

UKRAINE AT A CROSSROADS: WHAT'S AT STAKE FOR THE U.S. AND EUROPE?

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WEDNESDAY, FEBRUARY 1, 2012

U.S. SENATE,
SUBCOMMITTEE ON EUROPEAN AFFAIRS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:35 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Jeanne Shaheen (chairman of the subcommittee) presiding.

Present: Senators Shaheen, Menendez, Barrasso, and Risch.

OPENING STATEMENT OF HON. JEANNE SHAHEEN, U.S. SENATOR FROM NEW HAMPSHIRE

Senator SHAHEEN. Good afternoon, everyone. Thank you for joining us.

The Senate Foreign Relations Subcommittee on Europe meets today to examine the current situation in Ukraine and to evaluate what is at stake for the United States and our transatlantic allies.

I want to thank the witnesses who are here to help us sort through these difficult issues. We look forward to your testimony today.

I am pleased to be joined by the subcommittee's ranking member, Senator John Barrasso from Wyoming.

As one of the largest and most strategically located countries in Europe, Ukraine literally and figuratively lies at the crossroads between Europe and Russia. Its importance as an energy transit state and as a force in the vital Black Sea region has made the country a unique and critical player in Euro-Atlantic economic, energy, and security considerations. In addition, the country's ongoing transition from a Soviet Republic to a market-based democratic system makes Ukraine an important test case for reform in this part of the world.

Obviously the people of Ukraine will have the final say on the future of their country; however, we are here today because the path Ukraine ultimately chooses is important to the United States and our European allies. As a result, the United States and Europe must play a more aggressive role in encouraging Ukraine to continue down the path to reform.

Last year marked the 20th anniversary of Ukraine's independence from the Soviet Union, and over the course of the last two decades, we have seen some important progress in Ukraine.

On the security front, Ukraine made a courageous decision to voluntarily give up its nuclear arsenal in 1996, and today it con-

tinues to lead in nonproliferation efforts around the globe, committing to eliminate all of its highly enriched uranium by the spring of 2012. In addition, the United States relationship with Ukraine has evolved positively since 1991, culminating in a strategic partnership initiated in 2008. We have seen progress on political reforms and democratization in some areas, including open elections and free media.

Unfortunately, despite some movement forward, Ukraine is severely lagging on a number of its own initiatives, and it continues to slip backward on its democratic and economic reform agenda.

It has been 2 years since Viktor Yanukovich returned to power following the 2010 Presidential campaign in Ukraine. Elected in what was considered by outside observers to be a relatively free and fair election, Yanukovich had the legitimacy and mandate to continue moving Ukraine toward a modern, independent, and market-oriented future. However, Ukraine under Mr. Yanukovich has seen a significant slide on critical issues, including democratic reform, media independence, election standards, rule of law, and economic issues.

According to the Wall Street Journal, Ukraine ranks 163rd out of 179 countries in terms of economic freedom. That puts them dead last in Europe behind Belarus and Russia. Last year's annual Freedom House Report found that Ukraine suffered the steepest decline in democracy of any major nation in the last 2 years. That report cited antidemocratic tactics, politicized courts, a media crackdown, and the illegitimate use of force in the country.

Perhaps of most concern for the international community is the case of former Prime Minister Yulia Tymoshenko. Her continued imprisonment on dubious, politically motivated charges is unacceptable and antithetical to a free and open system. The decision to move her to a prison outside of Kiev and her continued lack of appropriate medical care adds to our concerns.

Her case shows the pervasive lack of rule of law, a corrupted judicial process, and selective persecution of political opposition leaders. Politically motivated trials and further abuses will isolate Ukraine, undermine its independence from Russia, make it difficult to attract outside investment, and will further hurt the country's struggling economy. We have already seen a major free trade agreement with the European Union held up over the Tymoshenko case.

So let us be clear, or let me be clear at least. It will be difficult, if not impossible, for Ukraine to deepen relations with the West while Ms. Tymoshenko remains behind bars. She should be released.

Today the people of Ukraine and its leadership face a critical choice about its future path. We all share an interest in an open, independent, and successful Ukraine that is accountable to its people, and we all have a responsibility to help the country reach that important goal. I look forward to hearing from our witnesses today and to learn their ideas and suggestions for accomplishing this important objective.

I am going to turn it over to Senator Barrasso before I introduce our witnesses.

**OPENING STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Madam Chairman, and I want to thank you for holding this hearing today.

I would like to also welcome all of our witnesses. We appreciate you appearing here today before this subcommittee to evaluate the current political and economic environment in Ukraine.

It is important for Congress to carefully examine what is happening in Ukraine and understand the implications that it has on our strategic policy objectives. Ukraine is a large nation both in its size and in its population. It is located in a geographically important area between Russia and the countries in the European Union.

In August of last year, Ukraine celebrated its 20th anniversary of independence. The United States has worked closely with Ukraine over the years on a variety of important issues. Our Nation wants to see Ukraine become an example for the region, as a strong, thriving, and democratic nation.

During the last 20 years, there has been a lot of progress taking place in Ukraine. However, recent events have raised serious concerns about the future of democracy and the rule of law in Ukraine. I am concerned about the conviction of the former Prime Minister. The Government of Ukraine has been engaging in what many people view as selective prosecution against opposition party figures. I believe that politically motivated prosecutions significantly undercut the values of democracy. The United States believes it is the fundamental importance of democracy. Our Nation has also been a strong advocate for rule of law and an independent judiciary.

I hope the Government of Ukraine takes action to prevent the backsliding and the erosion of democracy currently taking place in Ukraine. With parliamentary elections occurring in October, the international community is going to be carefully watching to assess the country's true commitment to a fair, open, and transparent election process. The actions and policies of the Government of Ukraine have a significant impact on the relationship between our two countries. Ukraine needs to support the values of democracy. The government should work on tackling corruption and providing conditions for a flourishing market economy. I also hope Ukraine continues to pursue meaningful steps toward European integration.

I look forward to hearing the testimony of our witnesses on these important issues.

And with that, thank you very much again, Madam Chairman.

Senator SHAHEEN. Thank you, Senator Barrasso.

We have two panels this afternoon. On our first panel, we have Ambassador Steven Pifer who is currently a senior fellow for Foreign Policy at the Brookings Center on the United States and Europe and a former U.S. Ambassador to the Ukraine. Thank you for being here.

Next we have Damon Wilson, who is the executive vice president of the Atlantic Council and a senior advisor to the U.S.-Ukraine Business Council. Welcome.

And we have Edward Chow, a senior fellow of Energy and National Security at the Center for Strategic and International Studies.

We are delighted to have all of you here. And let me just recognize the final witness who will be on the second panel today. I want to take this opportunity to recognize Ms. Eugenia Tymoshenko, and I will reserve your introduction for the second panel. Thank you.

And I believe we also have the Ukrainian Ambassador here, though I am not sure where he is. Thank you. Welcome.

So, Ambassador Pifer, if you would like to begin.

STATEMENT OF HON. STEVEN PIFER, SENIOR FELLOW, FOREIGN POLICY, CENTER ON UNITED STATES AND EUROPE, BROOKINGS INSTITUTION, WASHINGTON, DC

Ambassador PIFER. Thank you. Madam Chairwoman, Senator Barrasso, thank you for the opportunity to appear today to talk about developments in Ukraine and the implications for U.S. policy and U.S. policy goals in Europe.

With your permission, I will submit a written statement for the record.

The 2 years since Viktor Yanukovych became President of Ukraine have meant significant changes for the country's foreign and domestic policies. President Yanukovych made the first foreign policy priority repairing what he regarded as Ukraine's badly frayed relationship with Russia. He quickly agreed to extend the presence of the Black Sea fleet in Crimea in return for a reduction in the price that Ukraine paid Russia for natural gas. He ended a number of other policies pursued by his predecessor Viktor Yushchenko that had angered Moscow.

At the same time, the Yanukovych government indicated that Ukraine would seek a balance between its relationship with the West, particularly the European Union, and that with Russia. This seemed a sensible course for Ukraine in its current circumstances. Kiev began serious work to complete an association agreement and free trade arrangement with the European Union.

Regrettably, however, the first 2 years of the Yanukovych Presidency have also seen a significant regression in democratic practices in Ukraine. This includes inappropriate activities by the Security Service of Ukraine, a questionable constitutional change by the constitutional court that increased the power of the Presidency, flawed nationwide local elections, and the arrest and trial of opposition figures, including former Prime Minister Tymoshenko, on what appear to be politically motivated charges. This democratic regression is unfortunate for the Ukrainian people and for their ability to enjoy a full and open democracy. It also hinders President Yanukovych's professed goal of achieving a balanced foreign policy as it has resulted in a cooling of Ukraine's relations with the European Union and the United States. EU officials have indicated, for example, that signature and ratification of an EU-Ukraine association agreement, which is now complete, depends on Ms. Tymoshenko's situation. This undermines Ukraine's relations with the West, and it will leave Kiev in a weaker position vis-a-vis Russia.

This raises the question of what Washington should do. It remains in the United States interest that Ukraine develop as a stable, independent, democratic state with a market economy, increasingly integrated into Europe and institutions such as the

European Union. That kind of Ukraine promotes the United States objective of a wider, more stable, and secure Europe. Democratic regression within Ukraine, however, takes Ukraine in the wrong direction.

The United States and Europe cannot ignore this. The U.S. Government's priority with Ukraine now should be to encourage the Ukrainian Government to make the right choices regarding the country's democratic development. This means releasing Ms. Tymoshenko and allowing her to return to normal political life. It also means that the Ukrainian Government should end its manipulation of the judicial system against other members of the opposition. It should rein in agencies such as the Security Service of Ukraine, and it should work with a broad political spectrum to ensure that the upcoming parliamentary elections this autumn are free, fair, and competitive.

To promote this objective, the U.S. Government should, first of all, continue to underscore to Kiev U.S. concern about democratic regression and continue to remind the Ukrainian leadership that its internal political policies have a negative impact on its relationships with the United States and the West. U.S. officials should reiterate these points at every opportunity, including when Senate and congressional delegations visit Ukraine.

Second, the United States should keep the door open for a more positive relationship with Ukraine should Kiev heed the message on democracy. A Ukraine that returns to the democratic path should be fully welcome in the European and transatlantic communities.

Third, the U.S. Government should coordinate closely with the European Union so as to maximize the impact of Western policy on decisions by Mr. Yanukovich and the Ukrainian leadership. It is especially useful for Washington to coordinate with the European Union now as the European Union may be better placed to influence thinking in Kiev.

What do these policies mean in practice? As one example, Mr. Yanukovich would dearly appreciate an invitation to the White House or an opportunity to host President Obama in Ukraine. The U.S. Government and European Union should continue what appears to be a de facto policy of minimizing high-level meetings with Mr. Yanukovich. U.S. officials should make clear to their Ukrainian counterparts that as long as Kiev imprisons opposition leaders and regresses on democracy, no meetings at the highest level will be possible.

This approach does not mean freezing ties across the board. Normal diplomatic interaction should continue at most levels. The U.S. Government should carefully consider the assistance funding priorities it has. United States programs should aim to sustain civil society in Ukraine, which has made dramatic gains over the past 20 years. In this context, exchange programs that bring Ukrainians to the United States and Europe can play a major role.

It may be time for the United States and the European Union to consult as to whether it is appropriate to consider lists of Ukrainians who would be denied visas to visit the United States and EU member states. Even the threat of this could have a powerful effect on Mr. Yanukovich and the elite around him.

Some Ukrainian officials likely will warn that this kind of approach by the United States and the European Union will cause Ukraine's leadership to turn toward Russia. Western officials should not be taken in by this. If Ukraine truly wants to join Europe, then its leadership must accept the democratic values that prevail in Europe. If the leadership is not prepared to accept such values, then how can Europe and the West integrate Ukraine?

Moreover, Kiev does not wish to fall too closely into Moscow's orbit. President Yanukovich does not want to compromise Ukraine's sovereignty. He wants to be the leader of a fully independent state. The Ukrainian elite and public likewise overwhelmingly support an independent and sovereign Ukraine.

Madam Chairwoman, the overall goal of U.S. and EU policy now should be to crystallize in Mr. Yanukovich's mind the following choice. He can have a more authoritarian political system, more difficult relations with the West and a greatly weakened position when he deals with Moscow, or he can return to a more democratic approach and have a stronger relationship with the West and a balanced foreign policy. In the end, I believe Mr. Yanukovich has reasons to opt for the latter course. The West should face him with that choice as clearly as possible.

Thank you for your attention.

[The prepared statement of Ambassador Pifer follows:

PREPARED STATEMENT OF STEVEN PIFER

INTRODUCTION

Madam Chairwoman, Senator Barrasso, distinguished members of the committee, thank you for the opportunity to appear today to testify on developments in Ukraine and the implications for U.S. policy and U.S. policy goals in Europe.

When Victor Yanukovich became President of Ukraine in February 2010, his first foreign policy priority was to repair what he regarded to be Ukraine's badly frayed relationship with Russia. At the same time, his government indicated that Ukraine would seek a balance between its relationship with the West—particularly the European Union—and that with Russia. This seemed a sensible course for Ukraine in its current circumstances.

Regrettably, the first 2 years of President Yanukovich's tenure in office have seen a significant regression in democratic practices within Ukraine. That is unfortunate for the Ukrainian people, and it is blocking the strengthening of Ukraine's relations with the European Union and the United States. EU officials have made clear, for example, that the signature of an EU association agreement with Ukraine depends on Kyiv taking certain steps, such as releasing former Prime Minister Tymoshenko from prison.

Mr. Yanukovich's domestic policies are seriously undermining his ability to balance Ukraine's relationships between the West and Russia. That will complicate Ukrainian foreign policy, leaving it less connected to Europe and in a weaker position to deal with Russia on issues where Ukrainian and Russian interests do not coincide.

It remains in the U.S. interest that Ukraine develop as a stable, independent, democratic, market-oriented state increasingly integrated into Europe and institutions such as the European Union. That kind of Ukraine promotes the U.S. objective of a wider, more stable and secure Europe. Democratic regression within Ukraine, however, impedes that country's ability to draw closer to the West.

The U.S. Government should continue to underscore to Kyiv U.S. concerns about democratic backsliding and remind the Ukrainian leadership that its internal political policies have a significant impact on its relationships with the United States and Europe; keep the door open for a more positive relationship with Ukraine should Kyiv heed the message on democracy; and coordinate closely with the European Union to maximize the impact of Western policy on decisions by Mr. Yanukovich and the Ukrainian leadership.

While engaging Ukraine at most diplomatic levels, the United States and European Union should continue what appears to be a de facto policy of minimizing high-

level contact with Mr. Yanukovych until he alters his internal political policies. The West should seek to crystallize in Mr. Yanukovych's mind the choice between a more authoritarian political system and a strong relationship with the West, and make clear that he cannot have both.

UKRAINE'S FOREIGN POLICY—A HISTORY OF BALANCE

Developing an independent foreign policy has posed one of the key challenges for Kyiv since the collapse of the Soviet Union in 1991. Ukrainian Presidents have generally sought a balance in their foreign policy relationships between the West and Russia. Europe and the West are attractive to many Ukrainians. Ukraine ought to be able to develop stronger relations with the European and trans-Atlantic communities without rupturing relations with Russia, which are also important to many in Ukraine.

Given the large space that Russia occupies on Ukraine's border, the long, complex history between the two countries, cultural links between Ukrainians and Russians, and economic ties that have continued since the end of the Soviet era, it is natural that Ukraine seek a stable relationship with Russia. At the same time, Russia is not the easiest of neighbors. Ukrainian Presidents thus have sought to develop relationships with the United States, Europe and institutions such as NATO and the European Union. Ukraine's leaders have been motivated in part by a desire to gain greater freedom of maneuver vis-a-vis Russia.

For example, Ukraine's first President, Leonid Kravchuk, moved immediately after Ukraine regained independence to build strong relationships with the West. When he could not reach agreement with Moscow on the terms for the elimination of the strategic nuclear weapons on Ukrainian territory, he involved the United States. The resulting trilateral process successfully brokered a deal in early 1994.

President Leonid Kuchma, who took office in July 1994, established a strategic partnership with the United States, concluded a partnership and cooperation agreement with the European Union, and agreed to a distinctive partnership with NATO. As Ukraine's relations with the West strengthened, Moscow softened its approach toward Kyiv. In May 1997, Ukraine and Russia resolved the longstanding issue of basing rights for the Russian Black Sea Fleet in Crimea on terms acceptable to Kyiv, and signed a bilateral treaty that incorporated a clear and unambiguous recognition of Ukraine's sovereignty and territorial integrity—something Ukrainian officials had sought since 1991.

President Victor Yushchenko assumed office in 2005 following the Orange Revolution. While seeking stable relations with Moscow, he made no secret of his desire to integrate Ukraine fully into institutions such as the European Union and NATO. Kyiv opened negotiation of an association agreement with the European Union and asked for a NATO membership action plan. Other Yushchenko policies—including expanded use of the Ukrainian language, seeking to have the Holodomor recognized as genocide, and support for Georgian President Saakashvili—plus disputes over gas purchase contracts further angered Moscow. Relations between the two countries hit a low point in 2009. But the President failed to build elite or public support for his course; many Ukrainians grew concerned over the downturn in relations with Russia.

MR. YANUKOVYCH'S FOREIGN POLICY

Victor Yanukovych became Ukraine's fourth President in February 2010. He believed that "normalizing" relations with Russia should be his first foreign policy priority.

President Yanukovych met with Russian President Medvedev in Kharkiv less than 2 months after taking office. At the meeting, the Ukrainians agreed to extend the Black Sea Fleet's basing lease for an additional 25 years. In return, Russia's Gazprom agreed to reduce the price that it charged Ukraine for natural gas by \$100 per thousand cubic meters for the remainder of the multiyear gas contract signed in 2009. Mr. Yanukovych and other Ukrainian officials praised the arrangement for significantly reducing Ukraine's energy costs, though independent energy experts question whether Kyiv might not have negotiated a better deal, perhaps without having to extend the Black Sea Fleet's lease. The government rammed the agreement through the Rada (Parliament) within just a few days of signature and with no substantial parliamentary discussion, despite opposition by the Rada's foreign affairs, European integration and national security committees.

At the same time, Kyiv dropped other policies that had generated Russian complaints: It downgraded the program to promote use of the Ukrainian language, ended the campaign to get the Holodomor recognized as genocide, and toned down relations with Georgia. While expressing interest in maintaining cooperative rela-

tions with NATO, the Yanukovych government made clear that it sought neither membership nor a membership action plan. With these policies, Kyiv swept the bilateral agenda with Moscow clear of most issues that the Russians had considered problematic.

Even before the Kharkiv meeting, however, Ukrainian officials indicated that, while their first foreign policy priority was repairing the relationship with Russia, Kyiv planned to do so in the context of an overall policy that pursued balance between Ukraine's relationship with the West and that with Russia. Senior Ukrainian officials made clear that Ukraine remained very interested in concluding an association agreement, which would include a deep and comprehensive free trade arrangement (FTA), and a visa facilitation agreement with the European Union as the vehicles to strengthen Ukraine's integration into Europe.

Ukrainian officials also indicated that they wanted a robust relationship with the United States. By all accounts, President Yanukovych was delighted with the opportunity that he had for a bilateral meeting with President Obama on the margins of the April 2010 nuclear security summit in Washington.

One could see Kyiv's outreach to the West and effort to strike a balanced foreign policy in several developments in May and June 2010. The Rada voted overwhelmingly to approve the annual plan for military exercises on Ukrainian territory, most of which involved NATO forces. Ukrainian officials ruled out the possibility of joining a customs union with Russia, Belarus, and Kazakhstan, as that would be incompatible with an FTA with the European Union. Kyiv declined to join the Russian-led Collective Security Treaty Organization, which Moscow billed as a Eurasian counterpart to NATO.

Western diplomats in 2010 also reported that the Ukrainian Government was doing its homework to prepare an association agreement and FTA with the European Union in a more serious manner than had been the case during the Yushchenko Presidency. A number of Western diplomats expressed the view that President Yanukovych wanted to be seen as the one who "brought Ukraine into Europe."

