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ARTICLE

How the European Union Failed to Prevent the Ukraine Conflict

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Abstract

When the European Union was awarded the Nobel Prize for Peace in 2012, the citation stated that military conflict on the continent was "virtually inconceivable" owing to its action. This article will examine what role its acts and omissions played in the origins of the Ukraine crisis. The tensions stoked by potential NATO membership have been well aired. However, this article will argue that the treatment of minorities and particularly of the Russian language was equally important. The EU's failure to address these questions by insisting Kjiv grant substantial linguistic rights, or even regional autonomy as foreseen by the second Minsk agreement, was a significant cause of the conflict.

Keywords: linguistic rights; minority rights; nationalism; Russia; Ukraine; European Union

1. Introduction

Ten years ago, John Mearsheimer attributed blame for what was then merely a crisis in Ukraine to the West on account of the reckless expansion of NATO. He also considered "the European Union's expansion eastward" to be an aggravating factor.[1]

While accepting his core argument, I think it underestimates the extent to which non-strategic considerations have also been a major provocation. Putin has repeatedly made quite clear that it is not just potential accession to NATO that is unacceptable to Russia but also the nature of recent Ukrainian regimes and their policies.

It was Putin's decision alone to send his troops across the Ukrainian frontier on 24 February 2022, but the EU is blameworthy for failing to address the militant nationalist policies of recent regimes while loudly trumpeting itself as bringing a new democratic culture to the region.

2. War in Europe: "Virtually inconceivable"

The EU was awarded the Nobel Prize for Peace a little over a decade ago – something now almost forgotten – because it had "for over six decades contributed to the advancement of

[1] Mearsheimer 2014.

peace and reconciliation, democracy, and human rights in Europe." The citation specifically remarked that the post-1989 "enlargement did away with the division between east and west and settled many ethnically based national conflicts."

After reciting the events following the dissolution of Yugoslavia, the award commendation concluded: "in an era of major economic difficulties and social unrest, the Union had played a stabilising role. Crises of that nature had previously triggered political and military conflicts in Europe. This was now *virtually inconceivable, largely on account of the EU.*"[2]

What then did the bloc do – or fail to do – that resulted in Russia's invasion on 24 February 2022? It did nothing to encourage Ukraine to institutionalise the rights regime that was necessary to prevent Putin's feeling that he needed to intervene. Even with the east of the country in open conflict it was neither involved in negotiating a settlement nor in ensuring that the regional autonomy envisaged by the second Minsk agreement was enacted in practice.

The Venice Commission has declared Ukraine a "multi-ethnic country," noting the figures from the last census, taken just after the millennium: "Ethnic Ukrainians make up 77.8% of the population. Other ethnic groups are Russians (17.3%), Belarusians (0.6%), Moldovans (0.5%), Crimean Tatars (0.5%), Bulgarians (0.4%), Hungarians (0.3%), Romanians (0.3%), Poles (0.3%), Jews (0.2%), Armenians (0.2%), and Greeks (0.2%)" as well as Karaites, Krymchaks, and Gagauzes.[3] A study on the eve of the invasion by a leading Ukrainian sociologist concluded that the country was "ethnoculturally diverse" and that "Ukrainian citizens differ greatly in their ethnocultural practices and ethnolinguistic identifications."[4]

The fact that there has not been an official census since 2001 suggests an attempt to officially conceal or deny this reality. Although the percentages of minorities are relatively small, they are often found in relatively dense geographical clusters. That ethnic identity and linguistic usage are not conterminous is a notable feature of the situation in Ukraine. Almost fully one-third of the population (geographically concentrated in the south and east) declared themselves to be native Russian speakers, many coming from other minorities. Many who identify as ethnic Ukrainians speak better Russian than Ukrainian.

In the independence period, language policy was governed by a language law adopted by the Supreme Soviet of the Ukrainian SSR in 1989. This made Ukrainian the only state language, a situation that was considered dissatisfactory in many quarters and that regularly became an issue during election campaigns.[5] After a number of failed attempts, a new language law was passed in 2012. This would have allowed "regional or minority languages" (a term taken from the Council of Europe's European Charter for Regional or Minority Languages) official status on a regional basis. A rather modest measure by European standards, it provoked a nationalist backlash that led to political polarisation.

