggering Concerns on Supply', *IEA Press Release*, 8 June 2006.

¹⁴⁴ German Government Press Release, 'German-Russian Intergovernmental Consultations', 2 October 2008.

¹⁴⁵ Interview with E.ON employees, *op.cit.*

¹⁴⁶ *Ibid.*

¹⁴⁷ E.ON Press Release, 'E.ON and Gazprom Reach Understanding on Participation in Gas Field', *op.cit.*

¹⁴⁸ 'E.ON Weighs up Gazprom Stake Swap', *upstreamonline.com*, 15 August 2007, retrieved 30.08.09, <http://www.upstreamonline.com/incoming/article138916.ece>.

One possible explanation for the failure of the Framework Agreement and the subsequent modifications made to it is that E.ON experienced substantial political opposition to the deal. One media report mentioned opposition from the Hungarian government, which expressed concerns about being subject to Russian control, “as during Soviet times”.¹⁴⁹ Even E.ON itself seems to have been apprehensive about the consequences of ceding shares to Russian control, when the possibility of Gazprom acquiring shares in E.ON Ruhrgas was briefly discussed in early 2006: a “Gazprom acquisition [in E.ON Ruhrgas] would place the Russians in a key position in the company and hinder the purchase of gas from other regions”.¹⁵⁰ The British government is said to have been wary about ‘embracing the Russian bear’ when Gazprom wanted to bid in a totally separate deal for a majority stake in Centrica.¹⁵¹ However, coverage of Gazprom’s possible acquisition of E.ON UK assets only went as far as to say: “British politicians would face calls to resist a deal”.¹⁵² As far as the German government’s involvement is concerned, matters are even less clear cut. One newspaper reported that the government had ruled out in advance any Gazprom acquisition of European electricity networks.¹⁵³ On the other hand, E.ON employees involved in the negotiations stated that the German government was very much “in the background” and gave the company “constant support”.¹⁵⁴ Given the confidential nature of the talks between governments and E.ON on such a high-profile international deal, it is very difficult to determine the extent of political opposition to the asset-swap, as originally envisaged.

A prominent energy analyst gave a different explanation for the breakdown of talks following the Framework Agreement. He argued that although Gazprom may initially have been eager to acquire European downstream assets, these assets proved difficult to value precisely. This was in stark contrast with the Russian gas field, which made up the other side of the asset-swap and could be valued with far greater certainty.¹⁵⁵ The importance of these economic factors, involving very considerable sums, should not be underestimated. It was crucial for Gazprom to be certain that it was obtaining sufficient financial compensation, given its dire need for capital –

¹⁴⁹ Bein, Kramer and Bauchmüller, *op.cit.*

¹⁵⁰ *Ibid.* (author’s translation).

¹⁵¹ Jeremy Warner, ‘Gazprom Takes a Tilt at Centrica, but Is It Safe to Be Embraced like This by the Russian Bear?’ *The Independent*, 3 February 2006, retrieved 30.08.09, <http://www.independent.co.uk/news/business/comment/jeremy-warners-outlook-gazprom-takes-a-tilt-at-centrica-but-is-it-safe-to-be-embraced-like-this-by-the-russian-bear-465468.html>.

¹⁵² Steve Hawkes, ‘Gazprom Aims for a Slice of E.ON’s British Power Plants’, *The Times*, 10 August 2007, retrieved 27.08.09, http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article2231246.ece.

¹⁵³ David Gow, ‘Eon to Sell of Electricity Grid to Placate European Commission’, *The Guardian*, 28 February 2008, retrieved 29.08.09, <http://www.guardian.co.uk/business/2008/feb/28/utilities>.

¹⁵⁴ Interview with E.ON employees, *op.cit.*

¹⁵⁵ Interview with energy analyst, *op.cit.*

“even before the oil price fell (bringing down the gas price too), Gazprom had the highest costs and worst finances of any international gas company”.¹⁵⁶ In order to improve its financial position, the company was amenable to the alteration of the framework of the deal.

An additional cause for the hiatus in negotiations, suggested by sources within E.ON, was the rise in oil prices, to which gas prices are linked.¹⁵⁷ Prices had been rising steadily since 2000, but in 2006 the rate of increase had accelerated to such a degree that the gas field was worth far more than the package of Hungarian assets offered by E.ON.¹⁵⁸ It remains unclear why E.ON’s offers to ‘bridge the gap’ in value by including assets in Western Europe were not accepted. Whilst there was probably some political resistance, Gazprom seems to have been employing salami tactics, exploiting the difficulty in valuing downstream assets as a means of repeatedly increasing its demands by a small amount.

The Redefined Asset-Swap and Why It Succeeded

The beginning of the exploration of the gas field in December 2007 made the need to find a solution and seal a deal more urgent. The impasse was broken in February 2008 by E.ON boldly proposing a swap of completely different assets, shares in the Russian company ZAO Gerosgaz rather than European downstream assets.¹⁵⁹ This assertive move strengthened E.ON’s position, enabling E.ON Ruhrgas’ chairman, Reutersberg, to increase the time pressure and even threaten to “drop the idea of buying a stake in [Yuzhno Russkoye] if [...] Gazprom rejects its new offer”, according to one report.¹⁶⁰ E.ON explains that this initiative succeeded because it overcame the problems caused by the fluctuating gas price. According to E.ON, changes in the gas price would have a commensurate effect on both the value of the Yuzhno Russkoye gas field and the shares in ZAO Gerosgaz,¹⁶¹ a correlation which others have claimed is weak.¹⁶²

A more plausible explanation for the success of the reformulated agreement is that the assets that Gazprom was to receive were more certain and tangible¹⁶³ since E.ON’s return of its stake in Gerosgaz is indirectly a return of 3% of its stake in

¹⁵⁶ ‘He Who Pays for the Pipeline Calls the Tune’, *The Economist*, 16 July 2009.