Other reports suggested that senior Ukrainian officials were becoming unhappy with Russia's policies. For example, Ukrainian officials questioned why Moscow continued to pursue the South Stream gas pipeline, which would run along the Black Sea bottom and circumvent Ukraine, when the Ukrainian gas transit system had considerable excess capacity. As the Russians had no new gas to flow into South Stream, the pipeline, if constructed, would only divert gas from pipelines through Ukraine.

Kyiv's frustrations grew in 2011 as senior Ukrainian officials asserted that the price for Russian gas—even with the Kharkiv discount of \$100 per thousand cubic meters—was too high and "unfair." Gazprom showed no sign of budging. Ukrainian complaints increased at the end of the year, and Kyiv informed Gazprom that it would import only 27 billion cubic meters of gas in 2012. Gazprom officials responded that Ukraine had a "take or pay" contract and was obligated to take—or in any case pay for—41.6 billion cubic meters. These issues are currently unresolved. Press reports in December suggested that the Ukrainians were considering plans that would give Gazprom significant control of the Ukrainian gas pipeline system. Gazprom has long coveted Ukraine's gas transit infrastructure, but there likely would be significant resistance in Kyiv to ceding control.

DEMOCRATIC REGRESSION

Mr. Yanukovych was elected President in 2010 as the result of a process that domestic and international observers found to be free, fair, and competitive. Ms. Tymoshenko, who lost in the runoff round by about 3 percent of the vote, briefly challenged the result but offered no compelling evidence of major fraud. Western governments quickly recognized the result, which was Ukraine's fifth consecutive nationwide election following the Orange Revolution to win plaudits from election observers.

Unfortunately, questions soon arose about the Yanukovych government's commitment to democratic principles and practices. Over the course of 2010 and 2011, concern grew about the government's authoritarian tendencies. Some of the most troubling examples:

- Widespread reports began to emerge in spring 2010 of inappropriate activities by the Security Service of Ukraine (SBU), including approaching university officials for information and reporting on students who had taken part in antigovernment protests. SBU officers also reportedly approached nongovernmental organizations to seek information on their activities.

- On September 30, 2010, the Constitutional Court of Ukraine invalidated the changes to the Constitution approved by the Rada in December 2004, after the replacement of four judges who opposed the decision by four new judges who supported it. The result was to revert to the Constitution that had been in effect prior to the Orange Revolution, which gave the President significantly stronger powers and weakened the authority of the Rada. The European Commission for Democracy through Law (Venice Commission) issued a report the following December which raised numerous questions about the Constitutional Court's action. The report noted "it is clear that a change of the political system of a country based on a ruling of a constitutional court does not enjoy the legitimacy which only the regular constitutional procedure for constitutional amendment and preceding open and inclusive public debate can bring."
- Ukraine held nationwide local elections in October 2010. Observers found significant flaws, and both the European Union and U.S. Government expressed concern. The Congress of Local and Regional Authorities of the Council of Europe observer group issued a report in March 2011 noting concern over "a newly adopted local election law which created politically unbalanced electoral commissions, discretionary registration of candidates and overly complicated voting and counting procedures." The report concluded with the assessment that "overall, the local elections of 31 October 2010 in Ukraine met neither the standards that it wished to see, nor the standards set by the Presidential elections [in Ukraine] in January and February 2010." The conduct of these elections raises concern about the Rada elections to be held in autumn 2012.
- Attracting the most attention, former officials who served in the Cabinet under Ms. Tymoshenko have been arrested on charges that appear, to most observers, to be politically motivated. Among those arrested have been former Interior Minister Lutsenko, former First Deputy Justice Minister Korniychuk, former Acting Minister of Defense Ivashchenko, former First Deputy Chairman of Naftogaz Ukrainy Didenko, former Head of the State Customs Service of Ukraine Makarenko and former Economy Minister Danylyshyn (Mr. Danylyshyn sought and received political asylum in the Czech Republic). Then there is the case of Ms. Tymoshenko herself. She was charged in December 2010 with abuse of state power stemming from her conclusion of the 2009 gas purchase contract with Russia. Her trial began in June 2011, and she was jailed in August for disrupting courtroom proceedings. In October, she was convicted and sentenced to 7 years in prison—a verdict immediately condemned by the United States, European Union, most major EU member states and Russia. The Parliamentary Assembly of the Council of Europe, in a report issued in January, criticized the charges against former government officials as amounting to "post facto criminalization of normal political decisionmaking." Although Ukrainian officials maintain that these arrests were legitimate and do not represent selective prosecutions, no comparable members of the current government have been arrested or charged, despite the general view that corruption has increased significantly under Mr. Yanukovich.

In 2006 Freedom House rated Ukraine as the first post-Soviet state other than a Baltic nation to achieve a "free" ranking. In January 2011, given the democratic problems within Ukraine, it became the first post-Soviet state to lose the "free" ranking when it was found to be only "partly free." Freedom House reaffirmed that ranking last month.

DEMOCRATIC REGRESSION AND UKRAINE'S RELATIONS WITH THE WEST

The authoritarian tendencies within Ukraine have affected Kyiv's relations with the West. European and U.S. officials have long expressed concern about democratic regression, including warning senior Ukrainian officials as early as January 2011 not to carry forward the charges against Ms. Tymoshenko, whose case has come to epitomize the problem of selective application of the law within Ukraine.

Following her jailing in August, some deputies in EU member-state Parliaments stated that they would oppose ratification of the association agreement and FTA with Ukraine unless Ms. Tymoshenko was released. This is no surprise. The European Union has long regarded commitment to democratic principles as an important element of the association agreement process. In September 2011, Swedish Foreign Minister Bildt, EU Commissioner for Enlargement Fuele and European Parliament member Brok had a lengthy meeting with President Yanukovich and warned him of the damage that the Tymoshenko case was doing to EU-Ukrainian relations.

The Rada passed up an opportunity to end the case in October when it examined the Criminal Code. Despite suggestions that it might annul the article on which the charge against Ms. Tymoshenko was based, it did not. Days later, the court con-

victed her. The European Union responded by postponing a planned Yanukovych visit to Brussels.

EU officials continued to state that Ms. Tymoshenko should be released and allowed to return to normal political life. In November meetings with President Yanukovych, Lithuanian President Grybauskaitė, and Polish President Komorowski reiterated warnings that Ms. Tymoshenko's imprisonment would damage EU-Ukraine relations and prevent signature of the (now completed) association agreement and FTA at the planned December EU-Ukraine summit in Kyiv.

Although a number of European countries reportedly favored canceling the summit, EU President Van Rompuy and EU Commission Head Barroso went to Kyiv and held a short meeting with President Yanukovych. They signed no agreements and made clear that signature would depend on Ms. Tymoshenko's situation.

Thus, at the beginning of 2012, EU-Ukraine relations are at a standstill. It is not clear what will happen with the association agreement and FTA, which were to provide the basis for a new stage in the relationship between Brussels and Kyiv.

U.S.-Ukrainian relations are at a quiet point. Washington has few major issues on its bilateral agenda with Kyiv, reflecting the fact that many of the problems that troubled the relationship earlier have been resolved. More broadly, given everything else on the foreign policy agenda, Ukraine barely registers on the radar. Ukrainian officials have over the past 18 months actively sought to arrange meetings for President Yanukovych with President Obama or Vice President Biden, but without success. The lack of enthusiasm to meet with Mr. Yanukovych undoubtedly reflects the U.S. Government's critical attitude toward the democratic developments that have taken place the past 2 years in Ukraine.

THE RISK TO KYIV

Democratic regression most destructively sets back the ability of the Ukrainian people to have a free, fair, robust and competitive political system. It also has a destructive impact on Mr. Yanukovych's professed foreign policy.

Democratic backsliding puts at risk Ukraine's relations with the West, in particular with the European Union. As the EU President has indicated, the European Union does not intend to proceed with signature of the association agreement and FTA until political circumstances within Ukraine change. Even were it prepared to do so, the association agreement and FTA must be approved by all 27 EU member states, and a number of deputies in EU member-state parliaments have already stated that they would oppose ratification so long as Ms. Tymoshenko remains in jail.

Moreover, given the current difficulties within the European Union, such as the eurozone crisis, a number of member states believe that the EU's attention should be focused internally and that the European Union should slow the pace of its engagement with neighboring states, particularly those which say they aspire to become EU members. For those EU member states, democratic regression within Ukraine offers a handy reason to justify slowing down the pace of EU relations with Kyiv. Even Kyiv's traditional advocates within the European Union—such as Poland, Lithuania, and Sweden—appear to be flagging in their support for Ukraine.

Mr. Yanukovych's internal policies not only pose a major impediment to his goal of drawing closer to the European Union, they also endanger his goal of having a balance between Ukraine's relations with the West and with Russia. Although Kyiv sought to repair its relations with Moscow in 2010, the two countries' interests simply diverge on some issues. Take natural gas: a lower price for Ukraine means less revenue for Gazprom. Likewise, construction and operation of the South Stream pipeline would reduce the flow of gas through Ukrainian pipelines. Russian Prime Minister and presumptive President Putin has called for creation of a Eurasian Union to serve as a counterpart to the European Union. It is not exactly clear what the Eurasian Union might be in practice—and few other post-Soviet states have expressed enthusiasm for the idea—but it is almost certain that one of Mr. Putin's goals is to increase Russian influence in the post-Soviet space.

With weaker relations with the West, Kyiv will find that it has less room for maneuver in its dealings with Moscow. Tough negotiations will likely become even more difficult. Mr. Yanukovych only has to look north to Belarus and what happened to President Lukashenko once he had burned his bridges with the European Union and the United States following the December 2010 crackdown on opposition leaders and demonstrators. Facing a dire economic situation and with no hope for help from the West, Mr. Lukashenko struck a deal with Moscow that secured a lower price for gas and a loan from Russia—at the price of surrendering control of the Belarusian gas pipeline system to Gazprom.

It is not clear why Mr. Yanukovych is putting himself and Ukraine in this position. He has regularly expressed a desire for closer relations with the European Union and a balanced foreign policy. He may be allowing personal hostility toward Ms. Tymoshenko and a desire to sideline her politically to dominate his decisions. Ironically, over the past year, the government's actions against Ms. Tymoshenko have focused public attention on her, and her poll ratings and those of her party have increased significantly.

Mr. Yanukovych may also calculate that the European Union and the United States will overlook his democratic regression and accept Ukraine without his having to adjust his domestic policies, believing that the West does not want to see Ukraine drift closer to Moscow's orbit. That would reflect a fair measure of wishful thinking and overestimate the geopolitical importance that the West currently attaches to Ukraine.

U.S. INTERESTS AND U.S. POLICY

Since the early 1990s, the United States has supported Ukraine's development as a stable, independent, democratic state, with a robust market economy and growing links to the European and trans-Atlantic communities. Such a Ukraine is in the U.S. interest as it would contribute to the goal of a wider, more stable and secure Europe. It could be—and has been—an important partner in addressing critical questions such as proliferation challenges. The nuclear question, which dominated U.S.-Ukrainian relations in the early 1990s, has been resolved as the nuclear weapons systems that were in Ukraine have been eliminated and Kyiv has agreed to transfer its small stock of highly enriched uranium.

Over the past two decades, the United States has provided several billion dollars in assistance to Ukraine to promote democratization, economic reform and the elimination of the strategic nuclear systems and infrastructure that Kyiv inherited following the end of the Soviet Union. The United States has led in shaping a strong partnership between NATO and Ukraine and has encouraged the European Union to deepen its relations with Ukraine.

The U.S. interest has not changed. However, the circumstances within Ukraine have, and the Ukrainian Government is moving in the wrong direction. On democracy, it is walking back the gains that the Ukrainian people have made over the past 20 years, particularly in the period of 2005–2009. The West cannot and should not ignore that.

The U.S. Government's priority with regard to Ukraine now should be to encourage the Ukrainian Government to make the right choices regarding the country's democratic development. This means releasing Ms. Tymoshenko and allowing her to return to normal political life. But it does not end with Ms. Tymoshenko. The Ukrainian Government needs to end its manipulation of the judicial system for political purposes against other members of the opposition. It should rein in agencies such as the Security Service of Ukraine. And it should work with the broad political spectrum to ensure that the upcoming autumn Rada elections are free, fair, and competitive.

To promote this objective, the U.S. Government should, first of all, continue to underscore to Kyiv U.S. concerns about democratic regression and continue to remind the Ukrainian leadership that its internal political policies have a negative impact on its relationships with the United States and the West. Ambassador John Tefft and the U.S. Embassy in Kyiv are working hard to convey this message. Washington should reiterate it as often as possible, including when Senate and congressional delegations visit Ukraine.

Second, the United States should keep the door open for a more positive relationship with Ukraine should Kyiv heed the message on democracy. A Ukraine that returns to the democratic path should be fully welcome in the European and trans-Atlantic communities.

Third, the United States should coordinate closely with the European Union so as to maximize the impact of Western policy on decisions by Mr. Yanukovych and the Ukrainian leadership. The joint letter sent to President Yanukovych last September by Secretary of State Clinton and EU High Representative for Foreign Affairs and Security Policy Ashton provides just such an example of coordination between Washington and Brussels. It is especially useful for Washington to coordinate with the European Union now, as the European Union may be better placed to influence thinking in Kyiv.

What do these policies mean in practice? As one example, the Ukrainian leadership greatly desires high-level contact with Washington, which gives it a degree of political legitimacy. Mr. Yanukovych would dearly appreciate an invitation to the White House or the chance to host President Obama in Kyiv. The U.S. Government

should continue what appears to be a de facto policy of minimizing high-level meetings with Mr. Yanukovich. U.S. officials should inform Ukrainian officials that, as long as Kyiv imprisons opposition leaders and regresses on democracy, no meetings at the highest level will be possible.

As a second example, Ukraine's credit line with the International Monetary Fund is currently suspended, because Kyiv has failed to meet the conditions of the IMF loan. In the past, the U.S. Government has on occasion weighed in with the IMF to support a more lenient approach with Ukraine. Given the democratic regression in Ukraine, now would not be the time for Washington to take such an approach with the IMF.

This approach does not mean freezing ties across the board. Normal diplomatic interaction should continue at most levels. The target should be the most senior leadership in Kyiv, those who are responsible for Ukraine's democratic regression.

As for assistance programs, the U.S. Government should carefully consider its priorities, especially as budget resources for Ukraine will be limited. U.S. assistance should aim to sustain civil society in Ukraine, which has made dramatic gains over the past 20 years. In this context, exchange programs that bring Ukrainians to the United States and Europe can play a major role. The U.S. Government should also continue assistance programs to promote energy security, so that Ukraine can become less dependent on imported energy.

It may be time for U.S. and EU officials to consult as to whether it is appropriate to consider lists of Ukrainian individuals who would be denied visas to visit the United States and EU member states. Even the threat of this could send a forceful message to Kyiv and have a powerful effect on President Yanukovich and the elite around him.

This is not a call for the type of isolation that the West has applied to Belarus. Ukraine has not yet regressed to that point. But the United States and European Union should seek effective ways to disabuse Mr. Yanukovich of the notion that he can pursue a more authoritarian course at home without repercussions for Kyiv's relations with the West.

CRYSTALLIZING A CHOICE

Some Ukrainian officials likely will warn that this kind of approach by the United States and European Union will cause Ukraine's leadership to turn toward Russia. Western officials should not be taken in by this. If Ukraine truly wants to join Europe, then its leadership must accept the democratic values that prevail in Europe. If the leadership is not prepared to adopt such values, then how can Europe and the West integrate Ukraine?

Moreover, Kyiv does not wish to fall too closely into Moscow's orbit. Mr. Yanukovich does not want to compromise Ukrainian sovereignty; he wants to be the leader of a fully independent state. The Ukrainian elite and public likewise overwhelmingly support an independent and sovereign Ukrainian state. For the Ukrainian oligarchs—who control so much of the Ukrainian economy—the Russian model holds little appeal.

The overall goal of U.S. and European Union policy thus should be to crystallize in Mr. Yanukovich's mind the following choice. He can have a more authoritarian political system, more difficult relations with the West, and a greatly weakened hand in dealing with Russia, or he can return to a more democratic approach and have a stronger relationship with the West and a balanced foreign policy. In the end, Mr. Yanukovich has reasons to opt for the latter course. The West should face him with the choice as clearly as possible.

Senator SHAHEEN. Thank you very much.
Mr. Wilson.

STATEMENT OF DAMON M. WILSON, EXECUTIVE VICE PRESIDENT, ATLANTIC COUNCIL, WASHINGTON, DC

Mr. WILSON. Madam Chairman, Ranking Member, I am honored to speak before your committee on the situation in Ukraine.

Ukrainian democrats and their supporters share a vision of an independent, sovereign Ukraine with strong democratic institutions, rule of law, and a prosperous free market, embedded in Europe, a partner of the United States, and at peace with Russia.

Yet, 20 years after independence, Ukraine's young democracy, its cultural identity, and weak institutions face political manipulation

and its fragile economy is subject to massive distortions from widespread, top-down corruption. In short, Ukraine's sovereignty is not guaranteed, its democracy is not inevitable, and its market is not free.

Today Ukraine teeters between Eurasian malaise and an ambivalent Europe. Indeed, Ukraine's future is in play. Decisions taken now and in the coming year by President Yanukovich and his government, the Ukrainian political opposition, civil society, media, youth, as well as the United States and the European Union, will determine whether Ukraine evolves into a European democracy or descends into a post-Soviet authoritarian kleptocracy.

Indeed, Ukraine is at a crossroads. And there is much at stake for transatlantic interests.

President Viktor Yanukovich and the Ukrainian Government are pursuing contradictory policies: they seek to integrate Ukraine into Europe while emasculating their domestic opposition. In their first 2 years in office, they have made progress on both, eliminating his key challenger from politics and negotiating a landmark deal with the European Union. Yet, ultimately, they must choose.

The choice is not between Russia and the West. In many respects, this is a false choice. The choice is whether Ukraine sees its future in the European mainstream or relegated to the borderlands. The outcome rests on whether Yanukovich and his government decide their political preservation is more important than anchoring Ukraine to the institutions of Europe.

Ukraine's difficult situation today is a result of the failure of political leadership in the wake of the Orange Revolution. Orange leaders, while allowing political pluralism to thrive, disappointed the Ukrainian people by failing to govern effectively. Their infighting opened the door to Yanukovich's rehabilitation and election in 2010 as President in free and fair elections.

When President Yanukovich came to power, he began to centralize authority. His advisors offer a compelling explanation. After years of political chaos and economic mismanagement, Ukraine's new leaders consolidated power in order to be able to govern more effectively and to implement long-needed reforms. And in many cases, the government has pursued difficult economic reforms necessitated by the global financial crisis including, for example, raising the retirement age.

At the same time, under Yanukovich, Ukraine has been a responsible international actor, advancing practical negotiations with the European Union, agreeing with the United States to eliminate highly enriched uranium, and managing more normal relations with Russia.

However, President Yanukovich's first 2 years in office provide a sufficient record to sound the alarm on the state of democracy. We have witnessed selective prosecutions of opposition figures, a more restrictive media environment, disturbing involvement of the security service in domestic politics, seriously flawed local elections in October 2010, pressure on civil society, an erosion of free speech, consolidation of executive influence over the judiciary, manipulation of the electoral code in advance of parliamentary elections this fall, and continued rampant corruption. In essence, the ruling Party of Regions has centralized authority, governing all of

Ukraine much as it governed its stronghold oblasts like Donetsk, weakening Ukrainian society's checks and balances.

The vision of a democratic European Ukraine, however, is not lost.

As we look forward, Ukraine faces three key tests: its handling of political prosecutions, the October elections, and its energy security.

Despite protests to the contrary, Ukrainian authorities have pursued selective prosecutions against political opponents, most notably former Prime Minister Yulia Tymoshenko. She is not an isolated incident but is illustrative of a disturbing pattern that is corrosive to democracy. If those in power believe that the price of losing an election is prison, they are unlikely to ever relinquish power. Through its own actions, the Party of Regions has set this dangerous dynamic in play. After months of various officials telling many in the West that the President would find a way within the law to end the prosecution of Tymoshenko, she has been sentenced to 7 years in prison and is now facing a set of new charges. Ukraine's leaders seem to have calculated that the threat she poses politically outweighs the cost of international opprobrium.