The EU failed to forestall conflict by not challenging the chauvinist language policy that followed. In pursuit of privileged access to Ukraine's markets, the EU arguably fatally destabilised the country.[6] The signing of an Association Agreement between Ukraine and the EU, which would have established a free trade area, provoked a crisis. It meant that Ukraine would not be able to take up an alternative offer from Russia of joining a customs

[2] https://www.nobelprize.org/prizes/peace/2012/summary/, my italics.

[3] Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language, adopted by the Venice Commission at its 121st Plenary Session (Venice, 6–7 December 2019).

[4] Kulyk 2022.

[5] Arel 1995.

[6] Ishchenko 2014.

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union with it, Belarus, and Kazakhstan. Public opinion in Ukraine was very divided about which course to pursue. The Association Agreement entailed embarking on a massive programme of legislative alignment with profound economic, social, and political consequences. When at the Vilnius summit in 2013 the EU refused to offer compensation for the loss of significant existing trade with Russia, President Yanukovych refused to sign the Association Agreement.

This sparked the much-mythologised "Maidan" protests (often prefixed "Euro"), which culminated in over a hundred deaths. Exhaustive investigations by University of Ottawa academics have now demonstrated that these protests were perpetrated by far-right nationalist elements within the protestors" ranks.[7] However, in narratives promoted at the time and since by the EU and widely promulgated by the Western media, the shootings were blamed on state forces. Following a procedurally irregular vote in parliament, Yanukovych was deposed as President and replaced by Poroshenko, an oligarch with a support base in the nationalist west of the country. His new government was notoriously hand-picked in advance by American officials. The illegitimacy of this government led to spiralling unrest in eastern regions of the country where ethnic Russians predominate. In an admission of its inability to lead, the EU largely fell silent diplomatically as attempts were made to find a solution to what was turning into a civil war. Russia became involved but "was slow to send weapons" and, unlike Crimea, did not at this time seek to incorporate these territories.[8] The bloc is profoundly culpable, given that it was in a very powerful position and had significant leverage, notably the carrot of progress towards accession, which could enable it to get Kjiv to do many things that, as we shall see, it would rather not.

3. The trigger

The widespread claim that Russia is a neo-imperialist state does not bear close scrutiny. Putin's oft-cited regrets about the collapse of the USSR notwithstanding, his actions can be understood as a reaction to circumstances rather than a part of a neo-imperial plan to recreate the USSR. His essay "On the Historical Unity of Russians and Ukrainians" is often mentioned, but it is rarely noted that it ends with his comparing Russia and Ukraine to Germany and Austria or the United States and Canada, two separate countries with much in common who should respect – a significant choice of word that deserves more attention than it has received – one another.[9]

After seizing Crimea, Putin drew a line and did not attempt a full-scale invasion until 2022, allowing Ukraine ample time to build up its forces. He placed his hopes primarily in non-military courses of action. Following the incorporation of Crimea, he declined to support those who wished to establish a "Novorussiya" in eastern Ukraine.[10] Putin may well have anticipated a less confrontational status quo emerging again in Kjiv, as it had on occasions in the past. Zelensky's election in 2019 on a platform of negotiating a solution to the conflict in the Donbass likely encouraged him in this.

He might also have imagined that a native Russian speaker – who has spoken of his struggles to learn Ukrainian – might be able to find a durable solution to the long-running language problem. If so, he could not have been more mistaken. The nationalist policies of Porshenko's

[7] Katchanovski 2024.
[8] Arel and Driscoll 2023, 173.
[9] http://en.kremlin.ru/events/president/news/66181.
[10] Nechepurenko 2015.

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government were maintained and extended by the new government.[11] The 2021 law on the native peoples of Ukraine has been almost entirely unreported, but a strong case can be made that it was a significant trigger for Putin's invasion of Ukraine.