¹⁵⁷ Interview with E.ON employees, *op.cit.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ ‘E.ON Ruhrgas, Gazprom Wrangle over Yuzhno-Russkoye’, *www.neurope.eu*, issue 788, 30 June 2008.

¹⁶¹ Interview with E.ON employees, *op.cit.*

¹⁶² Interview with energy analyst, *op.cit.*

¹⁶³ *Ibid.*

Gazprom.¹⁶⁴ This also conveniently aligned with the Russian government's policy of bringing energy companies under state control. This policy is, however, economically as well as ideologically motivated. The "Russian government has an insatiable demand for capital" because of the inefficiency of the Russian tax system,¹⁶⁵ and income from renationalised assets in the energy sector has been the government's only guarantee of much-needed revenue. In light of this, E.ON's new offer was very attractive. Gazprom's readiness to accept the new terms of the agreement and to effectively abandon its demand for European downstream assets suggests that their primary objective was to maximise economic gain from the E.ON negotiations. Any desire for political influence in the European market was secondary.

On E.ON's part too, there is clear evidence that economic incentives strongly prevailed over any political influence, especially after the launch of the redefined asset-swap. Even if the German government had intervened during the first phase of negotiations, the timing of the deal, in the context of other major world events, strongly suggests that E.ON did not meet with any strong political opposition in the second phase in 2008. International criticism that Europe should consider alternatives to Nord Stream and projects linked to it following the Russian invasion of Georgia¹⁶⁶ precipitated no response from the German government. Given Merkel's formerly more hard-line approach towards Russia than her predecessor Gerhard Schröder, her approval of the agreement seems surprising. Not only did she "realise which side her bread is buttered on",¹⁶⁷ but her separation of energy security from shorter term political concerns and decision to consent to the deal at a time of high political tensions constitutes a clear case of *Realpolitik*.¹⁶⁸ The closure of the deal less than two months after the Caucasian conflict, which threw Russo-EU political relations into chaos is evidence of the relatively insignificant role that inter-state politics played in actually shaping the final outcome.

Conclusion

Whilst it is clear that both parties profited from the deal, it is less straightforward to determine which party gained more or had to compromise more on their initial objectives. Despite a weak negotiating position at the outset, E.ON managed to achieve its principal goal of participating in the gas field. Critics have tried to lessen E.ON's success by claiming it "is paying significantly more than BASF spent on its interest last year".¹⁶⁹ Not only does this fail to account for the different range of

¹⁶⁴ E.ON Press Release, 'Yuzhno Russkoye Gas Field: Participation Agreement Signed', *op.cit.*

¹⁶⁵ Erixon, *op.cit.*, p. 6.

¹⁶⁶ US Ambassador to Sweden's comments, cited in Geropoulos, *op.cit.*

¹⁶⁷ *Ibid.*

¹⁶⁸ Interview with energy analyst, *op.cit.*

¹⁶⁹ Geropoulos, *op.cit.*

upstream assets, which BASF could offer Gazprom,¹⁷⁰ but it also focuses singularly on outcome and not the negotiating process. E.ON's lack of a real alternative for developing an upstream joint venture to supply Nord Stream increased its dependency on Gazprom. This placed Gazprom in a strong negotiating position, which it initially took advantage of by refusing to accept each progressive increase in E.ON's offer. The success of the redefined asset-swap can be attributed to E.ON's initiative to completely redesign the assets it offered Gazprom. The nature of these assets also overlapped considerably with the Russian win-set, despite the fact that this was far removed from Gazprom's initial demand.

The signing of two deals that enable two German companies to acquire a 25% stake each in a strategically vital gas field are landmark cases for European energy security because they show that Russia *is* potentially open to reciprocity. The Yuzhno Russkoye asset-swap reveals two fundamental lessons for Europe concerning the conditions which favour this type of deal. Firstly, it is highly significant that Gazprom signed a deal with E.ON Ruhrgas, a partner with which it (and its predecessor the Soviet Ministry of Gas) has worked for thirty-five years, rather than any other European company. It was the trust created by this long-term relationship, and the promise of future cooperation after the deal, which made both sides persevere until a mutually favourable deal was reached, even when negotiations were at a complete standstill. Secondly, although Gazprom's initial demand for downstream assets in Europe certainly had both political and economic motivations, Gazprom's readiness to accept E.ON's proposed redefined asset-swap and abandon its former claims, indicates that a desire for influence within European companies was *not* its main objective, contrary to assertions made by the Western media. European governments may well have intervened during the first phase of the negotiations, voicing concerns about Gazprom's downstream ambitions, but Gazprom's negotiating behaviour suggests its real priority was different. Far from being staunchly set on dominating European markets, Gazprom's eagerness to acquire European downstream assets was diminished by its realisation that they could not be valued easily and their profitability was uncertain. As Güllner points out, state-controlled companies do not necessarily behave as state actors,¹⁷¹ a point well illustrated in this case, where Gazprom ultimately remained a commercial actor, principally driven by profit maximisation.