American and European officials have spoken out forcefully regarding her case, and the EU has delayed signing an association agreement over the issue. Both the United States and European partners should keep this issue at the top of their agenda with Ukraine, not allowing the passing of time to diminish the Ukrainians' calculations of the costs of their actions. Washington and Brussels should also consider taking additional measures to raise those costs.

Second, the most critical test is whether Ukraine is able to conduct free and fair parliamentary elections in October. I have serious concerns already about the Ukrainian authorities' actions to tilt the scales in their favor through changes to the electoral code and influence over the judiciary.

Nonetheless, these elections are in play. Recent polling indicates that while the opposition remains weak, the ruling Party of Regions has lost tremendous support throughout Ukraine, including in its political base in the east. Given there is a genuine possibility for competitive elections, authorities may be tempted to take extraordinary measures beyond administrative means to maintain their majority in Parliament.

Therefore, now is precisely the time to shine a spotlight on Ukraine. The U.S. and EU members need to work together closely to help ensure a level playing field through support for measures that can counteract fraud. This includes helping independent civil society to observe elections, monitor media, conduct exit polls and parallel vote counts.

Furthermore, the European Union can make clear that ratification of any deep and comprehensive free trade agreement depends not only on the issue of political prosecutions, but also the conduct of these elections.

As we judge Ukraine's performance on these tests, United States and European objectives should be clear.

First, in the near term, transatlantic policies should aim to check democratic backsliding and help Ukrainians demand a free and fair

election this fall. As a first step, this requires that the sham trials against Tymoshenko end and that she be released.

Second, we should continue to promote Ukraine's genuine European integration by fostering societal level contacts while government-to-government negotiations stall.

Third, we should continue to help Ukraine increasingly integrate its market into the global economy, reorienting its economy away from Soviet-era patterns of trade.

And finally, the United States and our transatlantic partners should continue to support Ukraine's sovereignty and independence.

Holding Ukraine to account on democracy will not send Ukraine into Russia's arms. Whether it is Ukrainians in the west of the country whose reference is Poland rather than Russia, Ukrainian oligarchs who fear economic domination by their Russian counterparts, or Ukraine's political elites who have grown accustomed to managing their own nation, Ukrainians will play the lead role in preserving their sovereignty.

So as Members of Congress, you have much on your plate. It is important to remember that Ukraine's success or failure as a free market democracy will reverberate far beyond its borders. Ukraine can help anchor a region plagued by uncertainty, moving the region closer to European norms, advancing the vision of a Europe whole and free, or alternatively, it will set back reform in the broader region and undermine the goal of completing Europe.

Madam Chairman, Ukraine is indeed at a crossroads. Its democracy is in play. Its place in Europe is in play. And its reliability as a partner of the United States is in play. Western policy can sharpen the choices facing Ukrainian leaders today.

Thank you, Madam Chairman and Ranking Member. I look forward to your questions.

[The prepared statement of Mr. Wilson follows:]

PREPARED STATEMENT OF DAMON M. WILSON

Madam Chairman, ranking member, members of the committee, I am honored to speak before your committee on the situation in Ukraine.

Ukrainian democrats and their supporters share a vision of an independent, sovereign Ukraine with strong democratic institutions, rule of law, and a prosperous free market, embedded in Europe, a partner of the United States, and at peace with Russia.

Yet 20 years after independence, Ukraine's young democracy, cultural identity, and weak institutions face political manipulation and its fragile economy is subject to massive distortions from widespread, top-down corruption. In short, Ukraine's sovereignty is not guaranteed, its democracy is not inevitable, and its market is not free.

Today, Ukraine teeters between Eurasian malaise and an ambivalent Europe. Indeed, Ukraine's future is in play. Decisions taken now and in the coming year by President Yanukovich and his government, the Ukrainian political opposition, civil society, media, and youth—as well as the United States and European Union—will determine whether Ukraine evolves into a European democracy or descends into a post-Soviet authoritarian kleptocracy.

Indeed, Ukraine is at a crossroads. And there is much at stake for transatlantic interests.

President Viktor Yanukovich and the Ukrainian Government are pursuing contradictory policies: They seek to integrate Ukraine into Europe, while emasculating their domestic opposition. In their first 2 years in office, they have made progress on both, eliminating his key challenger from politics and negotiating a landmark deal with the European Union. Yet ultimately, they must choose.

The choice is not between Russia and the West. In many respects, this is a false choice. The choice is whether Ukraine sees its future in the European mainstream or relegated to the borderlands. The outcome rests on whether Yanukovych and his government decide their political preservation is more important than anchoring Ukraine to the institutions of Europe.

Ukraine's difficult situation today is a direct result of the failure of political leadership in the wake of the Orange Revolution. Orange leaders, while allowing political pluralism to thrive, disappointed the Ukrainian people by failing to govern effectively. Their infighting opened the door to Yanukovych's rehabilitation and election in 2010 as President in free and fair elections, Ukraine's fourth set of free elections in a row at the time.

When President Yanukovych came to power, he began to centralize authority. His advisors offer a compelling explanation: After years of political chaos and economic mismanagement, Ukraine's new leaders consolidated power in order to be able to govern more effectively and to implement long-needed reforms. And in many cases, the government has pursued difficult economic reforms necessitated by the global financial crisis, including for example raising the retirement age.

At the same time, under Yanukovych, Ukraine has been a responsible international actor, advancing practical negotiations with the European Union, agreeing with the United States to eliminate highly enriched uranium, and managing more normal relations with Russia.

However, President Yanukovych's first 2 years in office provide a sufficient record to sound the alarm on the state of democracy. We have witnessed selective prosecutions of opposition figures, a more restrictive media environment, disturbing involvement of the security service (SBU) in domestic politics, seriously flawed local elections in October 2010, pressure on civil society, an erosion of speech, consolidation of executive influence over the judiciary, manipulation of the electoral code in advance of parliamentary elections this fall, and continued rampant corruption. In essence, the ruling Party of Regions has centralized authority, governing all of Ukraine much as it governed its stronghold oblasts like Donetsk, while weakening Ukrainian society's checks and balances.

The vision of a democratic, European Ukraine is not lost however. Ukraine's political and cultural diversity is a bulwark against any one force dominating the political landscape. As we look forward, Ukraine faces three key tests: Its handling of political prosecutions, the October parliamentary elections, and its energy security.

First, despite protests to the contrary, Ukrainian authorities have pursued selective prosecutions against political opponents, most notably former Prime Minister Yuliya Tymoshenko. She is not an isolated incident, but is illustrative of a disturbing pattern that is corrosive to democracy. If those in power believe that the price of losing an election is prison, they are unlikely to ever relinquish power. Through its own actions, the Party of Regions has set this dangerous dynamic in play. After months of various officials telling many in the West that the President would find a way within the law to end the prosecution of Tymoshenko, she has been sentenced to 7 years in prison and is now facing a set of new charges. Ukraine's leaders seem to have calculated that threat she poses politically outweighs the cost of the international opprobrium.

American and European officials have spoken out forcefully regarding her case, and the European Union has delayed signing an association agreement over this issue. Both the United States and its European partners should keep this issue at the top of their agenda with Ukraine, not allowing the passing of time to diminish the Ukrainians' calculations of the costs of their actions. Washington and Brussels should also consider additional measures to raise those costs.

Second, the most critical test is whether Ukraine is able to conduct free and fair parliamentary elections in October. I already have serious concerns about Ukrainian authorities' actions to tilt the scales in their favor through changes to the electoral code and influence over the judiciary. After free and fair parliamentary elections in 2006 and 2007, there was no compelling need to revise the electoral code in advance of these elections. The ruling party's singular focus to do so raises concerns about those in power changing the rules of the game to their advantage.

Nonetheless, these elections are in play. Recent polling indicates that, while the opposition remains weak, the ruling Party of Regions has lost tremendous support throughout Ukraine, including in its political base in the east. Given there is a genuine possibility for competitive elections, authorities may be tempted to take extraordinary measures beyond administrative means to maintain their majority in Parliament.

Therefore, now is precisely the time to shine a spotlight on Ukraine. The United States and European Union members need to work together closely to help ensure a level playing field through support for measures that can counteract fraud. This

includes helping independent civil society to observe elections, monitor media, and conduct exit polls and parallel vote counts.

Furthermore, the European Union can make clear that ratification of any Deep and Comprehensive Free Trade Agreement depends not only on the issue of political prosecutions, but also on the conduct of these elections. Similarly, the United States should make clear that the conduct of these elections will determine the possibilities in our bilateral relationship.

Ukraine has been a valued partner given its commitment to hand over all of its highly enriched uranium as part of President Obama's nuclear security initiative. The risk, however, is that the Ukrainians will perceive they can cooperate on this strategic priority, and in return earn a pass on democracy issues. Washington needs to continue to send clear, consistent messages to Kyiv about the costs of poor elections in October.

A third key test for Ukraine is how it handles its dismal record on energy security. The energy sector in Ukraine is opaque and corrupt. More importantly, the government's management of energy is corrosive to Ukraine's democracy and sovereignty. The scale of corruption in the energy sector threatens to undermine Ukraine's democracy, as it provides an incentive for those in power to perpetuate their rule both for personal enrichment and to avoid prosecution once out of power. Corruption in the energy sector is also a national security threat as it allows unscrupulous interests to manipulate Ukrainian officials and policy. The best way to strengthen Ukraine's sovereignty, and to mitigate Ukraine's dependency on Russia for natural gas, would be to pursue an aggressive energy efficiency program and to liberalize its antiquated energy sector inviting in investors and promoting transparency.

As we judge Ukraine's performance on these three tests, U.S. and European objectives should be clear.

First, in the near term, transatlantic policy should aim to check democratic backsliding and help Ukrainians demand a free and fair election this fall. As a first step, this requires that the sham trials against Yuliya Tymoshenko end and that she be released.

Second, we should continue to promote Ukraine's genuine European integration by fostering societal level contacts while government-to-government negotiations stall. While some European nations seek to tether Ukraine to the European Union, many would prefer that Ukraine have no future home in Europe. U.S. policy should state that a democratic Ukraine that pursues reforms can earn its place in Europe's institutions.

Third, we should continue to help Ukraine increasingly integrate its markets into the global economy, reorienting its economy away from Soviet era patterns of trade. As Ukraine's economic interests increasingly value their credibility in Western markets, these forces will support rule of law at home and some will value Ukraine's democratic credentials abroad.

Finally, the United States and our transatlantic partners should continue to support Ukraine's sovereignty and independence. As Vladimir Putin plans his return to the Russian Presidency, we are likely to hear more ideas along the lines of his proposal for a Eurasian Union. While cooperative, constructive relations between Ukraine and Russia are healthy, Russian efforts to exert a sphere of influence, if unchecked, will lead to greater demands and ultimately greater instability over time. Our engagement with Ukraine through good times and bad will bolster Kyiv's ability to determine its own future.

Holding Ukraine to account on democracy, however, will not send Ukraine into Russia's arms. Whether it is Ukrainians in the west of the country whose reference is Poland rather than Russia, Ukrainian oligarchs who fear economic domination by their Russian counterparts, or Ukraine's political elites who have grown accustomed to managing their own nation, Ukrainians will play the lead role in preserving their sovereignty.

As Members of Congress, you have much on your plate. The United States interests are global. So why should U.S. policymakers concern themselves with Ukraine. I would offer three reasons.

First, as a nation with almost as many people as Spain and as much land as France, and with shared borders with the European Union, NATO, and Russia, Ukraine is a major actor and of significant importance to Euro-Atlantic security and prosperity. Much of the history of conflict in Europe is about insecurity in the land between Germany and Russia; as long as Ukraine's future remains uncertain, there is a risk of instability.

Second, Ukraine's success or failure as a free market democracy will reverberate far beyond its borders. Ukraine can help anchor a region plagued by uncertainty, moving the region closer to European norms, and advancing the vision of a

Europe whole, free, and at peace. Alternatively, its failure will set back reform in the broader region and undermine the goal of “completing Europe.”

Third, change in Ukraine may be among the best hopes for change in Russia. Most analysts think about how developments in Russia will impact Ukraine. I tend to believe that developments in Ukraine can influence Russia. First, failure in Ukraine would validate Vladimir Putin’s narrative to the Russian people that experimentation with democracy in the former Soviet Union leads to political chaos and economic instability; “democracy is dangerous.” However, Ukraine’s success as a market-oriented European democracy would challenge those assumptions. For so many in Russia who have been taught to think of Ukrainians as their backward cousins, progress in Ukraine would underscore the viability of progress in Russia.

Madam Chairman, Ukraine is indeed at a crossroads. Its democracy is in play. Its place in Europe is in play. And its reliability as a partner of the United States is in play. Western policy can help sharpen the choices facing Ukrainian leaders.

A President Yanukovich who ceases political prosecutions and releases Tymoshenko, presides over fair parliamentary elections, combats corruption, achieves a ratified association agreement with the European Union, and advances a top U.S. nonproliferation objective has the opportunity to remake his image in the world and in his own nation. The choice is his.

Thank you Madam Chairman, ranking member, and members of the committee. I look forward to answering your questions.

Senator SHAHEEN. Thank you very much.

Mr. Chow.

STATEMENT OF EDWARD C. CHOW, SENIOR FELLOW, ENERGY AND NATIONAL SECURITY PROGRAM, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, WASHINGTON, DC

Mr. CHOW. Madam Chair, it is my distinct honor to testify before your subcommittee. Unlike my fellow panelists who served with distinction at the Department of State and White House, I come to you as a simple oil and gas analyst and practitioner in the international petroleum industry for more than 30 years. In the past dozen years, I have observed the Ukrainian energy sector, sometimes up close, and written on the subject. I had the occasion to advise four separate Cabinets of Ministers of Ukraine on energy, including those led by then-Prime Ministers Yanukovich and Tymoshenko. It is this experience and knowledge that informed me for today’s testimony.

I would start off by saying, with all due respect to the title of this hearing, that as far as energy is concerned, Ukraine, a country which seems perpetually at crossroads, is no longer in that position. It may have been at crossroads in 2005 right after the Orange Revolution when there was a tremendous opportunity to shed its Soviet legacy and incomplete economic transition and to embark on the path of energy reform that could have greatly enhanced its domestic energy condition and improved energy security for both itself and Europe. However, infighting among the Orange political forces, including over energy rents, and secondarily insufficient attention and engagement by the West extinguished these hopes.

Since then, Ukraine has been on a dangerous path toward energy insecurity which has accelerated in the last 2 years. All the pity as Ukraine has enormous potential as an energy producer, efficient consumer, and key transit partner for Russia/Central Asia and Europe.

Until the discovery and development of major West Siberian gas fields in the 1970s, Ukraine was an exporter of gas to the Soviet Republic of Russia. Ukrainian gas production peaked at 69 billion cubic meters in 1975, more than its current annual consumption.

Today Ukraine's domestic gas production has stagnated below 20 billion cubic meters and it is two-thirds dependent on gas imports from Russia.

I have not met a single Ukrainian or Western geologist who does not believe that Ukraine has the geologic prospects to greatly increase its domestic oil and gas production. If proper policies and investment conditions were in place, domestic gas production can easily increase by 50 percent in a few short years. Together with energy efficiency improvements, Ukraine can be more than 50 percent self-sufficient in gas. Currently Ukraine is the third-largest gas consumer in continental Europe. It consumes two-thirds as much gas as Germany does, while its GDP is less than 5 percent of Germany's.

Ukraine's oil and gas sector is operated in a totally dysfunctional manner. This, as they say in this part of the world, is not an accident. Various state energy assets have been hijacked by rent seekers for their private gain. Regulation and pricing are left deliberately murky in order to benefit private interests. This is not a particular indictment of the current Government of Ukraine. In fact, these conditions of Ukraine's incomplete transition from its Soviet command economy have remained through the terms of four different Presidents and many more Prime Ministers and Cabinets of Ministers in the 20 years of independence. Franchises on control of energy assets may shift, but the business model never changed.

In fact, if you were to design an energy system that is optimized for corruption, it might look very much like Ukraine's. You would start with a wholly state-owned monopoly that is not accountable to anyone except the head of the country who appoints the management of this company. It would operate nontransparently without being held accountable by shareholders or capital markets since its chronic indebtedness is periodically repaid by the state treasury.

Domestic production would be priced artificially low, ostensibly for social welfare reasons, leading to a gray market in gas supply that is allocated by privileged access rather than by price. Low prices suppress domestic production and energy efficiency improvement, thereby requiring import of large volumes of gas which coincidentally is controlled by the same state monopoly or its chosen middleman company. The opaque middleman is frequently paid handsomely in kind rather than in cash, which allows him to re-export the gas or to resell to high-value domestic customers, leaving the state company with the import debt and social obligations.

Ukraine has also eroded its significant advantages as a major oil and gas transit country between Russia/Central Asia and European markets by virtue of its geographic location and Soviet legacy pipeline infrastructure. Ukraine inherited Soviet gas transit pipelines, which had a nameplate capacity of 175 billion cubic meters per year, as well as abundant and ideally located gas storage.

Yet, today Russian gas transit amounts to less than 100 billion cubic meters from a post-Soviet average of 120 billion cubic meters, and Russia is busy building and planning pipelines that bypass Ukraine, namely Nord Stream and especially South Stream. If Russia proceeds next year with South Stream at 63 billion cubic meters, then by 2016 it would have bypassed pipeline capacity that completely replaces current gas transit through Ukraine, which

represented about 80 percent of the gas Russia sells to Europe or 20 percent of European gas demand.

This developed because Ukraine has proven itself as an unreliable transit partner for both Russia and Europe. Successive Ukrainian governments have tried to use its transit leverage to extract below-market gas prices from Russia. This persisted even though conditions that facilitated the barter of cheap gas for transit, namely low-price Central Asian gas, disappeared about 5 years ago. Even when gas prices were low, Naftogaz is chronically indebted to Gazprom, leading to contract disputes, regular brinksmanship, and occasional gas cutoffs.

The gas crisis of January 2006 and 2009 seriously affected gas supply for Europe at the height of winter and underscored that Ukraine is a transit liability. Frequently Europe acts as if it is an innocent victim of pipeline disputes between Russia and Ukraine. EU blindly embraces every deal the two come up with no matter how fatally flawed the terms are or, therefore, how ephemeral their compliance is.

The root causes of Ukraine's energy insecurity are well known, as are their remedies. They are well documented in the Energy Policy Review of Ukraine conducted by the International Energy Agency and published in 2006. Repeated attempts have been made by international institutions, including the International Monetary Fund, World Bank, European Union, and U.S. Government to persuade and support Ukrainian authorities to enact serious energy sector reforms. They have been met generally by lip service even as fundamental conditions continue to deteriorate in the country.

The recommendations basically come down to modernizing the business practice of this large and nontransparent sector of the Ukrainian economy which has served as an exclusive playground for Ukrainian leaders for the past 20 years. This means the end of rent-seeking that leaks billions of dollars per year, transparent and fair rules of the game for investors that do not favor politically connected interests, and above all, energy pricing reform.

Instead of fundamental reform and the immediate benefits that can be achieved, this Ukrainian Government would rather talk about fanciful projects that are 5 years or further away in the future, such as shale gas or other unconventional gas production, liquefied natural gas imports, and offshore exploration, none of which can possibly succeed without energy reform.

At best, this is a misplacement of policy priorities. At worst, it is a deliberate misdirection in order to change the topic and to divert attention away from current and future mischief in the energy sector.

For the moment, Russia and Ukraine are supposedly at an impasse in their gas price negotiations, after the disastrous decision President Yanukovich and his government made on gas agreement with Russia in Kharkiv in April 2010. Ironically, the Kharkiv agreement essentially confirmed and locked his new government into the terms of the agreement made by then-Prime Minister Yulia Tymoshenko and Prime Minister Vladimir Putin in January 2009, the unfairness for which she is currently accused and jailed.

The most likely scenario is an agreement will be reached soon between Russia and Ukraine on gas that cedes partial control and/

or ownership of Ukraine's international gas transit system to Gazprom in exchange for another so-called discount on gas pricing.

Despite such an agreement, Russia will likely continue to progress the South Stream pipeline as important for its own interests or at least hold it in reserve. Russia may expect to gain full control of the gas transit system over time, as Ukraine continues to mismanage its energy sector and pile on gas debt to Russia.