This piece of legislation made manipulative use of an idea from international law that had been developed to recognise aboriginal peoples in colonial situations. The statute made an entirely novel distinction between "indigenous peoples" – who on this occasion alone are uniquely defined as those who have no governmental organisation outside the state of Ukraine – and "national minorities" who do. The necessity of this distinction is far from clear.[12]

Practically, it was a pointless statute, given that only Crimean Tatars and two small Jewish sects in Crimea were designated as indigenous. It is hard to avoid the impression that this law was rather a goad to Putin on the question of rights, legislating for tiny fractions of the population in a territory he controlled while passing over the situation of Russian speakers, a focus of acute concern. He certainly took it as a provocation, declaring that "the division into indigenous, first-class categories of people, second-class, and so on – this is definitely completely abhorrent, reminiscent of the theory and practice of Nazi Germany."[13] Yet his famous essay stressing the shared historical origins of Russia and Ukraine published less than a fortnight after the law was formally enacted, still recognised Kyiv's sovereignty. Its closing plea for respect might be taken as a final and urgent request for diplomatic engagement.

However, no significant response was forthcoming, least of all from the EU. It has become well recognised that a dynamic of escalation and counter-escalation around NATO alignment occurred in the immediate run-up to the invasion. The signing on 20 November 2021 of a "strategic partnership" with Ukraine by U.S. Secretary of State Blinken was perhaps the final straw. This committed the United States to Ukraine's full integration into NATO and stressed Ukraine's claim to Crimea. However, as a vague statement of a distant aspiration, it can seem puzzling that Putin acted so swiftly and decisively. Certainly, the academic literature on the causes of the war frequently struggles to account for Putin's invading exactly when he did.[14] However, if we take into consideration the law regarding the native peoples of Ukraine and the language question more widely, we can see that, for Moscow, the cultural threat was imminent.[15] As Dominique Arel pithily remarks, "By 2022, Russian schools were virtually gone." Putin may well have felt that he had waited too long and put too much hope in diplomatic solutions.[16]

4. Minority rights and the origins of the conflict

The failure of successive Ukrainian governments to instantiate satisfactory linguistic rights for minorities is especially egregious given that the USSR gave, and Russia still gives, a remarkable degree of recognition to them. Constitutionally, the USSR was an ethno-territorial federation based on a four-tiered set of national territories, each endowed with

[11] Ishchenko 2022.

[12] https://www.loc.gov/item/global-legal-monitor/2021-08-02/ukraine-new-law-determines-legal-status-of-indigenous-people/.

[13] https://www.timesofisrael.com/ukraine-honors-2-sects-with-jewish-roots-as-indigenous-peoples-angering-putin.

[14] Bakalov 2024.

[15] Mearsheimer 2022.

[16] Arel and Driscoll 2023, 191.

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varying degrees of autonomy, comprising an elaborate system of political and administrative institutions.

More than half of the territory of the Russian Soviet Republic itself was allocated to non-Russian nationalities as their national homelands. Overlaid onto this was a system of personal nationality based on descent, not residence, which had no territorial component whatsoever.[17] Russia itself did not abandon this framework with the demise of the USSR. The 1993 Constitution is very much a continuation of the structures of the Soviet period in regard to languages and minorities.

Will Kymlicka, a noted theorist of multiculturalism, has remarked that this arrangement "may have important lessons for Western democracies."[18] As with much under socialism, realities did not always fully meet aspirations but against such a background, it was inevitable that Russia would have more than minimal expectations about how an independent Ukraine would treat its Russian-speaking minority.

This was the situation the EU needed to address. The Nobel citation specifically mentioned the dissolution of Yugoslavia and implied that it had internalised the lessons of that conflict. The reality was that while recognising the problem the EU failed to develop a substantive solution.