¹⁷⁰ Interview with E.ON employees, *op.cit.*

¹⁷¹ Lutz Güllner, 'Threat or Risk? The Debate About Energy Security and Russia: Five Steps for a Scientific Research Programme', *Journal of Contemporary European Research*, vol. 4, no. 2, 2008, p. 150.

V. Negotiating a New EU-Russia Agreement: A Three-Level Game

Anna Panczocha

Relations between the European Union and the Russian Federation are based on the Partnership and Cooperation Agreement (PCA) which came into force on in 1997 for an initial duration of ten years and is automatically extended beyond 2007 on an annual basis, unless either side withdraws from the agreement. A mandate for negotiations towards a new bilateral agreement was agreed in May 2008 after long discussions between EU member states, marked by a veto crisis caused by Poland and Lithuania. Soon after launching the negotiations, due to Russia's "disproportionate reaction"¹⁷² during the crisis in Georgia, the process was postponed.¹⁷³ On 10 November 2008 the EU foreign ministers decided to reopen the negotiations. Since then, there have been two EU-Russia summits at the highest political level and five rounds of technical negotiations – both of them without any remarkable results. Instead, the prospects for an agreement about the most important and at the same time disputed issues concerning energy supplies and trade regulations have deteriorated. Disagreements over the 'common neighbourhood' provoke crises both small and large every few months, and the situation in Georgia and its separatist republics of Abkhazia and South Ossetia is still unstable. Thus, taking into account the previous obstacles and actual symptoms of the deep divergences among the parties, one can argue that the negotiations over the new agreement will be rather long, and the result remains uncertain.

In this essay I apply Putnam's two-level game approach¹⁷⁴ to explain why the pre-negotiations among the EU member states encountered so many obstacles at the very beginning and why it is likely that these problems may be also transposed on the international level of negotiations. Likewise, I analyse why Russia, having strong economic and political interest in boosting relations with the EU, is such a difficult and unpredictable negotiating partner. I argue that although the win-sets of both parties could objectively overlap, there are many factors that make the outcome of EU-Russia negotiations uncertain.

¹⁷² Council of the European Union, 'Presidency Conclusions - Extraordinary European Council, Brussels, 1 September 2008', Brussels, 6 October 2008.

¹⁷³ 'Postponed' and not 'suspended', therefore legally there was no need for unanimity in the Council, and Lithuania, although it did not agree to reopen the negotiations, could not veto the decision.

¹⁷⁴ Robert D. Putnam, 'Diplomacy and Domestic Politics: The Logic of Two-Level Games', *International Organization*, vol. 42, no. 3, 1988, pp. 427- 460.

I adapt Putnam's theory to a three-level framework. Firstly, I will analyse the win-set of the EU as such and then in the second part I will move to the member states' perspective. The third part will deal with the examination of the Russian position. In addition, each section contains some observations on the negotiating behaviour of the parties, being to a great extent the consequence of the room of manoeuvre delimited by their win-sets. In the conclusion I will show that the prospects for quick and effective negotiations over a new bilateral agreement between Russia and the EU are rather limited. Nevertheless, the new international context created by the international financial crisis may lead to some changes in the negotiating positions, thereby generating more chances for a positive outcome.

The EU Win-Set

Taking into account the latest Commission review of EU-Russia relations, emphasizing the interdependence of the European and Russian economies and "the complex web of overlapping and shared interests",¹⁷⁵ one could argue that, at least from the EU's perspective, a positive outcome of the negotiations on a new agreement is desirable and very probable. According to the report, "Russia is an important emerging market [...] that offers opportunities to EU enterprises, [...] a significant share of the Russian foreign exchange reserves are held in euro, making Russia one of the largest holders of euro-denominated assets in the world", and finally "the energy sector is a core element of the relationship",¹⁷⁶ for Russia as a supplier and for the EU as a consumer.

Moreover, as one of the major actors on the international scene and in particular in the post-Soviet area, Russia plays a key role in the peaceful and sustainable solution of many conflicts in Europe and its boundaries. Effective cooperation between the EU and Russia is crucial to achieving greater economic and political stability in the 'common neighbourhood'. The European Union needs a constructive engagement of its biggest neighbour to solve problems in Iran, Transnistria, the Middle East, Nagorno-Karabakh or Georgia and its separatist republics. Therefore, it is in the very best interest of the EU to continue its efforts to conclude the new agreement with Russia, which can serve as a basis for enhanced cooperation. However, despite obvious mutual benefits of good relations between Moscow and Brussels, there are several crucial problems which hinder reaching an agreement. The main areas of conflicts concern the energy sector, 'common neighbourhood' and the question of democracy and human rights in Russia.

¹⁷⁵ European Commission, 'Review of the EU-Russia Relations', MEMO/08/678, Brussels, 5 November 2008.

¹⁷⁶ *Ibid.*

In the field of energy, the European Union would like to build a mature strategic partnership with Russia based on the “enshrining principles of the Energy Charter Treaty”.¹⁷⁷ Yet, the document setting out a non-discriminatory regime for the energy market based on WTO principles goes against the Russian interests. Although Russia signed the Energy Charter in 1994, it has systematically refused to ratify it. Instead, it proposed its own version based on the status quo with the monopolistic position of the Russian companies on the European market and refused to grant access to the domestic market for the European companies. Finally, on 30 July 2009 Vladimir Putin declared the withdrawal of the Russian Federation from the Energy Charter Treaty.¹⁷⁸

Another area of disagreement is the European engagement in the so-called ‘common neighbourhood’. Russia perceives the European Neighbourhood Policy and especially the recent initiative of the Eastern Partnership – covering the six former Soviet republics Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine – as a quasi-enlargement policy endangering Russian interests in its immediate vicinity.