The result of this scenario is that Ukraine becomes an energy appendage of Russia's. What is the geopolitical significance for the United States and Europe of this possible outcome I will leave to others more expert on such subjects on this panel.

I would offer one small recommendation. If the United States and our European allies care about Ukraine's energy vulnerability and its negative impact on the region, then they must address the policy remedies not only to Ukrainian leaders but also publicly to Ukrainian society. Ukraine has a vibrant civil society, an educated public, and relatively free press for post-Soviet space. Speaking privately to political leaders about urgently needed energy reform has proven ineffective in the past and may even enable their bad behavior. It is time we invest in a direct dialogue with the Ukrainian people if we believe we have a stake in the energy health of this important country.

Thank you.

[The prepared statement of Mr. Chow follows:]

PREPARED STATEMENT EDWARD C. CHOW

Madam Chair, it is my distinct honor to testify before your subcommittee. Unlike my fellow panelist, who served with distinction at the Department of State and White House, I come to you as a simple oil and gas analyst and practitioner in the international petroleum industry for more than 30 years. In the past dozen years, I have observed the Ukrainian energy sector, sometimes up close, and written on the subject. I had the occasion to advise four separate cabinets of ministers of Ukraine on energy, including those led by then-Prime Ministers Yanukovich and Tymochenko. It is this experience and knowledge that informed me for today's testimony.

I would start off by saying, with all due respect, that as far as energy is concerned Ukraine—a country which seems perpetually at crossroads—is no longer in that position. It may have been at crossroads in 2005, right after the Orange Revolution, when there was a tremendous opportunity to shed its Soviet legacy and incomplete economic transition; and to embark on a path of energy reform that could have greatly enhanced its domestic energy condition and improved energy security for both itself and Europe. However, infighting among the Orange political forces, including over energy rents, and secondarily insufficient attention and engagement by the West extinguished these hopes.

Since then, Ukraine has been on a dangerous path toward energy insecurity, which has accelerated in the last 2 years. All the pity as Ukraine has enormous potential as an energy producer, efficient consumer, and key transit partner for Russia/Central Asia and Europe.

Until the discovery and development of major West Siberian gas fields in the 1970s, Ukraine was an exporter of gas to the Soviet Republic of Russia. Ukrainian gas production peaked at 69 billion cubic meters (bcm) in 1975, more than its current annual consumption. Today Ukraine's domestic gas production has stagnated below 20 bcm and it is two-thirds dependent on gas imports from Russia. Reliance on imports has diminished only because of the dismal performance of the overall Ukrainian economy, not because of efficiency improvements or increased domestic production.

I have not met a single Ukrainian or Western geologist who does not believe that Ukraine has the geologic prospects to greatly increase its domestic oil and gas production. If proper policies and investment conditions were in place, domestic gas production can easily increase by 50 percent in a few short years. Together with energy efficiency improvements, Ukraine can be more than 50 percent self-sufficient

in gas. Currently Ukraine is the third-largest gas consumer in continental Europe (outside of Russia). It consumes two-thirds as much gas as Germany does, while its GDP is less than 5 percent of Germany's.

Ukraine's oil and gas sector is operated in a totally dysfunctional manner. This, as they say in this part of the world, is not an accident. Various state energy assets have been hijacked by rent seekers for their private gain. Regulation and pricing are left deliberately murky in order to benefit private interests. This is not a particular indictment of the current Government of Ukraine. In fact these conditions of Ukraine's incomplete transition from its Soviet command economy have remained through the terms of four different Presidents and many more Prime Ministers and Cabinets of Ministers in the 20 years of independence. Franchises on control of energy assets may shift, but the business model never changed.

In fact, if you were to design an energy system that is optimized for corruption, it might look very much like Ukraine's. You would start with a wholly state-owned monopoly that is not accountable to anyone except the head of the country who appoints the management of this company. It would operate nontransparently without being held accountable by shareholders (who might demand legal rights as owners) or capital markets since its chronic indebtedness is periodically repaid by the state treasury.

Domestic production would be priced artificially low, ostensibly for social welfare reasons, leading to a grey market in gas supply that is allocated by privileged access rather than by price. Low prices suppress domestic production and energy efficiency improvement, thereby requiring import of large volumes of gas which coincidentally is controlled by the same state monopoly or its chosen middleman company. The opaque middleman is frequently paid handsomely in-kind, rather than in cash, which allows him to reexport the gas or to resell to high-value domestic customers, leaving the state company with the import debt and social obligations.

Ukraine has also eroded its significant advantages as a major oil and gas transit country between Russia/Central Asia and European markets by virtue of its geographic location and Soviet legacy pipeline infrastructure. Ukraine inherited Soviet gas transit pipelines, which had a nameplate capacity of 175 bcm per year, as well as abundant and ideally located gas storage capacity. In addition, Ukraine's oil transit pipelines have a capacity of more than 1 million barrels per day, linking Russian and Central Asian oil production with landlocked markets in Central Europe.

Yet today Russian gas transit amounts to less than 100 bcm from a post-Soviet average of 120 bcm and Russia is busy building and planning pipelines that bypass Ukraine, namely Nord Stream and especially South Stream. When the second line of Nord Stream is completed by the end of this year, it will bring capacity to 55 bcm per year. If Russia proceeds next year with South Stream at 63 bcm, by 2016, it would have bypass pipeline capacity that completely replaces current gas transit through Ukraine, which represented about 80 percent of the gas Russia sells to Europe or 20 percent of European gas demand.

This developed because Ukraine has proven itself as an unreliable transit partner for both Russia and Europe. Successive Ukrainian governments have tried to use its transit leverage to extract below-market gas prices from Russia. This persisted even though conditions that facilitated the barter of cheap gas for transit, namely low-priced Central Asian gas available to Russia, disappeared about 5 years ago. Even when gas prices were low, Naftogaz (the Ukrainian state company) is chronically indebted to Gazprom, leading to contract disputes, regular brinksmanship, and occasional gas cutoffs. Instead of maintaining and enhancing the reliability of the Ukrainian pipeline system with the transit revenue it earned in order to attract higher volumes, Ukraine raised serious doubts in the minds of energy producers and consumers.

The gas crisis of January 2006 and 2009 seriously affected gas supply for Europe at the height of winter and underscored that Ukraine is a transit liability. Consequently, even the EU-sponsored Nabucco pipeline proposal is as much a diversification away from the risks of transit through Ukraine as a diversification from over-dependence on Russian gas supply. More frequently, Europe acts as if it is an innocent victim of pipeline disputes between Russia and Ukraine. EU blindly embraces every deal the two come up with, no matter how fatally flawed the terms are or how ephemeral their compliance, as proved to be the case in both 2006 and 2009.

The root causes of Ukraine's energy insecurity are well known, as are their remedies. They were well documented in an "Energy Policy Review of Ukraine" conducted by the International Energy Agency and published in 2006. Repeated attempts have been made by international institutions, including the International Monetary Fund, World Bank, European Union, and U.S. Government to persuade and support Ukrainian authorities to enact serious energy sector reforms.

These have been met generally by lip service, even as fundamental conditions continue to deteriorate in the country. It amused me to read that 2 weeks ago there was a conference in Kyiv on “Natural Gas and Ukraine’s Energy Future” conducted by a well-known international energy consulting firm and attended by senior Ukrainian officials. I dare say that most Ukrainian energy experts could have written the policy recommendations by themselves without any foreign help—they have heard them so many times.

These recommendations basically come down to modernizing the business practices of this large and nontransparent sector of the Ukrainian economy, which has served as an exclusive playground for Ukrainian leaders for the past 20 years. This means the end of rent-seeking that leaks billions of dollars per year; transparent and fair rules of the game for investors that do not favor politically connected interests; and above all energy pricing reform. Assuming the right business conditions, Ukraine possesses sufficient conventional and renewable energy potential, and scientific and engineering skills to both increase its domestic energy production and to significantly improve its energy efficiency.

Foreign investment can also help in this regard. However, to date, foreign investors have not been met with fair access to geologic data, open and transparent tender process, or internationally standard business terms. What small foreign operators who have ventured into oil and gas production and achieved minor success in Ukraine have been met with corporate raids, absence of rule of law, capricious regulations, and other hostile conditions.

Instead of fundamental reform and the immediate benefits that can be achieved, this Ukrainian Government and its predecessors would rather talk about fanciful projects that are 5 years or further away in the future, such as shale gas or other unconventional gas production, liquefied natural gas imports, and offshore exploration—none of which can possibly succeed without energy reform.

At best, this is a misplacement of policy priorities. At worst, it is deliberate misdirection in order to change the topic and to divert attention away from current and future mischief in the energy sector.

For the moment, Russia and Ukraine are supposedly at an impasse in their gas price negotiations, after the disastrous decision President Yanukovich and his government made on gas agreement with Russia in Kharkiv in April 2010, soon after his ascendancy to the Presidency. Ironically the Kharkiv agreement essentially confirmed and locked his new government into the terms of the agreement made by then-Prime Minister Yulia Tymoshenko and Prime Minister Vladimir Putin in January 2009, the unfairness of which she is currently accused and jailed.

The most likely scenario is an agreement will be reached soon between Russia and Ukraine on gas, perhaps before Russia’s Presidential election in March, that cedes partial control and/or ownership of Ukraine’s international gas transit system to Gazprom in exchange for another so-called discount on gas pricing. Concessions on penetration into Ukraine’s domestic gas market may also be made to Gazprom or its chosen middleman company.

Despite such an agreement, Russia will likely continue to progress the South Stream pipeline as important for its own interests or at least hold it in reserve. Russia may expect to gain full control of the gas transit system over time—as Ukraine continues to mismanage its energy sector and pile on gas debt to Russia—similar to what it has already accomplished in Belarus.

The result of this scenario is that Ukraine becomes an energy appendage of Russia’s. What is the geopolitical significance for the U.S. and Europe of this possible outcome I leave to others more expert on such subjects on this panel and to subsequent questioning by the committee, as I prefer to stay within my competence in energy.

I would offer one recommendation: If the United States and our European allies care about Ukraine’s energy vulnerability and its negative impact on the region, then it must address the policy remedies not only to Ukrainian leaders, but also publicly to Ukrainian society. Ukraine has a vibrant civil society, an educated public, and relatively free press for post-Soviet space. Speaking privately to political leaders about urgently needed energy reform has proven ineffective in the past and may even enable their bad behavior. It is time we invest in a direct dialogue with the Ukrainian people if we believe we have a stake in the energy health of this important country.

Senator SHAHEEN. Thank you very much, Mr. Chow. I do not think anybody would describe you as a simple energy analyst.

I want to go back to this question of the imprisonment of former Prime Minister Tymoshenko. I mentioned it in my opening state-

ment. Ambassador Pifer, you mentioned it and Mr. Wilson mentioned it as well.

I also want to point out that the subcommittee did engage the Ukrainian Embassy here in Washington. As I mentioned, the Ambassador is here, and they submitted a letter to me relative to some of the issues that face the United States-Ukrainian relationship. I appreciate their thoughts, and I want to ask the panelists about one of the points raised in the letter from the Embassy.

The letter suggests that political issues should be separated from legal issues and that attempts to link the Tymoshenko case to Ukraine's European aspirations are artificial. And I would like to ask both Ambassador Pifer and Mr. Wilson if you think it is possible to separate the two or how continued integration into the EU is going to be viewed as long as former Prime Minister Tymoshenko remains in prison. And I will ask you if you would begin, Ambassador.

Ambassador PIFER. Thank you. I think that is an excellent question.

It first gets to the point—and I think you may hear a little bit more on the second panel about the specifics of the charge, but it is a charge of abuse of power for her conclusion in January 2009 of a contract with Russia for a gas sale. And the view of most outside observers is this was a political decision. You cannot and you should not be criminalizing those types of political decisions. And it opens up sort of a Pandora's box, as Mr. Chow said, questions about the Kharkiv agreement. Could somebody then look back and say, well, does that agreement open up the same types of questions? And I think it is this.

But it is also not just the case of Ms. Tymoshenko. She is one of probably a dozen former senior members of the government under President Yushchenko and Prime Minister Tymoshenko who have also been arrested and charged on similar charges that do not appear to be well based.

So I think this is the basis of the concern, both as expressed by the European Union and the U.S. Government, that the judicial system in Ukraine is being manipulated for political means in a way that we really haven't seen happen before in Ukraine's 20 years of independence. And I think as long as that continues, that will be and should be a significant barrier to Ukraine's effort to draw closer to Europe because ultimately if you want to be a full member of Europe and a member of the transatlantic community, you have to accept democratic values, and what we are seeing with regard to Ms. Tymoshenko and other former opposition or other former government leaders is not consistent with those values.

Senator SHAHEEN. Thank you.

Mr. Wilson, do you want to add to that?

Mr. WILSON. Madam Chair, I would endorse what Ambassador Pifer just said, and add to that, that I think the argument of the need to disentangle the political from the legal is frankly disingenuous. What we are seeing right now is the distortion of the legal for political purposes, and I think that is pretty clear to everyone who has paid attention to this particular case, but also as Ambassador Pifer says, this case is sensational and it is a human rights

issue, but it is also illustrative of a broader pattern that raises genuine, deep concerns.

The second part of this, I think, in response to the comments that you conveyed, it represents on the Ukrainian side a fundamental misunderstanding of what it means to draw closer to the European Union to join Europe. At the end of the day, accession talks to the EU—yes, there is a long process. In these association agreements, there are lots of technical negotiations. There is a technical aspect to it. But that is not the purpose.

At the end of the day, this is about moving closer to a community of shared values, shared norms based on democracy, human rights, rule of law, and democracy. And if the Ukrainian Government does not understand the connection between the values issues and the technical issues they are negotiating in an agreement, then there is a fundamental misunderstanding of what it means to become part of Europe.

Senator SHAHEEN. That is my followup. Do you think the people around Yanukovich understand that, that really you cannot separate the two?

Mr. WILSON. From their actions, it does not imply that that is the case. My sense, from watching the situation, is that there is some merit, political merit, on the part of the President to be seen as having made more progress in the negotiations with the European Union than his predecessors. And in the technical sense, Ukraine has advanced in those negotiations. But it is not clear to me—I think that that fuels a domestic purpose of being seen of checking the box, making progress with Europe, but not a fundamental understanding or commitment to what is behind that and what it represents. And I think what we are seeing play out over the Tymoshenko trial is at the end of the day an unwillingness to make that connection and to take the tough choices that are required to actually give meaning to many of these technical agreements.

Senator SHAHEEN. And can you both comment on what kind of an impact both the imprisonment of Tymoshenko and other former officials has on the interest in international investment and business investment in the country?

Ambassador.

Ambassador PIFER. I think, again, to the extent that this raises questions about the Government of Ukraine's readiness to observe the rule of law, it raises questions in the minds of Western companies and American companies that are looking to invest and do business in Ukraine. And I know from my own 3 years there back at the end of the 1990s, Ukraine at that time—and I think it is a bit better, but it is still not an easy environment. You have complex tax regulations, very difficult customs rules, often applied in an arbitrary manner.

Unfortunately, the court system in Ukraine is to the point where I think very few Western companies have any confidence that if they went to court, they would actually have the chance of a fair outcome. And again, what we see with the manipulation of the judicial system now against political opponents, it only feeds into that discreditation of the judicial system in Ukraine. So this, I think, has a bigger impact. It is not just about the rule of law with

regard to democracy, but it does raise questions in the minds of investing companies that are looking at Ukraine about whether that is the right place to go, particularly when they have lots of other opportunities around the world.

Senator SHAHEEN. And, Mr. Chow, you talked about the many challenges facing the energy sector in Ukraine. Is this something that as companies who are interested in the energy sector in the Ukraine look at a potential future there? Do you think this is something that deters them as well?

Mr. CHOW. It certainly is a factor. I mean, oil companies follow geology first. But then you look at the investment conditions under which you might have to operate. So, for example, if you were to invest and hopefully be successful in producing gas in Ukraine, what access would you have to customers? What access would you have to pipelines? Would you be held for ransom along the way? What gas price might you be able to get in the domestic market, never mind the right to export it? All these are undetermined, deliberately murky, and unpredictable. So even if the geology is good, you are likely to discount your bid on the basis that the investment conditions are risky.

So does that mean that no oil company would come knocking on Ukraine's door? Every time Ukraine has a new government, oil companies come knocking on the door, and inevitably they have been disappointed in the past.

You will see there is a bid round coming up, I think, to be announced on February 22, very soon. There are some oil company interests in it, and I have spoken to some of them. But how do you assign a value to an opportunity when the fundamental investing conditions are so shaky?

Senator SHAHEEN. Thank you.

My time is up. Senator Barrasso.

Senator BARRASSO. Thank you very much, Madam Chairman.

Both to Mr. Wilson and Mr. Chow. At the opening of the Nuclear Security Summit in Washington 2 years ago, about April 2010, there was an agreement reached where Ukraine would eliminate its entire stock of highly enriched uranium by March 2012. So it is coming up in the next month. With the summit quickly approaching, could you tell us what kind of progress Ukraine has made regarding the disposal of all of its highly enriched uranium and where we are with that and how you see things coming in terms of this March deadline?

Mr. WILSON. This was very much a significant outcome of that Nuclear Security Summit and a major commitment on Ukraine's part to fully eliminate highly enriched uranium, a major non-proliferation objective for our country.

There has been significant progress in implementing the agreement. There were some delays, but many of the interim markers have been met and I think they remain on track in theory to try to meet a March deadline.

However, the concern I have related to that is the perception in Ukraine that action and movement on an issue that is a non-proliferation objective for the United States has the potential to buy them a free pass on some of these democracy and human rights issues. So the challenge for U.S. policy in managing the

highly enriched uranium issue is to underscore our intent or commitment to try to follow through on the agreements the Ukrainian Government has made, but that does not remove Ukraine from expectations in meeting rule-of-law issues at home.

Senator BARRASSO. Mr. Chow and then Ambassador Pifer.

Mr. CHOW. I do not have a whole lot to add. I stipulated that I am a simple oil and gas guy and not really competent on fissile materials.

I would add, though, that the rest of Ukraine's energy sector, whether you are talking nuclear power, powerplants, fuel supply to those powerplants, as well as the oil industry, are burdened with the same shadowy business practices that I highlighted on gas. So there is reason to seek the most transparent regime possible to make sure that the pledges made by Ukrainian authorities are actually met.

Senator BARRASSO. Mr. Ambassador, anything else to add on that?

Ambassador PIFER. I would just add briefly. I think Ukraine, in fact, does have every incentive to meet that agreement because as part of the arrangement, U.S. Government assistance, provided mainly by the Department of Energy, is helping Ukraine convert its reactors so that they can operate on low-enriched uranium in a more modern way. So there is actually an advantage to Ukraine in completing that deal.

Senator BARRASSO. I want to move to the IMF. In July 2010, \$15.5 billion stand-by loan approved by the IMF for Ukraine. The latest tranche of the loan is suspended. IMF is requesting Ukraine make some changes. Specifically they have requested that Ukraine address its domestic gas price. Can you explain any of the major concerns that are happening there and the impact this is having on Ukraine, and with the parliamentary elections coming up in the fall, do you see the political will needed to make the changes that the IMF may request? Mr. Wilson, I do not know if you want to start.

Mr. WILSON. I would say two things in response to that.

One, I do not see the political will in addressing sort of this core issue of the domestic gas price. That is what Mr. Chow has talked about, one of the core issues that has a whole ream of ramifications for corruption, sovereignty, security issues. I am very skeptical that the Ukrainian Government will be in a position to move on the domestic gas price issue.

At the same time, I think some of their efforts to respond to the financial crisis previously worked on the IMF side of this have reinforced their political instincts because they have taken some difficult decisions that have not been popular in the public. You can point to a substantial drop of political support in the east because of raising the retirement age, for example. So in some respects, I think some of their efforts on the economic front have reinforced their inclination to take measures on the political front because they feel vulnerable and exposed headed into parliamentary elections.

Senator BARRASSO. Anyone want to add anything to that?

Mr. CHOW. I was a critic of the Fund—that is, IMF—in 2009 when I thought that they were being too lenient to the then-

Tymoshenko government. If the Orange forces needed tough love at that time, my position is that this government needed strict compliance before any money is given to them. We have already seen the first tranche delivered by the IMF. The second tranche continues to be delayed for the reasons that Mr. Wilson gave, as well as the upcoming parliamentary elections in October. I am highly skeptical that any positive move would be made soon.