The EU has announced its aspirations while failing to make good on them in practice. Most notably, in June 1993, the European Council laid down a new set of conditions – the Copenhagen criteria – that any candidate state must meet to join. These require candidate countries to achieve "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." These were entirely new stipulations that had not been demanded of previous applicants. There has been considerable discussion and much angst around Poland and Hungary's backsliding after accession regarding questions of the rule of law and democracy. In contrast, minority rights have not been raised with the same urgency and, despite proposals, were never incorporated in the aborted Constitution or its functional replacement, the Lisbon Treaty of 2007. No mechanisms were ever created to manage how states, once members, treated their minorities.[19]

As a result, the fate of Ukraine was already decided by decisions made by the EU during the first wave of post-communist accessions. Hungarian minorities outside Hungary, Roma populations, and Russian speakers in former Soviet republics that became members or candidates of the EU were identified as the major challenges. A rush to incorporate the Baltic states, the most economically advanced areas of the former USSR, led to concerns for fundamental rights that had been trumpeted so loudly being hastily swept under the carpet.[20]

On independence, about one-third of the population of Latvia and Estonia were native Russian speakers, largely owing to the immigration of Russians during the Soviet period. But citizenship was conferred only on those residents or their descendants who had been living in the state before the annexation of 1940. In both cases, a linguistic qualification for

[17] Slezkine 1994.
[18] Kymlicka 2000.
[19] Hillion 2003.
[20] Johns 2003; Hogan-Brun 2003.

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naturalisation was introduced and citizenship could not be obtained without demonstrating linguistic competence in the only official language.

This left 700,000 Russians stateless in Latvia, out of a population of 2.5 million. Nic Craith, a leading authority on European minority rights, concluded that Russian speakers "were effectively deprived of certain key rights."[21] The granting of citizenship to all those born since independence – the so-called "stateless children" – became almost the sole issue around which pressure was focused by the EU. After securing this goal, it would appear that the bloc had no further ambitions, despite it having the powerful tool of membership conditionality at its disposal.[22]

The extent to which Russia attempted to constructively engage with the pertinent international structures over a lengthy period is remarkable. As late as January 2015, Russia's foreign minister Sergei Lavrov asked only for compliance with the recommendations of the OSCE, the Council of Europe, and relevant UN committees concerning non-citizens, "nothing more nor less."[23] To observe this is not to claim Russia as an international paragon but to note that it was for a long period willing, for the most part, to work within a rules-based international order to achieve its goals. Mark Galeotti, a leading academic observer of Russia has described Putin as "a rational actor, and even a cautious one" and contended that "failed Western diplomacy" turned "a potential pragmatic ally" into a confrontational opponent.[24]

5. Militant nationalism in Ukraine

The first major attempt to address the linguistic rights situation in independent Ukraine came in July 2012 when the Verkhovna Rada, Ukraine's parliament, passed a law that would make any language spoken by more than 10% of a region's inhabitants into an official "regional language."[25] The response was explosive, with physical violence in the parliamentary chamber being just the start. Yet this legislation aligned with European values and drew in particular on the concepts of the Charter for Regional or Minority Languages. The law was similar to reforms which resolved tensions over the use of Hungarian in Romania, albeit having a lower 10% rather than 20% threshold. While the EU failed to back these new linguistic rights, it threw itself behind the Maidan demonstrations the following year, not seeming to pay close attention to their composition. As John Mearsheimer has remarked, the new government that came to power after Euromaidan had four high-ranking members who could legitimately be called neo-fascists, drawn from the far-right groups who had risen to prominence during the "Euromaidan." Another factor making the administration after 2014 increasingly nationalist was that the most Russian regions of the east were embroiled in conflict. As a result, where previously the Ukrainian parliament was roughly balanced between east and west, now nationalist regions had the upper hand.

A joint-authored survey concluded that "between 2014 and 2019, the Ukrainian government passed a number of new laws that significantly restrict the right and possibility to use minority languages."[26] An education statute of 2017 mandated that all education be conducted in Ukrainian with the exceptions of permitting the use of minority languages in primary

[21] Nic Craith 2006, 32.
[22] Carpinelli 2019.
[23] Croft 2016, 190.
[24] Galeotti 2019, 13, 54.
[25] Csernicskó and Fedinec 2016.
[26] Csernicskó et al. 2020.