The last problem is more general and derives from the fundamental and growing discrepancy between the European and Russian models of governance. Over the last few years, Russia evolved from a weak transition democracy to a much stronger state building its own version of ‘sovereign democracy’ as some have it,¹⁷⁹ or heading towards an authoritarian regime, as it is called by others. Whatever the name, the Russian system differs from European democratic standards and this has consequences for the bilateral relations. The EU as an active promoter of values undertook the commitment to include a human rights clause as an essential element of all international agreements with wide-ranging and political content.¹⁸⁰ It means that in case of human rights violations, each of the parties may suspend implementation of the agreement. Russia clearly emphasises that it will not accept any attempts to base its relationship with the EU on conditionality, normally used towards developing countries or as a pre-accession instrument. Thus, the EU’s desire to base the new agreement on “recognition of common values such as democracy,

¹⁷⁷ European Commission, Press Release, ‘EU-Russia Summit on 21-22 May in Khabarovsk’, Brussels, 20 May 2009.

¹⁷⁸ ‘Rosja ostatecznie rezygnuje z Traktatu Karty Energetycznej’, *Tydzień na Wschodzie. Biuletyn Analityczny. Rosja, Kaukaz, Azja Centralna*, Warsaw, Centre for Eastern Studies, no. 27 (102), 2009, p. 8.

¹⁷⁹ Sergey Ivanov Deputy Prime Minister and Minister of Defence of Russia, quoted in Michael Emerson, Fabrizio Tassinari and Marius Vahl, ‘A New Agreement between the EU and Russia: Why, What and When?’, in Michael Emerson (ed.), *The Elephant and the Bear Try again: Options for a New Agreement between EU and Russia*, Brussels, CEPS, 2006, p. 3.

¹⁸⁰ European Commission, ‘Commission Communication on the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries’, COM(1995) 216 final, Brussels, 23 May 1995.

human rights and the rule of law"¹⁸¹ may end as an empty political statement. The most visible examples of how far from each other the European and Russian visions of cooperation are were the gas crisis in Ukraine and the war in Georgia. These two events "seriously undermined the level of trust"¹⁸² between the EU and Russia and put their relationship again at a cross-roads.¹⁸³

Despite these obstacles, the European Commission insists that dialogue between the parties should continue, as it is the best way to discuss disagreements and gives the EU the possibility to propose some trade-offs such as visa facilitation and financial aid, which can help the EU to achieve its objectives with Russia.¹⁸⁴ Therefore, the Commission proposes that the new agreement provide "an updated and more ambitious framework for the EU-Russia relationship".¹⁸⁵ It should be legally binding¹⁸⁶ and cover all main areas of cooperation based on the four common spaces.¹⁸⁷ Once the Russian Federation becomes a member of the WTO, the EU envisages establishing a Free Trade Area (FTA), which requires mutual acceptance of the high standards and rules of the international trade system.

The evaluation of the EU's interest and demonstrated will to pursue negotiations with Russia despite many obstacles seems to clearly indicate that the EU's win-set is quite large, which makes the agreement more likely. In fact the complexity of the EU treaty-making system makes the number of acceptable agreements with Russia rather limited. The PCA is a mixed agreement and the Commission is pushing for a new, comprehensive bilateral treaty with Russia which would have certain implications.¹⁸⁸ Firstly, this kind of agreement requires a consensus among member states to give to the Commission a mandate to launch, conduct and conclude negotiations.¹⁸⁹ Secondly, the agreement needs to be ratified by the Council, the European Parliament (especially after the entry into force of the Lisbon Treaty) and all member states, according to their national ratification procedures. The problems

¹⁸¹ European Commission, Press Release, 'European Commission Approves Terms for Negotiating New EU-Russia Agreement', Brussels, 3 July 2006.

¹⁸² Benita Ferrero-Waldner, Commissioner for External Relations and European Neighbourhood Policy, 'After the Russia/Ukraine Gas Crisis: What Next?', London, Chatham House, 9 March 2009, SPEECH/09/100.

¹⁸³ *Ibid.*

¹⁸⁴ Benita Ferrero-Waldner, Commissioner for External Relations and European Neighbourhood Policy 'External Relations: Latest Developments', AFET, European Parliament, Brussels, 5 November 2008, SPEECH/08/586 .

¹⁸⁵ 'European Commission Approves Terms for Negotiating New EU-Russia Agreement', *op.cit.*

¹⁸⁶ 'Review of the EU-Russia Relations', *op.cit.*

¹⁸⁷ The decision of establishing four common spaces (covering economic issues and environment; freedom, security and justice; external security; research and education) was taken at the EU-Russia summit in St. Petersburg in 2003.

¹⁸⁸ Emerson, Tassinari and Vahl, *op.cit.*, p. 70.

¹⁸⁹ The Commission is assisted by the representatives of the Presidency/Council when CFSP issues are concerned.

with reaching a consensus on the negotiating mandate and disputes around the reopening of the talks proved that member states are extremely divided in their positions towards Russia. The heterogeneous preferences around the EU's domestic negotiating table makes its win-set rather limited.