Ambassador PIFER. I would agree with my two colleagues, because one of the primary conditions for the next tranche of the IMF loan is a raise in domestic gas prices which would hit a broad portion of the electorate. I do not see this government as prepared to do it in the runup to a parliamentary election.

Senator BARRASSO. Then I want to move to integration with the European Union and the accessment agreement with Ukraine is stalled. So I am curious about long-term prospects for the integration of Ukraine into the European Union and kind of the requirements and reforms that should the European Union require of the Ukraine. If you have any assessment of how you think the people of Ukraine feel about joining the European Union. Is it something they want, something they are concerned about? Mr. Wilson, if you want to start.

Mr. WILSON. Sure. I think despite the tenor of the testimony that you have heard today, I am very supportive of the long-term prospects of Ukraine's integration into Europe, and I think ultimately the vast majority of the Ukrainian population wants to see their future as part of the European mainstream. That is what gives me confidence at the end of the day there is an element of a check to the tendency that we have been seeing, but that has been put completely at risk right now.

So I think part of the challenge—what has played out in the wake of the Orange Revolution, what has played out with this government is an increasing sense of apathy among the Ukrainian population, apathy within civil society, which I think is a dangerous precursor to an ability to allow the government to take steps without some of those checks and balances. So I think key in this is United States policy beginning to be clear, including with those that are skeptical in Europe, that as Ukraine takes the right steps, as Ukraine restores its democracy and strengthens its free market, that really the doors in Europe should be open.

Senator BARRASSO. Mr. Ambassador.

Ambassador PIFER. I would just add two observations.

First, to agree with what Mr. Wilson said, polls over the last several years have consistently showed 55 to 65 percent of the Ukrainian population supports the idea of joining Europe, and primarily it is because of the attraction of the economic standard of living there.

The second point on this points up why the democratic backsliding in Ukraine comes at a very bad time because within Europe now, I think, you have a lot of questions about how far it should expand. And with the eurozone crisis and the internal problems, there really is this tendency to look inward. And so the democratic backsliding that you have seen in Ukraine over the last 2 years is being taken by those countries who want to say we really cannot

think much beyond our borders and to push Ukraine off. So it is not playing out at a good time.

I would guess that had Poland, which held the Presidency of the European Union during the last part of 2011—had Poland not held that Presidency, I think there would have been a very good chance that the European Union would not have gone forward with a summit meeting with the Ukrainians last December. That is because the Poles have been one of the countries that have been strongly advocating for Ukraine, but I suspect even they may be getting a bit frustrated.

Senator BARRASSO. Thank you. Thank you, Madam Chairman.

Senator SHAHEEN. Thank you.

Senator Risch.

Senator RISCH. Thank you, Madam Chairman.

Mr. Chow, can you tell me what percent of the electricity is generated in the Ukraine from nuclear energy? Do you know that number off the top of your head?

Mr. CHOW. I do not know that number off the top—

Senator RISCH. Is it significant?

Mr. CHOW. It is very significant. Fifty percent. I was going to say 40. So 40–50 percent. So it is a very significant part of electricity.

Senator RISCH. And what about the remainder of it? Is it coal, gas, combination? What is the remainder of it or do you know?

Mr. CHOW. Power generation by energy source in Ukraine is approximately as follows: 48 percent nuclear, 34 percent coal, 11 percent gas, and 7 percent hydroelectricity.

Senator RISCH. The other question I would have for any one of you—I suppose, Mr. Ambassador, it is probably more in your line. The dismantling of the old Soviet Union missile system in the Ukraine. Is that completed now?

Ambassador PIFER. Senator, in 1996, the last of the nuclear warheads that were in Ukraine—

Senator RISCH. I knew the warheads were gone, but what about the remainder of the system?

Ambassador PIFER. All of the ICBM silos have been dismantled. All of the bombers have been dismantled. Probably the one piece that is still being worked on is the SS-24 missiles have been separated into stages, but they are still working out the way to remove the fuel from those missiles. But it has been a very, I think, cooperative effort between the United States and Ukraine.

Senator RISCH. The reason I ask is, there is an Idaho company, I believe, that is involved in that. Thank you very much. I appreciate that.

Thank you, Madam Chairman.

Senator SHAHEEN. Thank you, Senator Risch.

Ambassador Pifer, in December you wrote a very interesting article in the Ukrainian Weekly which argued that Mr. Yanukovich's pursuit of a more authoritarian agenda at home would cause disbalance in Ukraine's foreign policy. I am not quoting you exactly, but you point out that actually his current tactics may weaken his ability to negotiate with Moscow rather than improve that ability. I wonder if you could elaborate on this.

Ambassador PIFER. I think when you look at Russia, Russia has a fairly strong set of goals it wants to achieve vis-a-vis Ukraine.

It wants to keep Ukraine geopolitically in its orbit. It does not want to see Ukraine draw closer to NATO or the European Union. It wants to have control, including ownership, if possible, of the energy transit system through Ukraine. It wants to have Ukraine open for Russian business. And I think as we have seen over the last couple of years, even when relations between Russia and Ukraine improved after the beginning of 2010, the Russians remained very hard-nosed negotiators. As early as the summer of 2010, one was hearing that Ukrainian officials, including in Bankova, where the Presidential administration is housed, were becoming very frustrated that the Russians continually push for more, push for more.

So my own estimate is that to the extent that Mr. Yanukovich's policies on democracy mean a weaker relationship with the West, he is going to find himself in a more lonely and more difficult position dealing with the Russians, and I think the Russians will use that to their advantage. That is, quite frankly, the hope that I have because I think Mr. Yanukovich can appreciate that. And my hope is—I am not as optimistic as I was maybe 5 months ago, but my hope remains that seeing that difficult position without the balance, that that will lead him to conclude that he has to adjust his course on democracy to return to the balance, which would be good both in terms of Ukraine's relationship with Europe but also strengthen his position vis-a-vis Moscow.

Senator SHAHEEN. And, Mr. Wilson, do you share Ambassador Pifer's view that Yanukovich understands this and will respond to it, or do you think that is part of his political calculation?

Mr. WILSON. Sort of two points.

One, first on the Russia side of this, I think there is another objective that is in play from Moscow's part. Vladimir Putin needs the experiment of democracy, needs the experiment of the Orange Revolution and its aftermath to fail and to be seen as failing to reinforce the narrative to the Russian people that experimentation with democracy in the post-Soviet space is dangerous, leads to economic uncertainty, chaos.

If Ukraine were to succeed, with its democratic experiment—the Russians have been taught to think of Ukrainians as their backward cousins. If that were to succeed inside Ukraine, it really challenges the narrative. We used to think that changes in Moscow would reverberate throughout the former Soviet space. I think today that successful change in Ukraine has a strong likelihood of impacting Russia. And so I think that is another factor in play as the Russians think about how all this plays out.

At the same time, I think President Yanukovich is very leery of being drawn too close into Moscow's orbit and has tried to pursue sort of equidistance. I think he understands it is not in his interests to be completely under the arms of a returning President Putin. Speaking to many of Yanukovich's advisors, Prime Minister Tymoshenko when she was Prime Minister, having Russian leaders speak to them with street language Russian as a condescending sense conveys to them almost that they are a lower class, has inculcated across the Ukrainian political elite, whether from the Orange camp or others, a sense of pride in actually being able to

be responsible for their own nation and not wanting to be subject to Russia.

So I think that there are complicated calculations. President Yanukovich's No. 1 priority is to have cheap gas from Russia to maintain his own political support in Ukraine, but it gets quite complicated beyond that because they understand that there are real liabilities to that dependence.

Senator SHAHEEN. And do the current protests in Russia affect those calculations at all, do you think?

Mr. WILSON. I think they very much impact Vladimir Putin's calculations and reinforce the sense that success of a free market democracy in a post-Soviet country, particularly Ukraine, is a direct threat and challenge to the narrative and the structure that I think has been set up in Russia.

Senator SHAHEEN. And how do Ukrainians view what is going on in Russia? Either you or Ambassador Pifer.

Ambassador PIFER. Probably with interest, but I think it is somewhat colored by the fact that for a lot of Ukrainians now, there is a certain degree, unfortunately, of cynicism about the Orange Revolution, and that was, unfortunately, in the aftermath of the Orange Revolution in 2005, President Yushchenko—and I think some of the blame also lies with Prime Minister Tymoshenko—is they had an opportunity there and they failed to take advantage of that opportunity, the result of which is, I think, 5 years later people then basically voted for Mr. Yanukovich who had, of course, been the one thrown out by the Orange Revolution. So my suspicion is that there is still a desire to be closer to Europe and have a more democratic society, but unfortunately, it has been colored by an experience that they see as really not having delivered.

Senator SHAHEEN. Mr. Chow talked about the importance of engaging the Ukrainian public if there were any real reforms going to be done to the energy sector. How possible do you think that is to really engage the public?

Mr. CHOW. I think it is wide open honestly. I think Ukraine is still, in spite of its problems today, a relatively open society. There are organizations with people that we can speak directly to. The United States Government has invested 20 years of building up civil society organizations in Ukraine. People, as Ambassador Pifer alluded to, are very disappointed and disillusioned with this generation of political leaders, and they have good reason to be. But that does not mean that we should give up on Ukrainians and give up on talking particularly to younger generations of Ukrainians about the possibility of change and improvement in their country.

Senator SHAHEEN. Thank you.

Senator BARRASSO.

Senator BARRASSO. Thank you, Madam Chairman.

This is a followup, and they may feel that they have completely answered this. Due to the geographic location, the cultural history, the aspirations for the future of the people of Ukraine—I believe people will continue to search for the right balance in terms of its foreign policies. Is there a way for Ukraine to successfully balance its relationship with the West as well as Russia? You all alluded to that in the last answer. I do not know if there is something else you would like to add.

Ambassador PIFER. I do not think it should be, nor does it have to be, for Ukraine an either/or choice. Ukraine should be able, on the one hand, to have a stable, constructive relationship with Russia, which I think most Ukrainians want. They do not want to have difficult relations with the Russians. And Ukraine also can have, I think, a strong and growing relationship with Europe and the transatlantic community. So it can do both. What is holding it back now though, is the decisions that President Yanukovich is making regarding democracy within his country, and that is preventing the development of the relationship with particularly the European Union that might be possible.

Mr. WILSON. I would just add that part of the challenge here is Russia's approach is a very clear perspective on privileged interests, fear of influence. And in that context, balance does not work.

If you look at Poland, the Baltic States, by their being able to join NATO and join the European Union, once they were safely embedded in the institutions of the transatlantic community, they actually had the stability, the confidence to be able to manage more cooperative, constructive relationships with Russia. Without that, the Russians were not willing to respect certain limits, respect certain sovereignty.

And I think that is the challenge that Ukraine will face. When will Russian leaders be prepared to honestly treat and think of Ukraine as a sovereign, independent nation? And it does not just work to be equidistance or to balance. It requires, I think, a greater Ukrainian integration into a broader community of shared values, interests, and norms to be able to help check some of those Russian tendencies and provide the Ukrainians the confidence and the capability to be able to manage a healthy relationship with Russia. But right now, I see it very difficult for the Russians opening the door being willing to have that kind of healthy relationship.

Senator SHAHEEN. Senator Risch, any other questions?

Senator RISCH. No other questions.

Senator SHAHEEN. I just have one final question. Mr. Wilson, you pointed out that one of the tests upcoming will be the parliamentary elections this year. And I wonder if you all could—both you and the Ambassador and Mr. Chow, if you have any views as well—what concerns you have about seeing those elections go forward in a way that ensures that they are free and fair and what can the United States and Europe do to help make that happen. So, Mr. Wilson, do you want to go first?

Mr. WILSON. Madam Chair, I do believe this is a critical issue on our policy agenda right now. President Yanukovich was elected in free and fair elections that represented the fourth in a series of free and fair elections in Ukraine. That is very significant in the post-Soviet space. The first election that happened under his watch, the local elections in 2010, were seriously flawed. There was a real regression in terms of the conduct of elections. This will be the first parliamentary elections under his Presidency, and I think, first of all, I already have very serious concerns because, despite two successful, free and fair parliamentary elections already, the ruling party with singular focus decided to pursue a change in the electoral code, one that when most analysts look at this mixed system which increases the number of majoritarian seats, it has a

tendency to benefit the ruling incumbent party. So, one, I am already quite concerned and skeptical as to why Ukraine needed to go through yet another electoral code. It is as if the party in power continues to change the rules of the game to support itself each electoral cycle. There needs to be continuity and stability in electoral code in Ukraine.

Second, I think by trying to keep Tymoshenko in prison is trying to hamstring the opposition in this effort.

And third, I think part of the key issue right now—part of the United States—its support with Europe that was so valuable in the runup to the Orange Revolution was our support to Ukrainian civil society organizations that could do election monitoring, that could conduct exit polls, that could manage parallel vote counts, that were part of the fabric to do media monitoring. I think right now we are not as far along as I would like to see us. I think USAID should already be committing its grants, already be pushing this money out to help support Ukrainian civil society organizations, as well as IRI, NDI, other American actors, to set the right table for the elections this fall. The default option is that these are going to be dirty, they are going to be tough, and they are likely to be tilted. But I do think Ukrainian actors have been involved in checking these practices in the past, and I think United States and European policy needs to be doing what it can today to maximize their capability to check that in the fall.

Senator SHAHEEN. Ambassador.

Ambassador PIFER. Two points which really build on what Mr. Wilson said.

First of all, there needs to be—and I think the United States and European Union are already providing this message, but there needs to be just a continuous message hammered home on Kiev of the importance of democracy within Ukraine for Ukraine's relationship with the West. We must leave no doubt in the minds of Mr. Yanukovych and the Ukrainian leadership that if these elections are bad elections, there will be significant consequences for the relationship that they hope to build with Europe and the United States.

And then I would also agree with Mr. Wilson, what we have seen in Ukraine is actually a very heartening development in terms of civil society organizations. Already 10 years ago, the Ukrainians had organizations that were very well set up to monitor elections. So, for example, in preparation for their 2002 parliamentary elections—and I was still in the Government. I had a chance to visit Kiev. I mean, they had one group that was monitoring electronic media, one group monitoring print media, one group that was organizing exit polls. So there are organizations on the ground in Ukraine that know how to do this, and they are going to be a lot smarter than American or European observers in catching fraud. So we ought to be directing assistance to them so that they can do the job that we know they can do.

Senator SHAHEEN. Thank you. Yes, I was actually in Armenia for the parliamentary elections in 2003, and there were a number of Ukrainian observers there and they were very sophisticated.

Mr. Chow, did you want to add anything to that?

Mr. CHOW. I will allow myself to venture beyond my competence.

[Laughter.]

I have observed, as a private citizen, a couple of elections in this part of the world before. And I will just say, to underscore what my colleagues have already mentioned, that the messaging from us, the West, to the authorities and to the Ukrainian people need to be starting now and not on election night. Elections are not only rigged on election night, as you well know. Lots of conditions, rules of the game are already being implemented now. By the time we object the day after the election, it will be too late to have an impact. So if we want to have an effect, then we ought to be saying something sooner rather than later.

Senator SHAHEEN. Thank you very much. I think we all share that.

As we are closing this panel, I want to just make clear for the record that the letter that I referenced earlier from the Embassy will be submitted for the record on this hearing.

And I also have another report that I will be submitting called "Open Ukraine." I had the opportunity in December to host an event for the Johns Hopkins Center for Transatlantic Relations called "Open Ukraine" that produced a policy report outlining some important recommendations for both the United States and Europe. And so I want to make sure that that report is also submitted for the record.

Senator SHAHEEN. So thank you all very much for joining us. We very much appreciate your views. And I will, at this point, close this first panel and ask Ms. Tymoshenko if she would join us at the table.

On our second panel, we have a special guest from the Ukraine, Ms. Eugenia Tymoshenko. Ms. Tymoshenko is a graduate of the London School of Economics, a businesswoman and restaurateur. She has previously worked for the International Development Fund and is the Honorary President of the Festival of Arts for Orphans and Disadvantaged Children in Ukraine.

Today she is here on behalf of her mother, former Prime Minister Yulia Tymoshenko. Eugenia has been devoting her time to fighting for the release of her mother from prison. We are very pleased to have you here today. We look forward to your testimony.

And I would just point out that I understand you have an important appointment shortly. And so we will try not to keep you too long. Thank you very much for being here.

**STATEMENT OF EUGENIA TYMOSHENKO CARR,
KIEV, UKRAINE**

Ms. TYMOSHENKO CARR. Thank you, Senator Shaheen and distinguished members of the committee, ladies and gentlemen. Thank you for granting me, a citizen of Ukraine, the privilege of coming here to speak to the Senate today and, through you, to the citizens of America. It is such an honor for me to be here in this hallowed place, but I know that you are truly honoring my country, my mother, and other political prisoners by inviting me here to discuss this issue in this moment of grave danger for Ukrainians' liberty, even for our independence as a nation.

Thank you for being able at last to speak of injustice in these cases of political repression and to be heard and to find the solution.

I am very glad to see that you are from New Hampshire, Senator Shaheen. My mother has always admired your State motto: "Live Free or Die."

I want to discuss what is happening in Ukraine today and given the daily threats of what is left of our democracy. I was able to witness the court proceedings and the show trial that happened in Ukraine during the repression where actors such as judges and prosecutors were acting as puppets of the President with no regard to the rule of law. I continue to witness this cynical miscarriage of justice every day following my mother's case and being able to see her in prison.

I want to begin with the sad and amazing words taken from the Internet petition to free my mother filed by Bishop Paul Peter Jesep where he quoted the French thinker Montesquieu, and it says: "There is no greater tyranny than that which is perpetrated under the shield of law and in the name of justice."

My mother has been illegally imprisoned, maltreated, and humiliated for 6 months by the regime which is trying to break her. Despite the immense psychological pressure and constant, unbearable pain, she did not break. Her spirits are high. I can say that emphatically, but her health is failing. When I see her, I must lift her from her bed. She can barely walk. Yet, she still works and not only to fight all the legal mud that is being thrown at her, but to unify all of Ukraine's democratic forces to challenge President Yanukovich and the repressive clan that rules with him.

My mother went into politics and took up the great task to free her country of injustice, absence of rule of law, and corruption left from Soviet past so that we young Ukrainians would not need to devote our lives to do the same. One of the major failures was and now remains corruption. She chose to go against the system, refused to be part of corrupt schemes, and ended up facing the system alone, letting it destroy her business, putting her, her family, and friends behind bars on falsified charges.

That happened 10 years ago when my mother was Vice Prime Minister for Energy, and when she managed to remove corruption in the energy sector and restored financial functioning in this sector that is still intact. When the country's leadership resisted her reform efforts and imprisoned her for the first time, she was freed and organized massive protest movements. These protests later grew into the Orange Revolution where she became an icon for democratic victory in Ukraine.

While Prime Minister, even though she had limited control but big responsibilities, she fought for major reforms and country's well-being. Despite her transparent efforts, she was many times betrayed for her refusal to compromise country's well-being for her own. After 2009 gas negotiations with Russia, when she had removed the corrupt gas trading middleman, RosUkrEnergo, she brought the transparency back into the gas trade, but became enemy No. 1 to those who were trying to monopolize the energy market and who are in power now.

What we are witnessing in Ukraine is such a twisting of the rule of law that it is not possible to distinguish illegality from legality. It is hard to see the line between the law and abuse of law.

My mother is imprisoned under an old Soviet-era criminal code of 1960 that criminalizes political decisions. It is important to know that there was no accusation or evidence introduced in the court that my mother had personally gained from negotiating the gas deals that ended the European gas crisis back in January 2009.

Politically motivated charges, of which my mother was found innocent by Supreme Court 6 years ago, have also been reopened with no legal basis. The statute of limitations is also ignored. They have been reopened for only one reason, to try to destroy her reputation in the EU and USA and to put more psychological pressure by prosecuting my father, my grandfather, her colleagues, and friends.

Her cell in Kachanivska prison outside of Kharkiv, far from her family and friends, is not a dungeon, as you may be relieved to know. But the Yanukovych regime does not need to use medieval surroundings to get medieval results. Instead, they are using the modern techniques of sleep deprivation and intimidation to try to break her. This includes 24 hours lit room and 24-hour video surveillance. Lately they have introduced a close-up surveillance camera so that they can see what she is writing to me, to her husband, to her supporters around the world.