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education and English or other EU languages in higher education. In response, the governments of several EU member states with kin populations inside Ukraine – including Hungary, Romania, Slovakia, Bulgaria, Poland, and Greece – raised objections. The EU itself not only failed to act publicly at a high level but institutionally appears to have been willing the issue away. It did not shy from declaring "the rights of the Crimean Tatars … have continued to be gravely violated through the shutting down of Crimean Tatar media outlets" but had no firm statements to make concerning Kjiv's new law.[27] The following year, a report on the implementation of the Association Agreement by the Committee on Foreign Affairs of the European Parliament, which might be expected to take a critical stance with regard to the Commission, mentioned under human rights only the situations of the Roma and LGBT communities. Hungary achieved public action only by addressing NATO rather than the EU. After threatening to use its veto, the NATO Secretary General obtained the rather minimal statement that Ukraine would comply, at least formally, with the Venice Commission's recommendations.[28]

It might be suspected that once the EU had admitted members who failed to give their Russian speakers citizenship, let alone substantive minority rights, it would not be in a position to insist that Kyiv meet higher criteria. But, even beyond this, the impression that the EU has persistently been less than full-throated in its advocacy of minority rights is hard to avoid. Indeed, the Copenhagen criteria only addressed the issue in the wake of the Council of Europe's "Charter for Regional or Minority Languages" (adopted 1992). The Association Agreement between Ukraine and the EU of 2014 does not mention linguistic rights at all; "non-discrimination of persons belonging to minorities" is included under Title II Political Dialogue and Reform, but there is no further specification. This vast document of more than 20,000 pages gives minute attention to such details as the permissible duties on passenger cars while effectively ignoring what should have been seen by the EU as a vital issue.

In gauging whether the Copenhagen criteria had been met, the bloc largely did so secondhand, relying on assessments made by the Council of Europe's Venice Commission on the implementation of the Charter. It can be argued that there is a fundamental problem – beyond even its particular failure to uphold the rights of Russian-speaking inhabitants of the new aspirants for membership – that prevents the EU from establishing and enforcing a rigorous standard on minority rights. This fatal obstacle is France's objections to special treatment for minorities. Stipulations of the first article of the constitution concerning equality have come to be understood to mean that distinctions among citizens should not be recognised by the state. France has signed the Charter but never ratified it. Given that France and Germany habitually act as the principles of the EU, it might be suspected that this stance has posed an insuperable impediment to the bloc effectively enforcing linguistic or minority rights.

In 2019, Hungary's Ministry of Foreign Affairs objected that the "Law on Supporting the Functioning of the Ukrainian Language as the State Language," which mandated that business must be conducted in Ukrainian with a hotline established to report firms for not switching to Ukrainian upon request, "strongly violates the rights of the Hungarian minority." Hungary insisted that "it is shameful that a country that is striving to develop an increasingly close relationship with the EU has made a decision that is in complete opposition to European values."[29] Other legislation enacted in this period required all printed mass media in Ukraine

[27] Association Implementation Report on Ukraine 2017.

[28] Fiala-Butora 2020, 258.

[29] https://www.bpb.de/themen/europa/ukraine-analysen/258160/dokumentation-reaktionen-auf-die-verabschiedung-des-neuen-bildungsgesetzes-vom-5-september-2017/.

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to be published in Ukrainian, with the exception of publications which were simultaneously published in it and another language, a particularly onerous demand for the smaller languages.

On all these matters of express concern to the governments of a number of member states, the EU failed to make official statements while pouring much diplomatic energy into repeatedly and loudly condemning the occupation of Crimea. Often appearing self-righteous in its rhetoric, it fell into an oppositional dynamic and was unable to practically engage substantive Russian concerns. In a significant development that largely went unreported in the West, Putin signed an order simplifying the procedure for obtaining a Russian passport for residents of eastern Ukraine's rebellious regions. Ominously, no longer was Russia making statements about pursuing matters through international structures, perhaps the first hint that he was anticipating violating the sovereignty of the post-2014 borders.

It is not that the question of rights more widely has not been raised in relations between the EU and Ukraine. In 2015, the EU refused to implement a new visa regime unless sexual orientation and gender identity anti-discrimination legislation were put in place, an entirely new normative demand on any potential member state. After much resistance, legislation to this effect was passed. Yuriy Lutsenko, the Verkhovna Rada's majority leader, commented that "it is better to have gay parades in Kiev than Russian tanks." There was apparently no recognition that forestalling the latter development might also necessitate avoiding antagonising their larger neighbour by the repression of the Russian language in Ukraine.