In consequence, the European Commission becomes a very tough negotiator, having limited room for manoeuvre when acting within the precise mandate, and it is therefore not prone to make concessions. At the same time it is difficult for the Commission to play a pro-active role in the negotiations¹⁹⁰ as any new offer put on the table must have an acceptance from all 27 member states, which are briefed before and after each negotiating round. Moreover, the Commission's credibility as a negotiator may be undermined if it is not able to promise ratification at home. The EU's negotiating position is a result of complicated domestic negotiations based on the smallest common denominator.

The EU Member States' Perspective

On 10 November 2008, the foreign ministers of the EU decided to proceed with the negotiations with Russia over a new agreement. However, they did not manage to reach a unanimous position because of Lithuania's resistance.¹⁹¹ Lack of consensus among member states is not an unusual situation when the question of EU-Russia relations is on the table. Different economic interests and political perspectives, plus geographical location and difficult historical experiences, shape national positions vis-à-vis Russia. The categorisation proposed by Leonard and Popescu, although controversial, could be useful to understand the complex system of preferences within the EU.¹⁹² They differentiate five groups of countries on the basis of their attitude towards Russia: *Trojan horses* (Cyprus and Greece) often defend Russian interests in the EU; *strategic partners* (France, Spain, Germany, Italy) have 'special relations' with Russia sometimes going across or even against common EU policy; *friendly pragmatics* (Austria, Belgium, Bulgaria, Finland, Luxemburg, Malta, Portugal, Slovakia, Slovenia, Hungary) have close relations with Russia and sometimes are prone to set their own economic interests above EU political objectives; *cold pragmatics* (Czech Republic, Denmark, Estonia, Netherlands, Ireland, Latvia, Romania, Sweden, UK) are also focused on their interests, however, they are not afraid of criticizing Russia; *new Cold War fighters* (Poland and Lithuania) have cold

¹⁹⁰ Alasdair R. Young, 'What Game? By Which Rules? Adaptation and Flexibility in the EC's Foreign Economic Policy', in Michèle Knodt and Sebastiaan Princen (eds.), *Understanding the European Union External Relations*, London, Routledge, 2003, p. 65.

¹⁹¹ 'EU Overrules Lithuania over Russia Talks', *Euractiv*, 11 November 2008, retrieved 11.11.08, <http://www.euractiv.com/en/enlargement/eu-overrules-lithuania-russia-talks/article-177071>.

¹⁹² Mark Leonard and Nicu Popescu, 'Rachunek sił w stosunkach Unia Europejska – Rosja', Londyn – Warszawa, Europejska Rada Spraw Zagranicznych Fundacji im. S. Batorego, 2008, pp. 10-11.

relations with Russia and if unsatisfied, they are ready to block negotiations between the EU and Russia.¹⁹³ The most powerful groups influencing EU-Russia relations are the *Cold War fighters*, sometimes supported by Sweden and the UK, and the strong group of *strategic partners*.

Poland and Lithuania had already blocked the talks over a new agreement with Russia at the very beginning, when they alternately vetoed the Council mandate for the Commission to start negotiations. The reasons for such behaviour derive from their historical background and are reconfirmed by the Russian embargo on the Polish agricultural products on a very flimsy pretext or the Russian use of blackmail towards those countries highly dependent on Russian energy supplies. Therefore, Poland and Lithuania were challenging Russia, but also European solidarity, trying a linkage strategy by raising conditions for the launch of negotiations with Moscow (for example, Russia's ratification of the Energy Charter and the Transit Protocol or the inclusion in the mandate of a commitment to protect human rights and to cooperate with Brussels in solving 'frozen conflicts' in Georgia and Moldova).

The second group, even though it sometimes shares those concerns,¹⁹⁴ is more in favour of the 'double-track' policy towards Russia, which means moderate criticism when it is necessary but continuation of doing 'business as usual'. France, Germany and Italy, pushed by their own business circles searching for better access to the Russian market, represent this pragmatic approach. They have the advantage of good bilateral relations which could be an alternative to the common EU agreement. The 'cost of no agreement' for them is then relatively low. In this case, why do they strongly support the negotiations? The possible explanation is that in multilateral negotiations they have a stronger position, as they may use 'rebel countries' (Poland and Lithuania) as a leverage to put pressure on Russia and thereby obtain some concessions.¹⁹⁵

The provisional conclusion that can be drawn so far is that the divisions among EU member states and the high politicisation of their relations with Russia make the EU's win-set quite small. Nevertheless, the EU can easily lose this surplus in negotiations by immersing itself in internal disputes. However, if the EU manages to achieve a general consensus, it can make use of the leverage of its diversity. The strategic partners should conduct negotiations in a friendly way, which may weaken the vigilance of

¹⁹³ *Ibid.*

¹⁹⁴ "In this particular case [...] everyone is glad Poland has remained true to its reputation as a rebel" in Frank Herold, 'Erwünschtes Bremsmanöver Polens', *Berliner Zeitung*, 14 November 2006.

¹⁹⁵ *Ibid.*

the Russian negotiators, whereas the troublemakers should serve as a backup of assertive criticism, when necessary.