They say it is done for her protection, but I doubt it. When she fell unconscious for 2 hours due to a sudden, mysterious loss of blood pressure, no help came, as her cellmate tried to revive her for 20 minutes. They waited for a doctor to come, and when the doctor arrived, they did not even call an ambulance. She could have died that night. But we only found out about this incident 3 days later from her and her cellmate. Later, they say they would lose the video archive. It is clear why she stopped trusting the ministry doctors and why she refuses to see them and to make their false diagnosis.

Many other outrageous breaches of her rights, the rule of law I can mention, like illegal second arrest delivered by the court that took place in her cell and lasted for 12 hours when she was bed-ridden and in pain. It is illegal in Ukraine to have a court hearing in the cell and, more than that, to arrest the person for the second time. There was also impossibility for her defense to build up the strategy and to defend her in the proper way.

We are told that they plan to move her now to a new cell with other seven people, make her to wear uniform, and work despite her illegal sentence and constant pain.

I have no doubts that the verdict against my mother was sought and approved by President Yanukovych. She is, according to recent polls, his main political opponent and more popular than him.

But I do not want you to think that this is only about my mother. It is not. Others are being repressed and unjustly imprisoned.

Her former colleague, Minister of Interior Yuri Lutsenko, has been imprisoned for over a year on charges that would be laughable if they were not so tragic. He is charged with hiring a driver past the retirement age and of spending \$2,000 over budget to

mark Ukraine's national police day. I do not know American political practice very well, but I cannot imagine a former Cabinet Minister be jailed for over a year without a trial on such charges.

And there are others. The son-in-law of Supreme Court chairman was arrested on the day his wife gave birth in order to intimidate that Justice into resigning. Former Acting Minister of Defense, Valery Ivashchenko, has been imprisoned for almost 2 years with his health severely deteriorating. They are all repressed and humiliated because of their political views. They courageously stood up to the regime and the injustice and fear it is sowing.

The situation with political prisoners is just the tip of an iceberg, and the situation is direct evidence of a much graver problem, political crisis that the regime is creating by continuous abuse of criminal justice system. Politically motivated prosecutions of former government officials, civil society activists, and prosecutions of human rights defenders ignore the rule of law. The bottom line is that no law enforcement agency dares to make a move to prosecute the political opposition without the instruction of the President.

I believe that the current situation, as described in the recent European Parliament and the Parliament Assembly of the Council of Europe resolutions, require urgent action.

Numerous legal infringements of the European Convention of Human Rights were listed and explained in three reports of the Danish Helsinki Committee, which was commissioned by the EU, and found the truth behind the political so-called criminal cases.

Yanukovych spent millions of U.S. dollars hiring American audit companies and hoping that he can find traces of her corruption. Hundreds of her ex-coworkers were summoned for questioning. They were looking hard but never found and will never find.

The current government's activities are not only ruining the image of Ukraine and Ukraine as a united nation, but also the profitable sectors of the economy that become paralyzed and eventually abandoned when the rule of law is ignored. Successful people prefer to leave Ukraine and our population is declining.

Indeed, not even our constitution has survived Yanukovych's contempt for law. To grab more power for himself, he simply junked it. His first breach of the constitution was signing a shameful Kharkov agreement with Russia which was nothing but a concession of Ukraine's national interests.

I know that Ukraine must seem like a faraway place and that our problems must also seem distant from the concerns of Americans at this difficult time for America. But just as no man is an island unto himself, no democracy is an island. When one nation is allowed to be hijacked, all democracies are threatened.

I am here today to answer your questions, Senator Shaheen, but also to plead that America do all that it can to preserve democracy in my country. My mother's plight has united many great, strong nations and amazing people, true heroes of our time to support political prisoners in Ukraine and fight for their release. It is paramount for Ukraine to have free and fair elections this fall, but it would be impossible without major opposition leaders.

I know my mother strongly believes in democratic future of Ukraine and has consistently fought for it and continues to do so

despite the risk for her life. Yanukovych wants her to write a letter publicly asking forgiveness and admitting her sins for him to pardon her. This will never happen as she never committed a crime, even according to the old criminal code. She will never let Ukraine fall back into the Soviet past. She is strong enough to do it and to win the elections if she is allowed to run. She has already succeeded in bringing fractioned opposition into one unified front.

The enemies of democracy and freedom should not be welcome in a democratic society unless they correct their mistakes. I ask you to consider all possible ways to influence and to explain to them the consequences of their actions. But most of all, I ask you to speak out loudly and clearly so that the people of my country do not feel abandoned and lose hope.

I want to thank you again and thank present administration, Secretary Clinton and President Obama for the support, but also mention that I really appreciate the statement made, according to the Associated Press, by the head of the security, by the head of the intelligence, Mr. Clapper, who said that democracy in Ukraine is under siege, and the charges against my mother and other political prisoners are politically motivated. And I just wanted to add that he is right in his statement.

Thank you very much for your attention.

[The prepared statement of Ms. Tymoshenko Carr follows:]

PREPARED STATEMENT OF EUGENIA TYMOSHENKO CARR

Thank you, Senator Shaheen. Thank you for granting me, a citizen of Ukraine, the privilege of coming here to speak to the Senate and through you, to the people of the United States. It is such an honor for me to be in this hallowed place, but I know that you are truly honoring my country and my mother by inviting me here to discuss with you this moment of grave danger for Ukraine's liberty, and our independence as a nation.

I am very glad to see that you are from New Hampshire, Senator Shaheen. My mother has always admired your State motto: "Live Free or Die."

I hardly know where to begin in discussing what is happening in Ukraine, given the daily threats to what is left of our democracy. Perhaps I ought to begin with the sad and amazing words taken from the Internet petition to free my mother, filed by Bishop Paul Peter Jesep, where he quoted the French thinker Montesquieu, and it says, "There is no greater tyranny, than that which is perpetrated under the shield of law and in the name of justice."

My mother has been illegally imprisoned, maltreated, and humiliated for 6 months by the regime which is trying to break her. This didn't break her. Her spirits are high, I can say that emphatically, but her health is failing. When I see her I must lift her from her bed; she can barely walk. Yet she still works, and not only to fight all the legal mud that is being thrown at her, but to unify all of Ukraine's democratic forces to challenge President Viktor Yanukovych and the repressive clan that rules with him.

My mother went into politics and put on her small shoulders the great task to free her country of injustice, absence of rule of law, and corruption left from Soviet past, so that we, young Ukrainians, would not need to devote our lives to do the same. She, unlike many young entrepreneurs in newly independent Ukraine, managed to build a big, successful corporation that helped restore the lost production and trade ties between ex-Soviet states. By doing that she uncovered most major failures of the old system. One of the major failures was and now remains—corruption. She chose to go against the system, refused to be part of corrupt schemes and, ended up facing the system alone, letting it destroy her business, putting her, her family, and friends behind bars and again on falsified charges.

Ten years ago, when my mother was Vice Prime Minister for the Energy Sector, she managed to remove corruption in oil, electricity, and gas trading and restored financial functioning in this sector. When the country's leadership resisted her reform efforts she organized massive protest movements. These protests later grew

into the Orange revolution, which she helped to lead and supported a person for President she believed would lead the country into democratic victory.

While Prime Minister, even though she had limited control but big responsibilities, she fought for major reforms and country's well-being. After she had removed the gas trading monopolist, RosUkrEnergo, she became enemy number one, to those who were trying to monopolize the energy market and who are in power now. She ended up illegally imprisoned, convicted, and tortured for not playing by the rules of their game, not complying with their orders that were detrimental to Ukraine.

Her cell in Kachanivska prison outside of Kharkiv, far from her family and friends, is not a dungeon you may be relieved to know. But the Yanukovych regime does not need to use medieval surroundings to get medieval results. Instead, they are using the modern techniques of sleep deprivation and intimidation to try and break her. They won't succeed. They are able to deny her a restful night's sleep because her cell is kept lit and she is filmed and watched 24 hours a day. Lately, they have introduced a closeup surveillance camera so that they can see what she is writing to me, to her husband, to her supporters and to the world.

They say it is done for her protection but I doubt it. When she fell unconscious in her cell due to a sudden mysterious loss of blood pressure, no help came, as her cellmate waited for 20 long minutes for a doctor to come in, who didn't even call an ambulance. She could've died that night. We found out about the incident 3 days later from her and her cellmate. Later, they would "lose" the video archive and would make her cellmate rewrite her witness statement.

You will not be surprised to learn that since her incarceration and the constant pressure the regime has placed on her, my mother has developed serious health problems, which have gone untreated. The regime will say that this is my mother's own choice. But can anyone seriously expect her to trust her physical well-being to a regime that directs doctors to falsify their diagnoses. Her only request is to be examined by her own doctors, or independent doctors from abroad. That does not seem unreasonable. People who keep her behind bars say: "Of course, yes, yes," then nothing happens. But no one should be surprised by that. As European leaders have learned all too well over the past year, Yanukovych can't be trusted to keep his word.

The intimidation that my mother is enduring comes from the fact that the regime and its prosecutorial henchmen keep piling criminal charge upon criminal charge, so that my mother and her small team of lawyers are simply overwhelmed. Against all legal norms, she is interrogated in her cell, sometimes for 12 or more hours consecutively. She is given inadequate time to review the documents that will be used against her in the next court hearing. It was clear at the first trial and at the appeal court that my mother was convicted before the evidence was heard. She was even denied a closing statement and evidence that would have proven her innocence was not admitted. Over 100 other motions made by the defence team were denied.

I have no doubts that the verdict against my mother was sought and approved by President Yanukovych. She is, according to recent polls, his main political opponent and more popular than him.

But I don't want you to think that this is only about my mother. It is not. Others are being repressed and unjustly imprisoned.

Her former colleague, Minister of Interior Yuri Lutsenko, has been imprisoned for over a year on charges that would be laughable if they were not so tragic. He is charged with hiring a driver past the retirement age and of spending \$2,000 over budget to mark Ukraine's national police day. I don't know American political practice very well, but I can't imagine a former cabinet minister be jailed for over a year without trial on such charges.

And there are others. The son-in-law of a Supreme Court Chairman was arrested on the day his wife gave birth, in order to intimidate that justice into resigning. Former Acting Minister of Defence Valery Ivashchenko has been imprisoned for almost 2 years, with his health severely deteriorating. They are all repressed and humiliated because of their political views. They courageously stood up to the regime and the injustice and fear it is sowing.

Unfortunately Ukraine turns into an authoritarian regime with leaders of the opposition sitting in jail.

What we are witnessing in Ukraine is the continuous abuse of the criminal justice system. Politically motivated prosecutions of former government officials, civil society activists and prosecutions of human rights defenders ignore the rule of law. I believe that the current situation, as described in the recent European Parliament and Parliamentary Assembly of the Council of Europe resolutions, requires urgent action.

To say that prosecution of the opposition is just a problem of the outdated legislation is to miss the obvious. It's really not so much the law at fault but how it is

enforced. Ukrainian authorities cynically blame the law while everyone knows that the prosecution system and the judiciary is under the complete control of the governing party via the so-called High Council of Justice, which is controlled by President Yanukovich. No law enforcement agency dares to make a move to prosecute the political opposition without instruction from the President.

Numerous legal infringements of the European Convention of Human Rights were listed and explained in three reports of the Danish Helsinki Committee, which was commissioned by the EU, to find the truth in the political, so-called “criminal” cases. This shows a systematic prosecution of the opposition or people close to it. And my mother is the main target.

What we are witnessing in Ukraine is such a twisting of the rule of law that it is impossible to distinguish illegality from legality, hard to see the line between law and abuse of law. My mother is imprisoned under an old Soviet Era Criminal code of 1960, that criminalizes political decisions. Even as out-dated as they are, they have been applied illegally in her case. It is important to know that there was no accusation or evidence introduced in the court that my mother personally gained from negotiating the gas deals and ending the European gas crisis in January 2009. Two letters filed by acting Minister of Justice, Mr. Lavrynovich, and ex-Prosecutor General, Mr. Medvedko, state the same. The state gas trading company “Naftogas” has recently issued a statement, that calculation of losses that my mother is charged with, was done under severe pressure from the General Prosecutor’s Office.

Politically motivated charges of which my mother was found innocent a decade ago have also been reopened, with no legal basis. Past Supreme Court rulings are being ignored. The statute of limitations is also ignored, as some of the charges now being brought against my mother for her business activities stem from 15 and 16 years ago. They have been reopened for only one reason, to destroy her reputation in the EU and the USA.

These new cases can take care of a few other problems for Yanukovich’s government. She will stay in jail despite the European Court of Human Rights’ decision, if it is in her favour. They put more psychological pressure on her by prosecuting and charging her husband, her father-in-law, and ex-colleagues.

Yanukovich and his team are trying to do everything possible to charge my mother with corruption. They hope the smallest hint of corruption will confuse Western politicians and make them turn their back on Ukraine and on her. And that’s what Yanukovich’s administration is trying to achieve. They spent millions of U.S. dollars hiring American audit companies in hoping they can find traces of her corruption. Hundreds of her ex-coworkers were summoned for questioning. They were looking hard, but never found anything and they never will.

The current government’s activities are not only ruining the image of Ukraine, and Ukraine as a united nation, but also the profitable sectors of the economy, that become paralyzed and eventually abandoned, when the rule of law is ignored. Successful people prefer to leave Ukraine and our population is declining.

Indeed, not even our Constitution has survived Yanukovich’s contempt for law. To grab more power for himself, he simply junked it. His first breach of the Constitution, was signing a shameful Kharkov agreement with Russia which was nothing but a concession of Ukraine’s national interests. The lease of Sevastopol naval base to Russia was supposed to give Ukraine a major discount on Russian natural gas, but at the end of the day Yanukovich got a price \$100 higher than my mother did in 2009. By this standard, he and not my mother should be in prison if the law was applied equally.

I know that Ukraine must seem like a faraway place, and that our problems must also seem distant from the concerns of Americans at this difficult time for America. But just as no man is an island unto himself, no democracy is an island. When one nation’s is allowed to be hijacked, all democracies are threatened. Ukraine exists in a fragile neighbourhood, where war broke out just a few years ago across the Black Sea in Georgia.

I am here today to answer your questions, Senator Shaheen, but also to plead that America do all that it can to preserve democracy in my country. My mother’s plight has united many great, strong nations and amazing people, true heroes of our time who are trying to get her and other political prisoners out of jail. We are hoping for your support. It is paramount for Ukraine to have free and fair elections this fall, but it would be impossible without major opposition leaders.

I know my mother will not let Ukraine fall back into the Soviet past. She is strong enough to do it and to win the elections if she is allowed to run. She has already succeeded in bringing fractioned opposition into one united front.

The enemies of democracy and freedom should not be welcome in a democratic society unless they correct their mistakes. I ask you to consider all possible ways to influence them and to explain to them the consequences of their actions. But

most of all, I ask you to speak out, loudly and clearly, so that the people of my country do not feel abandoned and lose hope.

Senator SHAHEEN. Thank you very much for being here and for your eloquent testimony. You point out, as the previous panel did, that this is about more than just the case of your mother, as difficult as that is personally, but it is also about selective persecutions and rule of law and really moving the democratic process backward in Ukraine, unfortunately, rather than keeping it moving forward.

Can you talk a little bit about how the public in Ukraine has reacted to your mother's imprisonment?

Ms. TYMOSHENKO CARR. Well, of course, during the beginning of the court, there were many people coming, joining us and the family and the team outside the court. And we could see many supporters even throwing themselves under the prison van when my mother was taken, when she was arrested on the 5th of August. But the amount of the military forces and police forces accumulated there brutally stopped any kind of protests by the court and actually the protests after that were maybe not so numerous but were definitely less in number than the military and the police.

A lot of statements and appeals to free her were made by the local elite, by the actors, intelligentsia, by the leaders of our civil society. I mean the support was and still remains unprecedented. I mean, the support is growing and she has become more popular now than Yanukovich and his party.

Senator SHAHEEN. You talked about the statement of National Security Director Clapper and I talked a little bit about the letter from Secretary Clinton to your mother. Are there other actions that the United States can take to demonstrate our support for your mother's release and how has your mother responded to some of those statements?

Ms. TYMOSHENKO CARR. Well, I think she only holds on because of the support of the democratic world now, and now we see that the pressure is building because the repressions are becoming worse in Ukraine. And of course, we are here to ask you to keep up this pressure because, as we see with other cases around the world of political prisoners, this helps. And the more we make sure that the regime and the people who are persecuting their opposition in Ukraine should know that they are under watch and their course of action should be changed.

We could also ask about restrictive measures to those in particular who are creating this political repression and cynically continuing to do so despite signals from the democratic world. Of course, it is my mother's and Mr. Lutsenko's and other prisoners' concern that Ukrainian nation does not suffer from such actions.

Senator SHAHEEN. Thank you.

I understand that your father was recently granted political asylum in the Czech Republic, I understood because there were some concerns that he might also be arrested. Are you hearing that about others who have been part of the opposition, and are you afraid for your own safety?

Ms. TYMOSHENKO CARR. Well, thank you for this question.

The old cases that have been reopened against my mother actually have been reopened also against the members of my family

and against her ex-colleagues and friends, and there is a tremendous pressure that these people will be put and were put under prosecution. And my grandfather, who is a victim of stroke—he can't even move—he has been put under investigation now with no legal basis as well.

At least the people who are under prosecution now—and every day we found more and more. They are mostly members of the opposition like the ex-governor of Kharkov, Mr. Avakov, who has been recently now also put under investigation. Her house has been searched by people in masks without any legal basis. And he had to flee the country. This, I am afraid, will continue.

Senator SHAHEEN. Thank you very much.

Senator Menendez.

Senator MENENDEZ. Thank you, Madam Chair. Thank you for holding this hearing. I think it is incredibly important. It seems to me that the Ukraine is at a crossroads. It is backsliding on human rights. Corruption is on the rise. The energy sector has great potential, but it seems to be largely a mess right now. And I think its political leaders have to decide where it wants to hitch its wagon in the future: to the West or to Russia.

It is of real concern to me, as someone who cares very much about democracy and human rights on this committee, that while the Orange Revolution was a success, its leaders, obviously, have not followed the spirit of that revolution at the end of the day. Freedom of the press is restricted. The 2010 local elections were largely a sham, and we have the present set of circumstances that we are talking about.

So I really appreciate the chair's leadership in calling this hearing.

Ms. Tymoshenko, I appreciate your coming before the committee. I personally believe your mother is a pioneering and incredibly strong woman who is an example for all people who care so much about their country that they are willing to endure extraordinary hardship and not just lay down the face of oppression. And I think having you in this panel at this hearing is an extraordinary way to inform the American people about your mother.

I am wondering what else you think my Senate colleagues, who might pay some attention here, can do to make sure that more people learn about her situation and keep the pressure on the Ukrainian authorities to seek her freedom?

Ms. TYMOSHENKO CARR. Thank you, Senator.

Well, I wanted to mention the resolution that was recently passed in the Parliamentary Assembly of the Council of Europe, and it states very strong points on ways out of this political crisis and names a few solutions which is humanitarian release, but actually unfortunately now it became not as much as a political but humanitarian problem for the people illegally put behind bars because of their health and maltreatment. But also it is calling President Yanukovich to use all constitutional means to solve the situation and to release the political prisoners. So we wanted to urge you to act upon this resolution and to join in the efforts with EU to follow this up and put the pressure more according to the points to the Government of Ukraine.

Senator MENENDEZ. Well, I appreciate that. I am concerned by the trajectory in the Ukraine, as the human rights situation worsens it is starting to remind me of the shameful conditions of the Soviet era in which the yokes were broken from. I know your mother worked very hard to throw off the tyranny of the Soviet past, and to see her and other opposition leaders in jail is a reminder that no one is safe in today's Ukraine. And so I hope, Madam Chairman, that for our bilateral relationship the State Department is focused on changing the course of events.

I am also very concerned about the growing economic relationship between the Ukraine and Russia, not in the context of a relationship that any two countries might have in a bilateral way, but especially as it relates to energy cooperation. That it is ultimately perverting the views of what the Ukrainian society and democracy should be about.