The extent to which extreme nationalist ideology had taken over in Kyiv is evidenced by Ukraine's first language ombudsman – of all people – declaring: "The dream was always to cultivate, build or construct a powerful homogeneous Ukrainian monolith – a society of the like-minded, who speak the state language, having no disagreements on major issues of state."[30] The very least that must be said is that this is not a statement that in any way aligns with the broad principles on which the EU is based. Whether such a declaration is totalitarian or not would require a longer discussion. It is especially troubling in a situation where many of the most extreme nationalist organisations in Ukraine see themselves as ideologically continuous with groups that fought with the Nazis during the Second World War. The "fascism" of elements of the political scene in contemporary Ukraine is not a fantasy "talking point" of Putin but a matter in plain view that has been amply documented by Western journalists.[31]

6. The EU abscondus and the Civil War in the east

The EU's push to expand its markets was a proximate cause of the conflict in Donbass. After it broke out, talks in Geneva proceeded without it. The OSCE was a signatory to the first Minsk Accord and France and Germany to the second, effectively a stunning admission of its inability to act. While a civil war raged in eastern Ukraine, the EU – whom the Nobel Committee had named the guarantor of continental peace only two years previously – appeared powerless to take the initiative.

The last high-level meeting between Russia and the EU was a summit in January 2014, more than eight years before the invasion. That a proposal to meet in 2021 collapsed after objections

[30] Petro 2023, 235–6.
[31] Golinkin 2019.

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from the Baltic states and Poland suggests why the EU was ultimately unable to act effectively in relation to Ukraine. How could a bloc that contained two member states that were denying fundamental rights to their own Russian speakers insist on minority rights there? Putin likely felt that with hindsight it was a fatal error to allow the Baltics to join NATO without resolving the language question. Certainly, as we have seen, over a period of years, diplomatic approaches to addressing it proved unavailing. The deep historical links between Ukraine and Russia, which he himself emphasised on numerous occasions, would make it especially important that Russian speakers not be denigrated there.

There are a number of liminal regions in Europe that are or have been the site of significant contestation: Alsace-Lorraine, Southern Jutland, South Tyrol, Ulster, and Transylvania are among the most notable. Donbass and other eastern regions of Ukraine also stand out as potential flashpoints and should have been the focus of careful and attentive diplomacy. Merkel declared on a visit to Kyiv in August 2014 that federalism was the only solution in Ukraine.[32] If the EU had used its membership conditionality to insist on giving the region autonomy as firmly as it pushed for gay rights, Putin would arguably have never invaded. Yet it sat on its hands when, as Dominique Arel puts it, "radical right groups used violence in August 2015 to prevent parliament from passing a constitutional amendment that would have allowed autonomy for Eastern Donbas and facilitated implementation of the Minsk Accords."[33]

The costs of the bloc's failure to act have been massive and go far beyond the estimated cost of reconstruction and recovery in Ukraine of $500 billion. The total number of casualties on both sides is now thought to exceed more than a million, a staggering figure. Whether Russian or Ukrainian, the reality of the deaths of young Europeans is the same. This is precisely the scenario, a war between two states on the continent, costly in lives and materially, that the EU has long claimed was its founding *raison d'etre* to prevent.

Yet it has not only proved completely incapable of preventing the conflict in Ukraine, but at crucial points, the EU has significantly enflamed the situation with its aggressive push for markets and reckless encouragement of the deposition of an elected head of state. After the collapse of Yugoslavia, the EU recognised the principled and pragmatic importance of minority rights. However, when it came to the crunch, they failed to push new members to implement them for Russian speakers. In particular, had the EU resolutely reined in nationalist regimes in Kjiv and helped resist NATO expansionism, it is probable that Putin would never have considered invading Ukraine.

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[32] Olearchyk and Vasagar 2014.
[33] Arel and Driscoll 2023, 186–7.

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