The Russian Position

From the Russian point of view there are several, mainly economic reasons why the Russian government should be in favour of an enhanced co-operation with the EU, based on a new bilateral agreement. First of all, the Russian budget is strongly dependent on the income from selling energy mostly on the EU market. Although the Kremlin sometimes tries to blackmail its European partners by threatening to turn its priorities towards Asia, such a re-orientation is hardly possible due to lack of technical infrastructure and lower energy prices on Asian markets.¹⁹⁶ Secondly, the on-going financial crisis showed that the Russian economy, relying on high prices of gas and oil, needs a modernisation in order to avoid 'the Dutch disease'. The first symptoms are already visible: due to low hydrocarbon prices the deficit of the Russian budget has risen to nearly 10%, while economic growth is down and unemployment is growing.¹⁹⁷ In addition, Russian leaders are becoming more conscious of the fact that their European partners are heading towards a diversification of energy supplies by supporting initiatives like the Southern Corridor, which will connect Europe with new producers in the Middle East, South Caucasus or Central Asia. The Russian government is trying hard to divide the EU and torpedo this initiative, promoting instead its own rival project, the South Stream. However, on the horizon there is another threat for the Russian position on the European energy market, namely the growing sector of green technologies, in which the EU has a leading position. Finally, the expanding Chinese economic and political influence in the world, and in particular in Central Asia, is being observed with increasing concern by the Kremlin.¹⁹⁸

To face all these threats Russia needs to modernise its economy. Russian leaders are much more aware of this fact than just few months ago. President Medvedev frankly admitted that "we cannot develop like this any further. It is a dead end. We will have to make decisions on changing the structure of the economy. Otherwise, our economy has no future".¹⁹⁹ For that reason, Russia should eagerly accept the European helping hand. The EU can provide tools such as technical and financial

¹⁹⁶ Marcin Kaczmarek, 'Asian Alternative? Russia's Chances of Making Asia an Alternative to Relations with the West', Warsaw, Centre for Eastern Studies, June 2008.

¹⁹⁷ Fraser Cameron, 'Russia at the Crossroads Again', EU-Russia Centre, 10 September 2009, retrieved 11.09.09, <http://www.eu-russiacentre.org/eu-russiacentre-news/eurc-director-fraser-cameron-writes-world-commerce-review-current-challenges-facing-russia-global-financial-recession-potential-role-eu-implications-eurussian-relationship.html>.

¹⁹⁸ 'Paweł Wieczorkiewicz: Historia ruszyła z kopyta', *Euractiv*, 27 August 2009, retrieved 27.08.09, <http://www.euractiv.pl/polityka-zagraniczna/artukul/historia-ruszya-z-kopyta-001207>.

¹⁹⁹ Cameron, *op.cit.*

assistance to conduct reforms as well as access to the EU market and in a longer perspective the creation of a free trade zone, once Russia has acceded to the WTO.

The general compatibility between the Russian interest and the European offer of cooperation allows us to make the assumption that the Russian win-set is quite large and has a good chance of overlapping with the European one. Moreover, according to Putnam, "strong discipline within the governing party, increases the win-set".²⁰⁰ Therefore, in the case of Russia, where the president and the government have strong support in the parliament, the range of the agreements which can be expected to be ratified is wide. In other words, the Russian domestic level is characterised by a submissive attitude towards the executive power which is negotiating on the international arena.

However, this does not mean that we can talk about strictly homogenous preferences in Russia concerning relations with the EU. The attitudes of Russian elites towards the EU, and more generally towards the West, are aggregated within two extreme camps, which shape the traditional debate on the Russia's identity and its role in the world. The first group, so-called *zapadniki* (Occidentalists) believe that Russia is a specific part of Europe and the West and therefore should integrate with it.²⁰¹ The other group derives from the Eurasianist strand in Russian political thought which underlines the unique position of Russia in the world as a bridge between the East and the West, which is however very different from them and therefore cannot fully integrate with them but rather cooperate only on the basis of equal rights.²⁰² The pro-integrationists were very influential at the beginning of the 1990s²⁰³, but their foreign policy was discredited at the end of President Yeltsin's term and they were removed from mainstream politics by his successor, Vladimir Putin. Yet, with the economic crisis, they are again becoming more visible in the public discourse pointing out that "if Russia is to become a competitive economy, it has no choice but to open up to the world, join the WTO, and become a more liberal society with strong institutions providing for checks and balances".²⁰⁴

Nevertheless, the conservative camp, including the *siloviki* (the military-security complex), still seems to have greater control over the Russian foreign policy. Their vision of international relations is based on the realist paradigm of power. Thus, according to them, Russia is a sovereign power with a specific role and interests in

²⁰⁰ Putnam, *op.cit.*, p. 449.

²⁰¹ Marek Menkiszak, 'Russia vs. the European Union: a "Strategic Partnership" Crisis', Warsaw, Centre for Eastern Studies, January 2006, p. 52.

²⁰² *Ibid.*

²⁰³ At the time, when the PCA was negotiated.

²⁰⁴ Cameron, *op.cit.*

the post-Soviet area, which should be treated as the Russian zone of influence. The concept of the 'near abroad' is reflected in Russia's external security doctrine, which seems to legitimise the right to intervene in the domestic affairs of neighbouring countries in order to defend Russian political and economic interests.²⁰⁵ The most visible examples were Russian engagement in the campaign before the Ukrainian presidential elections in 2004 and the recent Georgian crisis. The 'near abroad' overlaps with the EU's neighbourhood, which together with the energy dossier is the main source of disagreement between Brussels and Moscow.