I know you are here primarily to focus on your mother's freedom, which I fully understand. I am wondering whether you have a view as to how we convince President Yanukovich to look at Ukraine's path in the future and economic prosperity, not to a return to Soviet-style centralized government, but to release the power and the dignity of the Ukrainian people as well as their ingenuity and intellectual ability to make for a better Ukraine.

Ms. TYMOSHENKO CARR. Thank you.

I wanted to stress again that this case is not just about my mother. My mother is just an example of such repressions that happen. As you said, if it is happening, it can happen to leaders of opposition, the people who are popular now and enjoy majority support in the country, then what can happen to a simple citizen of Ukraine? And this is the crisis that touches everyone, all the Ukrainian citizens, and actually the surrounding countries that Ukraine is really the remaining democracy and had a very strong chance to restore the democracy if the elections in autumn will happen and will be fair and free. And that could only happen if the opposition leaders are present there.

So when the Parliament or Assembly of the Council of Europe demanded for President Yanukovich to use all constitutional means to free political prisoners, it also urged him to amnesty these political prisoners and let them take the rightful parts in the parliamentary elections so that people of Ukraine can vote and choose and judge rather than the manipulated courts.

So I think the actions of Yanukovich and his team are now isolating Ukraine, and their playing off the interests against Europe and Russia just led us to more isolation. And I think that in order to save democracy, the only way is to urge and pressure our government and Yanukovich to change his course even maybe by applying certain restriction measures to their luxuries and wealth that they allow themselves, unfortunately, at the moment.

Also Transparency International recently made a statement of the massive corruption going on in preparation to Euro 2012, and there are many examples, unfortunately, of such corruption.

Senator MENENDEZ. Thank you.

Thank you, Madam Chair.

Senator SHAHEEN. Thank you very much, Senator Menendez.

And thank you, Ms. Tymoshenko, for being here.

Ms. TYMOSHENKO CARR. Thank you very much. It is an honor.
 Senator SHAHEEN. We will continue to follow what goes on in the
 Ukraine very closely.

I appreciate all of the witnesses' testimony today.

The record will be open until close of business on Friday.

At this time, I would like to close the hearing.

[Whereupon, at 4:14 p.m., the hearing was adjourned.]

MATERIAL SUBMITTED FOR THE RECORD

JOHNS HOPKINS CENTER FOR TRANSATLANTIC RELATIONS REPORT "TOWARDS AN OPEN UKRAINE: POLICY RECOMMENDATIONS"

Ukraine is one of the biggest, but also the second poorest country in Europe after Moldova. Given its territorial size, its geographic position, its almost 50 million population and its role as the main transit state for Russian oil and gas exports to central and western Europe, Ukraine has been a critical strategic factor for Euro-Atlantic and Eurasian security in the two decades of its independence. Today, it stands at a critical crossroads between developing a more open society increasingly integrated into the European space of democracy, prosperity and market-based economics grounded in respect for human rights and the rule of law, or an increasingly autocratic system, mired in the economic stagnation and political instability that is historically characteristic of Europe's borderlands. The choice is straightforward: Ukraine can either join the European mainstream or remain in a gray zone of insecurity between Europe and Russia.

The following recommendations outline how Ukraine could move away from immobility in the gray zone of domestic and international politics in which it finds itself, break its reform logjam and become an Open Ukraine—a democracy accountable to its people with a socially responsible market economy, governed by an administration that respects the rule of law, fights corruption and that can effectively implement needed reforms, and that is increasingly integrated into the European mainstream. These proposals are intended to expand the horizons of Ukrainian elites and opinion leaders and equip them with concrete reasons to move from short-term "momentocracy" to a more powerful vision that could guide their country. They also suggest ways Ukraine's neighbors can make the costs and benefits of Ukraine's choices clear.

POLITICAL REFORMS AND DEMOCRATIZATION

Ukraine's fundamental problem has been government dysfunction with leaders changing the constitution and election laws to deny power to the opposition or maximize power for themselves after elections. For Ukraine to have more effective governance, it must tackle seven interrelated challenges: switching from a presidential to a parliamentary political system, which is better suited for encouraging democratization; parliamentary and legislative reform; administrative reform; strengthening the rule of law; judicial reform; eradicating systemic corruption; and strengthening civil society and independent media.

- *Switch to a Parliamentary System.* The scholarly and policy debate has been extensive whether presidentialism or parliamentarism is best suited for countries in transition. Of the 27 post-Communist states, those with successful democracies in Central-Eastern Europe have adopted parliamentary systems while authoritarian regimes in Eurasia are primarily built on Presidential systems. Parliamentary systems have therefore been successful in promoting democracy and European integration than presidential systems. Over two decades Ukraine has had a presidential system for a decade (1996–2005) and again since 2010 when the Constitutional Court ruled under pressure from the executive that constitutional reforms adopted in December 2004 and going into effect after the March 2006 elections were "unconstitutional" (the same Court had refused to consider the same question under President Viktor Yushchenko). Presidentialism in Ukraine has stifled democratic developments, encouraged authoritarianism, promoted censorship of the media and became a nexus of corruption and illegality. Unelected regional governors, which duplicate elected local councils and mayors, have traditionally been at the center of election fraud, patronage and corruption. Abuses of presidentialism are clearly evident under President Viktor Yanukovych who has sought to maximize power at the expense of Parliament, the Cabinet, regions and local councils.

- *Parliamentary and Legislative Reform.* A strong and independent legislature is vital for jump-starting the reform process in Ukraine, yet the Ukrainian parliament turned into a rubber-stamp body with minimal political authority. Open Ukraine requires legislation, drafted in a transparent manner and be open to public deliberation, that would ensure a level playing field for competing political parties and their fair representation in the Parliament. The mixed system, adopted in November 2011 ignoring recommendations by the Council of Europe's Venice Commission, prevents this by skewing election results in favor of the Party of Regions. Provisions for full disclosure of candidates' funding sources and for challenging election results are essential for a democracy. The law should limit the ability of electoral commissions to interfere with the electoral process. The parliament's role in choosing candidates for Cabinet positions must be revived. It must also have strong oversight powers over the executive. Internal rules for coalition formation should prioritize party factions over individual deputies; the majority coalition should be formed based solely on parties elected to the parliament and not, as has been the tradition until now, of new parties and factions created after elections within the life of parliaments. There should also be a strict enforcement of the rules requiring deputies to vote individually (that is, a halt to the widespread practice of absentee voting) and disclose their personal incomes. The legislative process should be streamlined to improve the quality of legislation, possibly with the assistance of a Council of Foreign Advisers as was the case in the first half of the 1990s.
- *Administrative Reform.* The executive needs to be streamlined and decentralized to allow for more effective and accurate application of law. Many government ministries and state committees have overlapping responsibilities, duplicating functions and wasting resources.
- *Strengthen the Rule of Law.* In Ukraine the law continues to be viewed as an instrument of partisan governmental power. That which is construed to be "illegal" is whatever the government in power finds to be politically expedient. Procedural safeguards that are at the heart of a rule of law legal system are absent or ignored. Ukraine should fundamentally and profoundly transform its legal system if it is to spread European values and the rule of law. This means coming to grips with the legal system's catastrophic Soviet past; reforming the legal academy; and reforming the laws, procedures and mechanisms that remain in place as holdovers from Ukraine's totalitarian legacy. The Prosecutor's office needs to be overhauled or replaced. It has become highly compromised through corruption and under Yanukovich it has returned to its Soviet function as a state arm of repression.
- *Judicial Reform.* In a system that respects the rule of law, judges are professional, independent and impartial; they are not "accountable" to prosecutors. Prosecutors, in turn, do not act as the partisan political arm of the government. That is not the case in Ukraine today. The court system is endemically corrupt, incompetent and subject to commercial and political influence. Judges are routinely bribed to secure convictions or release of those charged or to alter title deeds in businesses in the widespread practice of corporate raiding. The President exerts political influence over the judiciary through the High Council of Justice, which is dominated by representatives of the ruling party and the Chairman of the Security Service, a direct conflict of interest. Ukraine's judicial system is in dire need of overhaul. The competence and jurisdiction of differing courts must be clarified. Training and selection of judges need to be made more transparent and meritocratic. Courts and judges require sufficient financing so as to discourage corruption. Concepts along these lines were approved five years ago, but have yet to be implemented. Court proceedings should be made more transparent, impartial, and effective. Procedures for mediation, independent arbitration, and enhanced use of notaries should be introduced. The power of the High Council of Justice to select or discipline judges should be transferred to a nonpartisan body comprising of authoritative and experienced judges, such as the High Qualifications Commission. The President's and Parliament's role in appointing or removing judges should be limited to mere approval of the Commission's recommendations with few clearly specified exceptions.
- *Eradicate Systemic Corruption.* The presence or absence of rule of law in a society is closely related to the level of corruption. Corruption has become endemic in Ukraine and is growing; it has degraded the country's governance, undermined its democracy, reduced public trust in state institutions, distorted the economy, discouraged foreign direct investment and been exported to Europe. To reduce corruption, Ukraine needs political leadership committed to and greater societal awareness that corruption impedes economic development, democratization and European integration. Organizations and individuals

committed to combating corruption need to mobilize behind specific, concrete initiatives—such as draft laws regarding codes of criminal procedure, professional ethics, and financial declarations by public servants. There is a wealth of international experience on how to reduce corruption, particularly from other post-Soviet or post-socialist countries; Ukraine should take advantage of such experience.

- *Strengthen Civil Society and Independent Media.* Media censorship under Yanukovich has not yet reached the level characteristic of Kuchma's presidency and is different in nature. Nonetheless, even though major media outlets in Ukraine have not yet fallen fully under the government's control, their independence has eroded substantially due to the excessive interference of owners keen to remain on good terms with the executive in news coverage. Television news is dominated by good media coverage of the authorities and either paints the opposition in a negative light or ignores them. Only print and Internet-based media still function as an instrument of accountability and a source of reliable news. Further international assistance to these media outlets is vital for supporting media pluralism.

ECONOMIC GROWTH AND MODERNIZATION

During the last two decades Ukraine has moved from a command administrative system but has still to arrive at the final destination of a market economy, despite recognition by the U.S. and EU in 2005–2006 of a “market economy” status. Ukraine's “partial reform equilibrium” is stuck between the Soviet past and European future and only concerted reforms will move the economy towards a European-style social market economy. Ukraine was hit hard by the global economic and financial crisis. The combination of weaker demand from Ukraine's trading partners, falling export prices, rising import prices and reduced access to international financial markets sliced GDP by 14.8 percent in 2009, and it will take until 2013 to recover that lost ground. Inflation is hovering above 9 percent and unemployment at 8 percent. The hryvnia, Ukraine's national currency, has lost almost half of its value against the U.S. dollar since July 2008. Pension expenditures increased from 9 percent of GDP in 2003 to 17.6 percent in 2010, one of the highest levels in the world—yet pension fund revenues cover only two-thirds of expenditures, the rest being covered by transfers from the budget. Demographic pressures will increase the burden on the working population even further. Ukraine's successful accession to the WTO in May 2008, after 15 years of negotiations, was an isolated foreign policy achievement of the Yushchenko presidency. President Yanukovich launched reforms in summer 2010, but implementation has been very slow due to a lack of political will, populist concessions ahead of parliamentary elections in 2012, and a deficit in government capacity to draft EU-compatible legislation. The refusal to implement further stages of the 2010 MF agreement, including raising household utility prices for a second time, has led to the suspension of IMF tranches. It is imperative that Ukraine return to the IMF agreement in order to introduce reforms and boost foreign investor confidence.

The following areas are urgent on the road to an Open Ukraine:

- *Pension reform* has been long delayed, yet is critically important for restoring Ukraine's financial sustainability. The IMF demand to raise the pension age from 55 to 60, as part of the July 2010 agreement for Ukraine, was adopted by parliament in 2011.
- *Simplified taxation and licensing*, including simplified accounting of revenues, should be introduced for small and medium businesses. Previously introduced reform principles must be made operational, such as the “one-stop shop” for registering and licensing businesses. Any permits other than those directly stipulated by the law should be abolished. Remaining permits and activities subject to mandatory licensing should be compiled into a single piece of legislation.
- *Corporate legislation reform.* The Economic Code of Ukraine is a confused mix of Soviet command economy elements and market institutions. It should be abandoned. The Civil Code of Ukraine should comply with EU Directives on company law. The new law on joint stock companies must be amended to comply with EU Directives on company law, and internationally accepted principles of corporate law and corporate governance best practices, by replacing the profit-extracting legal model for such companies to one of investor protection. Modern legal structures are needed for small and medium enterprises and domestic and foreign investors via a separate limited liability company law that provides for an efficient system of governance, control bodies and reliable protection of minority participants. The law on re-establishing solvency of a debtor or declaring a debtor bankrupt must be amended to prevent abuses by related-party

(conflict of interest) transactions and by enhancing the personal responsibility (liability) of company officers and the bankruptcy commissioner.

- *Agricultural Reform.* The moratorium on trading agricultural land should be ended and free access of citizens and agricultural producers to land resources ensured. Prices for agricultural land should be liberalized and work on establishing a land cadastre should be continued. Consideration should be given to allowing foreigners and foreign-owned companies to own some agricultural land deposits (e.g. up to 10 percent of land in each region [oblast]). Such reforms would attract more capital, help to import and disseminate modern agricultural technologies, and facilitate greater access to international channels of distribution of agricultural products. Moreover, Ukraine has a strong interest in the liberalization of global trade in foodstuffs. Administrative restrictions on exports should be abandoned and delays in VAT refunds to exporters urgently fixed. Targeted income support measures should be introduced for poor families to compensate for the rise in foodstuff prices. Social support and re-training programs for redundant agricultural workers need strengthening. Ukrainian law on state support of agriculture should be consolidated into one piece of legislation. An information service for agricultural markets should be established to monitor and forecast global food markets and collect information on standards in other countries. Sanitary and safety standards should, as a matter of high priority, be aligned with international and EU norms. Establishing WTO-compatible free trade agreements with other non-EU trade partners is in Ukrainian interests.

ENERGY EFFICIENCY AND INDEPENDENCE

Ukraine's energy sector is plagued by aging infrastructure, widespread corruption, political manipulation of utility rates and statistics, and minimal foreign direct investment. Although Ukraine has oil, gas and coal reserves, it is one of the most energy inefficient economies in the world and only able to cover 47–49 percent of its energy demand. Gas imports account for 7–8 percent of Ukrainian GDP and are clearly unsustainable. Around half of Ukraine's total energy consumption comes from natural gas. Although Ukraine has large conventional and unconventional gas resources, it will be unable to boost domestic gas production without deeper and comprehensive reforms and significant foreign direct investment. While it has coal reserves for another 100 years, the productivity of coal extraction is very low and its production costs are high. Coal mining is highly dangerous and Ukraine has one of the highest rates of accidents in the world, close to Chinese levels. Without restructuring, modernization and liberalized market reforms, Ukraine will be unable to cope with its energy supply challenges, including decreasing its extremely high energy consumption.

Moreover, Ukraine is deeply dependent on Russia, which supplies 85–90 percent of Ukraine's oil imports and 75–80 percent of its natural gas imports. In addition, in 2010 Ukraine signed agreements with Russia to build two nuclear reactors and to deliver only Russian fuel to all Ukrainian reactors until they cease operation. These arrangements have stunted necessary domestic reforms and weakened Ukraine's bargaining position vis-a-vis Russia, particularly with regard to gas imports and transit. Moscow uses the gas issue to exert pressure on Kyiv over various bilateral issues. Kyiv signed a gas agreement with Moscow disadvantageous to Ukrainian interests, yet Moscow insists that any review of that agreement would only be possible if the state gas company Naftohaz Ukrainy merged with Gazprom, ownership of the Ukrainian GTS was transferred to Gazprom, or if Ukraine joined Russia's Customs Union with Belarus and Kazakhstan. Yanukovich has publicly rejected such conditions as "humiliating," and Ukrainian law prevents the selling, renting or leasing of critical energy infrastructures to foreign countries and companies. Russia is pushing for a new gas consortium over the GTS acquiring majority control, leaving Ukraine just 20 percent of its shares. Such an arrangement would question Ukrainian sovereignty and independence, threaten efforts at deeper democratic and market reforms, and pose considerable challenges to EU energy security and foreign policy. Giving up sovereignty over the GTS is seen by the Nikolai Azarov government as a better option than implementing unpopular IMF reforms (such as raising household utility prices to reduce Naftohaz Ukrainy's contribution of 2 percent to the budget deficit) as Russia will provide gas at a subsidized price in a new contract.

An Open Ukraine requires Kyiv to boost domestic energy efficiency; eradicate endemic corruption in the energy sector; adopt all of the elements in the European Energy Community that it signed on to; and diversify its energy mix and strengthen its national security by reducing its dependence on Russia.

- *Boosting Energy Efficiency.* Ukraine's energy infrastructure is inefficient and wasteful. The country has invested little in energy efficiency, yet such efforts are critical to Ukraine's energy security. A major step forward would be for Kyiv to take the politically unpopular decision to raise gas prices for households and utilities, which are heavily subsidized (a first increase was undertaken in 2010 but the Cabinet balked at taking a second increase ahead of the 2012 elections). The domestic political fallout could be mitigated by compensatory measures for low-income households. Artificially low gas prices in the past have dampened any incentive to boost domestic gas extraction or to improve efficiency and a new gas contract with a return to subsidized prices will again freeze Ukraine's inefficient and wasteful energy sector. These have fuelled high-price gas imports from Russia, compromising Ukraine's national energy security and its overall economic competitiveness. Most Ukrainian energy producers have been unable to finance even their replacement investments because their revenues from domestic sales do not cover their costs. The only real beneficiary of the artificially increased demand for gas is the Russian state gas company Gazprom. In contrast, the Ukrainian state gas company Naftohaz Ukrainy needs budgetary support because of highly subsidized utility prices.
- *Eliminate endemic corruption in the energy sector.* The lack of strong market reforms is linked to systemic corruption and a nebulous legal and legislative framework, which have unnerved the markets and scared away foreign investment. If Ukraine is serious about its energy security, it will work to eradicate systemic corruption and establish clear legal ground rules for investments in its energy sector.
- *Adopt European Standards.* On February 1, 2011, Ukraine became a full member of the European Energy Community (EEC), which extends the EU's internal energy market to Ukraine. It is strongly in Kyiv's interest to live up to the obligations such membership entails, including full adherence to anticorruption norms of European law and implementation of the EU's third energy package of unbundling energy production from its distribution in gas and electricity markets by January 2015. The implications of this third package are far-reaching and often not fully understood. EEC members are obliged not only to revise their laws and to adopt secondary legislation but also to promote fundamental changes in market structures by introducing market rules and legislation. Central European practice offers Ukraine a means to implement EU *acquis* in energy despite its dense interwoven ties with Russia, whereby long-term Russian contracts could enjoy temporary derogation from EU regulations.
- *Diversify.* Energy cooperation with the EU and other foreign partners could help Kyiv diversify its fossil-fuel imports and its overall energy mix and reduce its dependence on Russian gas and oil. Ukraine has excellent wind resources and possesses significant unconventional (shale) gas deposits. Ukraine's Parliament has already passed more investor-friendly legislation to open its domestic natural gas market to foreign shale gas and coal-bed producers. Exploitation of these reserves could give buyers more leverage to renegotiate the high Russian oil-indexed gas price demands that are included in long-term contracts, and could drastically reduce Ukrainian dependence on Russian gas. Moreover, the confluence of EU energy market liberalisation, stepped-up antitrust enforcement, and the emergence of unconventional gas supplies in European markets may prompt Russia to increase its own efforts at energy efficiency and to invest in its own unconventional gas resources, which may be much cheaper than investing in the extremely costly Yamal Peninsula and Shtokman projects, and perhaps lead to greater reciprocity and symmetry in both Ukrainian and EU energy relations with Russia. On the other hand, if Ukrainian and European gas policies remain hostage to long-term contracts, "take-and-pay" clauses and oil price linkages, even though international gas markets have de-linked from oil price markets prospects are dim for new and sustainable integrated energy and climate policies.