In consequence, the Russian version of *Realpolitik* has a predominant impact on the perception of the European Union and the vision of EU-Russia relations. The EU is treated not as a community built on shared values, but rather a new version of the Concert of Europe,²⁰⁶ which dangerously increases its activities near the Russian borders. The proof of the expansionist intentions of the EU is the European Neighbourhood Policy. This realist perception affects the Russian attitude towards the negotiations with the EU over a new agreement. Although from the perspective of the general economic interest and the internal institutional architecture the Russian win-set should be quite large, the adverse domestic preferences narrow it down. Therefore, Russian negotiators take a strong conservative line, applying some traditional Russian bargaining tactics.

First of all, Russians perceive negotiations as a 'war' in peacetime,²⁰⁷ which implies that the 'winner takes all', concessions are signs of weakness and compromise is not considered as the best option of solving a problem. The PCA signed in 1994, when Russia was a weak country in transition, "was based on the EU's conception of how its neighbourhood relations should be organized"²⁰⁸ and therefore is perceived by Russians as a failure. The original PCA does not correspond to the current situation, where Russia is again an economically and politically powerful player on the international scene. The new negotiation process is therefore considered a chance for Russia to assert its position and to change the existing legal framework into something new, which will reflect the equality between the two parties.

However, the Russian vision of what the new agreement should look like seems to be quite different from the EU's proposal to sign a new comprehensive treaty, including especially energy and trade issues. Sergey Lavrov, the Russian foreign minister,

²⁰⁵ 'The New Russian Security Doctrine by Sergey Ivanov, Deputy Prime Minister and Minister of Defence of Russia', extract from article in *Wall Street Journal*, 11 January 2006, in Michael Emerson (ed.), *op.cit.*, p. 65.

²⁰⁶ Menkiszak, *op.cit.*, p. 53.

²⁰⁷ Hiroshi Kimura, *op.cit.*, p. 67.

²⁰⁸ Emerson (ed.), *op.cit.*, p. 2.

specified that Russia and the EU should first sign a “strategic cooperation agreement” which would serve as a framework for any other future sectoral treaties.²⁰⁹ This approach is known as ‘agreement in principle’, which for Russians is the most important part of the negotiations. ‘Agreement in principle’ tends to be a vague political declaration, which is considered by Russian negotiators as “nothing but promise”²¹⁰ and can be interpreted according to circumstances or even revised during the implementation process. Signing a general political treaty in lieu of the comprehensive agreement would serve three main goals. First of all, it would allow Russians to avoid linking the trade issues with the human rights and democracy clause that the EU includes in every treaty signed with a third country. Secondly, it would put energy dialogue with the EU outside the main negotiations. Whereas for the EU regulation in the field of energy supplies according to the principles of the Energy Charter and Transit Protocol is one of the main points of the negotiations, Russia is definitely interested in maintaining the status quo and inhibiting the liberalisation of the European market. For the moment, the energy dialogue is ‘frozen’ by the Russian government’s decision to withdraw from the Energy Charter Treaty announced by Prime Minister Vladimir Putin in a decree on 30 July 2009.²¹¹

Finally, the general agreement is related to the question of the Russian accession to the WTO. Russia has sought WTO membership since 1993 and, as high Russian officials underline, it is perceived as a strategic goal of foreign policy.²¹² Brussels supports these endeavours and would like to see EU-Russia trade relations governed by WTO rules as soon as possible to thereafter establish a free trade agreement. Although on 4 June 2009, the EU and Russia had a “common understanding” that WTO accession should be completed before the end of this year,²¹³ on 9 June Vladimir Putin announced that Russia will create a customs union with Belarus and Kazakhstan,²¹⁴ which will certainly postpone accession. This radical shift, very characteristic of the Russian negotiation style, may be a test of the determination and strength of the negotiators on the other side of the table. Russia wants to either postpone its membership in the WTO, which will allow it to continue to use protectionist trade measures, or to put pressure on its partners to accept Russian conditions of the accession. Thus, the declaration of the creation of the customs union with Belarus

²⁰⁹ ‘Minister Ławrow precyzuje rosyjską wizję porozumienia z UE’, *Tydzień na Wschodzie. Biuletyn Analityczny. Rosja, Kaukaz, Azja Centralna*, Warsaw, Centre for Eastern Studies, no. 17 (92), 6 May 2009, p. 8.

²¹⁰ Kimura, *op.cit.*, p. 79.

²¹¹ ‘Rosja ostatecznie rezygnuje z Traktatu Karty Energetycznej’, *op.cit.*

²¹² ‘Lavrov Calls WTO Membership Russia’s Strategic Goal’, *RIA Novosti*, 25 September 2009, retrieved 25.09.09, <http://en.rian.ru/business/20090925/156255908.html>.

²¹³ European Commission, Press Release, ‘EU and Russia Make Progress on WTO Accession’, St. Petersburg, 4 June 2009.

²¹⁴ ‘Rosja niechętna członkostwu w WTO?’, *Tydzień na Wschodzie. Biuletyn Analityczny. Rosja, Kaukaz, Azja Centralna*, Warsaw, Centre for Eastern Studies, no. 23 (98), 24 June 2009, p. 2.

and Kazakhstan may just be *pokazukha* (something what is done for show), a tactic used by Russians in order to make negotiations advantageous for them.²¹⁵ In any case, Moscow prefers to play this game when it is not directly related to any important issues, thereby preventing the EU from using the linkage strategy to extract concessions from the Russian side. This creates a stalemate in the negotiations, because the EU insists that it will not sign a new strategic pact with Russia unless the country enters the WTO. Moscow is playing the role of a tough negotiator, trying to convince its European partners that the new agreement is of no great importance to the Russian Federation, as there are alternative solutions. According to the legal provisions, the old PCA can be prolonged automatically every year, unless one party gives notice.²¹⁶ The message from the Kremlin is clear: either the new agreement will be tailored to Russian conditions, which means *inter alia* no references to 'internal' issues such as human rights protection or the rule of law, or there is no chance it will be signed. Moreover, Russia emphasises that it is ready to enhance cooperation with those EU countries respecting Russian interests,²¹⁷ meaning with 'strategic partners' such as France or Germany; 'Russophobe' countries, like Poland and Lithuania will be left alone.

Russians mastered the old technique *divide et impera*, exploiting even the smallest differences among member states. "Split, split and split again"²¹⁸ is the major rule in many European initiatives of the Russian government or public companies. The gas crisis, projects for the North and South Stream, EU relations with Belarus, Georgia and Ukraine, or the Polish 'meat affair' are just a few examples of cases in which Russia tried or is trying to heat up the internal EU disputes. The tactic remains successful as long as the EU has problems with implementing a common EU policy towards Russia. Yet, paradoxically, the Ukrainian gas crisis or the Georgian war may convince the extreme groups within the EU that only a united and assertive position will be heard and taken into account by the Russian partners. Russians negotiate in a tough way, often having high demands at the beginning and spinning out the talks to the very last moment. Nevertheless, the EU approach towards the crisis during the Orange Revolution or the 'meat affair' proved that a strong and 'single voice' is a key factor to convince Russians to take a more consensual position.

²¹⁵ Kimura, *op.cit.*, p. 75.

²¹⁶ Art. 106 of the *Agreement on Partnership and Cooperation Establishing a Partnership between the European Communities and their Member States of one Part, and the Russian Federation, of the other Part*, Corfu, 24 June 1994.

²¹⁷ Dimitri Medvedev, 'Address to the Federal Assembly of the Russian Federation', Moscow, 5 November 2008, retrieved 10.11.08, http://eng.kremlin.ru/speeches/2008/11/05/2144_type70029type82917type127286_208836.shtml.

²¹⁸ Vladimir I. Lenin quoted in Kimura, *op.cit.*, p. 81.

The Russian tactic in these negotiations remains ambiguous. On the one hand, "a stronger, pragmatic and more confident Russia [...] prefers to keep its hands free and options open in order to maximise its economic and geopolitical interests".²¹⁹ Then, it is clear that stronger relationships with selected European partners and the weak old PCA are a real and advantageous alternative to 'no agreement'. On the other hand, Russia could also be afraid that eventually the EU will maintain a strong unanimous position, and therefore Moscow will have to find a *modus vivendi* for its relations with the EU. In this case, it could use the tactic of being misleading about its own win-set in order to obtain a stronger bargaining position.

Conclusion

The perspectives for quick and effective negotiations over a new bilateral agreement between Russia and the EU are rather dim. Although due to economic interests the Russian and European win-sets could overlap, there are several factors on both sides which reduce the possibility of a successful outcome. On the EU side, divisions in member states' positions towards Russia narrow down the European win-set. Russia uses ambiguous bargaining tactics, trying to give the impression it is not interested in concluding the new agreement, while this is not necessarily the case. Moreover, apart from disagreements about the details, the European and Russian visions of the current situation and the nature of the future relationship seem to be completely divergent. For both parties, the question remains highly politicised, which makes the negotiations even more complicated.

Yet, despite many differences, the two big European neighbours have a common interest in building a new effective model of cooperation. Currently, a new 'window of opportunity' is being opened by the changing nature of the world order. The economic crisis has weakened the economies of the EU, Russia and the US, while seeing the rise of new Chinese power. This raises concerns especially in Russia, which perceives China as a dangerous rival in Central Asia. The new situation may create an impulse for reshuffling positions around the negotiation table. The first sign may be President Medvedev's announcement of "evolutionary, but consistent and irreversible reforms" in Russian politics.²²⁰ Brussels should make the best of the momentum and push for accelerating the talks over the new agreement. Taking lessons from the previous negotiating experiences, the EU should develop a common position in order to strengthen its bargaining position and put through its agenda. This would require granting some safeguards or side-payments, possibly concerning energy security, in order to satisfy the most sceptical member states. The most

²¹⁹ Maurizio Massari, 'Russia and the EU Ten Years On: A Relationship in Search of Definition', *The International Spectator*, no. 42, issue 1, 2007, p.13.

²²⁰ 'Rosjo naprzód', *Gazeta Wyborcza*, 26-27 September 2009.

difficult question to deal with at the negotiating table with Moscow will be the inclusion of a conditionality clause.

During the previous talks Russians proved many times that they seem to have more respect for the 'argument of strength' than the strength of arguments. They are also very sensible on the question of equal status of the negotiating parties. Therefore, the EU's negotiation strategy should be based on a clear, united and assertive position, emphasizing at the same time the mutual benefits of a treaty. European negotiators should try to get out of the zero-sum game context in favour of package deals. The result of the negotiating process will depend a lot on the political will of both sides; whether in this new context Russia will become a constructive partner, or whether on the contrary it will stick to its rigid position, perceiving any concession from the EU as a success of its own strategy. The reward for the effort made by both sides may be the establishment of a real, not virtual, 'strategic partnership'.

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