A STRATEGY FOR THE WEST: OPEN DOOR, STRAIGHT TALK, TOUGH LOVE

Given Kyiv's turn to autocracy, it would be tempting for Western policymakers, besieged with other priorities, to turn their backs on Ukraine. This would be a strategic mistake. The United States and the EU have a strong stake in an Open Ukraine secure in its borders and politically stable. A more autocratic, isolated and divided Ukraine would be a source of continued instability in the heart of Europe. It would make it harder for Georgia and Moldova to pursue their pro-Western course. It would diminish prospects for reform in Belarus. It would perpetuate a gray zone of borderlands on a continent that has until now enjoyed an historically

rare moment to transcend the tragedies of its past divisions. Western leaders should avoid falling into the same short-term mindset that currently befalls Ukrainian elites, and adopt a broader strategic perspective.

Ukraine is beset by regional and cultural divisions that will have a profound impact on the country's political evolution. As Ukrainians debate the norms that should guide their society, normative consistency by their Western partners can provide orientation and strength. This does not mean softening norms or conditions for effective engagement, but it does mean being clear about the benefits that could result from adherence to such norms. The West has a vested interest in ensuring that Ukrainian leaders understand the opportunities and consequences that could result from their decisions, and should be consistent in setting forth a coherent and coordinated framework of relations that can help shape those choices.

As Ukraine struggles to find its place in 21st century Europe, therefore, the door to that Europe should be kept open. There is no consensus at present within the EU about the possibility of ultimate Ukrainian membership. Yet if the door to Europe is closed, the Ukrainian Government will have little incentive to advance political and economic reforms, and could either turn to alternative geopolitical frameworks or remain isolated in a geopolitical gray zone, generating instability and insecurity throughout its wider neighborhood. Clear EU support for the principle of the Open Door, on the other hand, can help Ukrainians build the courage and political will to implement tough reforms at home—not as a favor to others, but because they understand it is in their own interest to do so. have an effect on internal developments in Ukraine. And if Kyiv begins to implement reforms that promise to move Ukraine toward an open, democratic and market-based society, such actions can in turn affect what leaders in EU capitals are willing to offer Ukraine.

Based on the continued validity of the Open Door, Western strategy should advance along two tracks that work together. The first track should demonstrate the genuine interest of North America and Europe in close and cooperative ties with Ukraine, and should set forth in concrete terms the potential benefits of more productive relations. They should make it very clear that Europe and the U.S. stand as willing partners if Ukraine decides to invest in its people, forge effective democratic institutions, build a more sustainable economy grounded in the rule of law, tackle endemic corruption, diversify and reform its energy economy; and build better relations with its neighbors. U.S. and European efforts should seek to strengthen democratic institutions; promote the growth of civil society, especially independent media; support economic reforms; provide technical assistance for energy reforms; and facilitate interaction between Ukrainian citizens and their neighbors, including visa liberalization, business and student exchanges. If Kyiv signals by its actions that it is interested in deepening its engagement with the West, North America and the EU should be equally ready to engage while pushing for more comprehensive economic and political reforms aimed at facilitating Ukraine's integration into Euro-Atlantic institutions.

At the same time the U.S. and Europe should make it clear that if Ukraine's leadership abuses the rule of law, facilitates corruption, fails to advance effective reforms, and resorts to intimidation tactics, as is currently the case regarding the Tymoshenko conviction, the prospects for an open, prosperous and secure European Ukraine will fade. International efforts to deter Ukraine's further backsliding should combine the threat of costly sanctions toward the ruling elite with calls for unencumbered engagement of citizens in political life, targeted assistance to key civil society actors and specific proposals for reforms that could pave the way toward a more open Ukraine. Outside pressure on Ukrainian authorities clearly has its limits, of course, and the main brunt of responsibility for the evolution of Ukraine's political regime lies with domestic actors. However, as the Orange Revolution demonstrated, Western influence can restrict the range of options available to authorities who choose to fight their own people, and can help to weaken the internal legitimacy of some of the government's antidemocratic policies.

In short, a proactive Western policy might be best characterized as Open Door, Straight Talk, and Tough Love. Such an approach requires persistence, patience, and consistent engagement on the following priorities:

- *Support Civil Society.* By monopolizing political space and marginalizing the opposition, Ukrainian authorities undermine the reform process and weaken public trust in government activities. Transformative reforms of the magnitude needed in Ukraine require support across the country and from political forces on both sides of the major political divide. North American and European governments and international organizations should stress the critical importance of a free and fair parliamentary campaign in October 2012 ahead of the process and cast a spotlight on even minor violations of democratic procedures. They should weigh in against any signs of abuse of state-administrative resources or

biased limitations on opposition activity or campaign financing, in order to prevent further emasculation of civic groups or further closure of the civic space for independent political action. They should encourage Kyiv to lower barriers to independent media and to ensure media access to the opposition. They should encourage active involvement of opposition parties and leading NGOs in the process of drafting reform strategies and ensuring government accountability at all levels. International organizations should provide technical assistance in training election observers and electoral commission members representing all political parties.

- *Advocate Institutional Reform.* Western governments and international organizations, particularly representatives of post-Communist countries, should advocate targeted institutional reforms aimed at establishing a legally grounded balance of authority among the executive, legislative, and judicial branches; increasing the government's accountability to the Parliament; and strengthening oversight agencies, such as an independent anticorruption bureau, accounting chamber, the office of the ombudsman and the financial regulatory body. They should offer concrete suggestions to depoliticize the judiciary and the civil service, which are still dominated by vested political and business interests.
- *Support Ukrainian Efforts to Tackle Systemic Corruption.* The West should develop consistent medium- to long-term strategies to help Ukraine fundamentally reform its legal system and to reduce systemic corruption.
- *Offer Technical Support for Reforms.* Ukraine's Cabinet lacks staff to develop draft legislation and government employees are not qualified enough to develop modern economic legislation. Provision of technical assistance will be crucial to Ukrainian political, administrative, economic and energy reforms.
- *Be Clear about the Consequences of Undemocratic Activities.* North America and the EU demonstrated impressive unanimity in condemning the trial and conviction of Yulia Tymoshenko in October 2011 and issued strong demands for her release and resumption of her ability to participate in the political life of the country. They should link such condemnation with concrete measures that would raise the cost to Ukrainian authorities of further undemocratic steps. Such measures should include suspension of Ukraine's membership in the Council of Europe; introducing visa bans for those officials responsible for ordering the crackdown against protesters or persecution of the opposition; a freeze on negotiations for an Association Agreement (including the DCFTA); and limiting bilateral contacts with top Ukrainian officials and state visits to Kyiv. At the same time, the West must maintain its clear message that the door to Europe and Euro-Atlantic institutions remains open should Ukraine work to create the conditions by which it could in fact walk through that door.
- *Make Better Use of the Eastern Partnership.* In order to articulate a policy for neighbors for whom membership is a distant goal, the EU launched the Eastern Partnership in 2009 with Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. Yet instead of using the EaP to deepen engagement in Ukraine and other Partnership countries, EU officials dampen their own influence with rhetoric that distances themselves from the prospect of a space of stability, prosperity, and democracy as far across the European continent as possible. The EU should be far more proactive in its use of the Eastern Partnership.
 - *Combine Broad Visa Liberalization with Targeted Restrictions.* Kyiv has a strong interest in visa liberalization with the EU; one in every ten Schengen visas goes to a Ukrainian. The EU should calibrate its approach by offering a generous broad-based approach to visa liberalization for Ukrainian citizens (particularly young people and students) and facilitating special possibilities for study abroad and cultural, educational, business and local government exchanges, so that the average man and woman in the street, especially in the east and south of the country, can gain personal awareness of the benefits to be derived from closer relations; This strategy of maintaining an Open Europe for Ukrainian citizens should be combined with targeted visa bans and restrictions for Ukrainian officials engaged in undemocratic or illegal activities.
 - *Engage Ukraine Actively via a Transcarpathian Macro-regional Strategy.* New EU macro-regional strategies, for interest with the Danube states, offer a potential model for engagement with Carpathian states. This special area is surrounded by four EU member states, namely Poland, Slovakia, Hungary, and Romania. All four are neighbors to Transcarpathia and to each other by cultural, historical and ethnic ties. The Transcarpathian Region could be developed into a strategic Ukrainian bridgehead for integration into Europe. It is already linked by broad-gauge railway to Hun-

gary and Slovakia, and its special location and multiethnic traditions are convenient for offshore zones and assembling factories.

- *Support Ukraine's democratic development.* The proposed European Endowment for Democracy should disburse aid to Ukrainian civil society and encourage and defend Ukraine's democratic development to monitor Eastern Partnership policy toward Ukraine. The EU should ensure that its assistance is coordinated with U.S. and Canadian efforts to ensure they are complementary and not duplicative.
- *Use the Association Agreement and DCFTA to Advance the Broader Strategy.* With neither NATO nor EU membership on the horizon, the primary vehicle for keeping open the prospect for Ukraine's closer ties to the European mainstream is the Association Agreement and Deep Comprehensive Free Trade Agreement (DCFTA) currently being negotiated between Ukraine and the EU. However, the EU has frozen the final negotiations slated to lead to initialing of the agreement, due to concerns in various EU member states about the political repression and serious violations of rule of law—particularly the arrest and trial of former Prime Minister Tymoshenko—that have occurred since President Yanukovich took office. The DCFTA offers the EU a mechanism by which it can calibrate a two-track approach to Ukraine. Initial but . . . [insert language here]. The DCFTA is in fact a new generation economic agreement ranging far beyond a standard free trade agreement, not only liberalizing 95 percent of bilateral trade but aiming for deep and comprehensive harmonization of economic legislation. The opportunities for Ukraine are immense, given that the EU is the largest single market in the world, about 130 times larger than the Ukrainian domestic market and 15–20 times larger than the Russian, Belarus, and Kazakhstan markets combined. The benefits to all sectors of Ukrainian society of joining the DCFTA far outweigh the small number of benefits from entering a free trade agreement with the CIS.
- *Keep NATO's Open Door while Engaging Closely.* Ukrainian membership in NATO has again been pushed off the international agenda for the immediate future. While the door to NATO membership remains open to Ukraine (and Georgia) in principle, in reality there is little support in Western capitals for further enlargement of the Alliance in the near term. Focusing on NATO membership now will only inflame the political atmosphere and make progress in other important areas more difficult. The main obstacle is not Russian opposition—though this is an important factor—but low public support for membership in Ukraine itself.¹ On the other hand, Ukraine was the first CIS state to join the Partnership for Peace, has been one of the most active participants in its exercises, and the NATO-Ukraine Charter on a Distinctive Partnership gives Ukraine a unique status. Rapprochement with NATO increased Ukraine's freedom of maneuver and led to an improvement of ties with Moscow. Ukraine contributes to nearly all U.N. and NATO peacekeeping operations, in some cases more than some NATO members.

Nonetheless, as long as only about a quarter of the population favors membership, prospects for Ukraine being admitted to NATO remain remote. In the meantime, other steps in the security field could be taken to strengthen cooperation within the NATO-Ukraine Partnership in areas where there is mutual interest while encouraging progress toward more open democratic institutions. Such activities include engaging the Ukrainian military in a dialogue on military reform; continuing to involve Ukraine in peacekeeping operations, both within NATO and bilaterally; enhancing cooperation on nuclear safety; further developing their crisis consultative mechanism; and further developing ties in such areas as civil-military relations, democratic control of the armed forces, armaments cooperation, and defense planning. Information campaigns should highlight how NATO provides practical help to Ukraine in emergency situations, cyber-security, security to the Euro-2012 football championship, orders for Ukrainian industry, and support for the training of Ukrainian officers. A critical area of concern, as Ukraine turns autocratic, is democratic control and reform of internal security forces (Security Service, Interior Ministry, border guards, customs officers, Prosecutor's office) whose numbers far outweigh the armed forces, are used in political repression and involved in corruption.

- *Engage Ukraine on Its Own Merits, Not as a Subset of Russia Policy.* A successful Euro-Atlantic policy of engagement toward Ukraine cannot be a subset of Western policy toward Russia; it must consider its own substantial interests in

¹ Popular support for NATO—22–25 percent and below 10 percent in the Russified areas of eastern Ukraine—is much lower in Ukraine in comparison to other states in Eastern Europe. See the chapter by F. Stephen Larabee.

an open Ukraine on their own merits. At the same time, the United States, Canada, and European allies should send a clear message to Moscow that they oppose any attempts to undermine the sovereignty of Russia's neighbors, including threats to their territorial integrity. Upon entering office Yanukovich acted quickly to remove key irritants with Moscow, such as the international campaign to recognize the Holodomor (1933 artificial famine) was genocide; shelving plans to join NATO; and ramming through an unconstitutional measure that prolongs the stationing of the Russian Black Sea Fleet in Crimea to 2042–2047. Russia has demanded more, however, including Ukrainian membership in its CIS Customs Union or Russian ownership of the Ukrainian GTS. It is clear that Russia finds it very hard to respect Ukrainian sovereignty and independence. Yanukovich has received little in return for his efforts at appeasing Moscow, and despite his interest in closer relations with Russia, he has also shown that he still prefers being the leader of a sovereign country to being the governor of a Russian province. Nonetheless, he faces strong and consistent Russian pressure on key issues; Western policy should make the implications of his choices clear. For instance, Ukraine faces a choice between entering the CIS Customs Union of Russia, Belarus and Kazakhstan, which is likely to block all fundamental domestic market reforms; or proceeding with the kinds of domestic reforms that would enable Ukraine to reap the benefits of the DCFTA with the EU and closer integration with the European mainstream, including visa liberalization, competitiveness, transparency and accountability in Ukraine's energy markets, greater investments in infrastructure and new technologies, and reduced energy dependency. The first choice demands far less than the second choice in terms of domestic reform, but the second choice promises substantially greater rewards. And joining the Eurasian Customs Union with countries that are not members of the WTO (Russia may soon join, but not Belarus and Kazakhstan) would require a renegotiation of Ukraine's membership in the WTO and end Ukraine's hopes for an Association Agreement and DCFTA.

We have no illusions about the difficulty of realizing the vision of an Open Ukraine. Yet the gains, both for Ukraine and for Europe, would be considerable. Ukraine's choices are it's to make, but it is the West's responsibility to make the costs and benefits of those choices clear and credible to Ukraine's leaders and its citizens..

LETTER FROM AMBASSADOR OLEXANDER MOTSYK, EMBASSY OF UKRAINE,
WASHINGTON, DC



*Embassy of Ukraine
Washington, D.C.*

February 1, 2012

**Dear Chairman Shaheen, Ranking Member Barrasso,
Members of the Committee,**

I would like to begin by thanking you for your interest in Ukraine which today's hearings demonstrate, and by assuring you that this interest in developing the Strategic Partnership between our nations is mutual.

Strengthening cooperation with the U.S. is one of Ukraine's key foreign policy priorities, along with our relations with the European Union and the Russian Federation. The Ukraine-U.S. Charter of Strategic Partnership signed in 2008 serves as a roadmap of our cooperation, which is based on common interests and values.

We highly appreciate the U.S. consistent support of Ukraine as it continues on the path to freedom, democracy and prosperity, and genuinely value America's assistance with our comprehensive reforms, as well as in overcoming the consequences of the Chornobyl disaster.

Ukraine has always been a reliable partner of the U.S. not only bilaterally, but also internationally. By giving up its nuclear weapons and joining the Nuclear Nonproliferation Treaty Ukraine helped to shape a new international order – more peaceful, stable and full of hope. Ukraine's recent decision to get rid of all of its stocks of highly-enriched uranium announced at the Washington Nuclear Security Summit in 2010 was a historic step and reaffirmation of Ukraine's leadership in nuclear security and nonproliferation.

Today, Ukraine is the only non-NATO country participating, side by side with our American partners, in all NATO-led as well as UN peacekeeping operations – in Afghanistan, Iraq, Kosovo, in Africa and the Mediterranean, which clearly demonstrates our commitment to regional and global stability. Ukraine reaffirms its commitments to address jointly other threats to the international peace and stability: tackling terrorism and cyber threats, expanding energy and food security, dealing with global recession and climate change, preventing hunger and pandemic diseases.

I am sure that our Government's vision of the future Ukraine is no different from the vision that our partners in the U.S. and the E.U. have. We all want to see Ukraine as a successful, democratic, and prosperous nation. We share the same values. We believe that the rule of law, free market economy and strong civil society are key tools to produce successful governance and economic growth.

**Honorable Senator Jeanne Shaheen
Honorable Senator John Barrasso
Members of the Senate Foreign Relations Committee
U.S. Senate
Washington, D.C.**

Over the two decades of Ukraine's independence, we have managed to achieve a lot, but much more yet needs to be done. The Government of President Viktor Yanukovich initiated an ambitious and long overdue reform agenda – from social security to taxes, from health care to judiciary and from military to education.

Ukraine moved swiftly to reform her domestic natural gas market, get a real energy independence, and became a member of the European Energy Community. We passed the Access to Public Information Act, a bipartisan piece of legislation emulating in many ways its American template. For the first time in twenty years of independence Ukraine passed the Tax Code that established strict but transparent rules in the Government's taxation policy. In the effort to streamline the Government, make it leaner and cut through red tape we reduced the regulations and quotas have been cut in some spheres by up to 60 percent. The bureaucracy has been cut by 30-50%.

We have achieved a sustainable economic growth, a balanced financial situation and stable exchange rate. Ukraine has been excluded from the FATF blacklist.

Ukraine has moved up 15 places in the World Press Freedom Index published last week, reflecting an improved media landscape in the nation during what proved to be a year of critical world attention.

Political reforms, including constitutional and electoral ones, are being done in close cooperation with the Venice Commission and are based on transparency, publicity and legitimacy. Last November, our Parliament passed the Election Law that was prepared by a special commission headed by a representative of the opposition.

We attribute particular significance to ensuring the free, transparent and democratic conduct of elections in accordance with the highest global standards. 2010 Presidential elections were recognized as free and fair. We welcome the widest possible participation of international observers, including from the U.S., in our Parliamentary elections that will take place in October 2012.

A key element in efficient protection of human rights in Ukraine is the ongoing judicial reform aimed at bringing our judicial system in line with the European values. The Criminal Code of Ukraine which has been recently criticized indeed needs to be amended as its present revision dated at least two-three decades. Previous governments did not recognize this problem and left it unchanged until now, when President Yanukovich's Government adopted serious steps to bring its provisions to modern standards.

Against the backdrop of these ambitious and painstaking reforms initiated by President Yanukovich, Ukraine needs clarity and understanding in relations with her strategic partners, first and foremost, the U.S. and the EU.

Successful reforms are impossible without effectively combating corruption. In recent years, Ukraine recognized this problem but it failed to take actual steps, and therefore corruption was unbridled.

Now the tides finally started turning, and in today's Ukraine we have finally reached the point where no public servant can afford engaging in corruption without risking immediate and severe consequences. With the new Anti-Corruption Law in action, there is a good chance that the whole corruption "ladder" from top to bottom will start crumbling.

Over four hundred high-ranking and midlevel members of the current Government have been indicted of corruption. Almost every day brings ever new reports on grafters apprehended in different

parts of the country. The opposition claims all of them are political victims and had nothing to do with the evil of corruption.

We understand all concerns being expressed by our foreign partners in regard to the complexity of internal developments in Ukraine, including ongoing trials. At the same time, we regret that some tend to view the trials of members of the former government in political rather than legal context. Among hundreds of criminal cases only a handful of the defendants belong to the previous Cabinet.

The verdict against Mrs. Tymoshenko, which has been appealed, found her guilty not of political decisions, but of violating specific criminal laws, which has led to very grave consequences for the Ukrainian economy. Any attempts to link this case to the European aspirations of Ukraine are artificial. All issues concerning cooperation between Ukraine and the EU must be solved within the economic and political frameworks, and criminal cases within the legal framework.

However, we do recognize the shortcomings of Ukraine's judiciary, including the frequent instances of corruption. The present Government is the first in many years to take immediate and harsh action to tackle this problem. That is why, bringing Ukraine's judicial system in line with the European values is a key element of the ongoing reform process. In particular, the criminal justice reform is being implemented in close cooperation with the Council of Europe.

There have indeed been times when our relations with the West, particularly with the EU, were more filled with mutual compliments than they are now. To the contrary, now we are more focused on the substance, and we believe that now we have very good chances to build a reliable, mutually beneficial and future-oriented relationship with the EU.

We have adopted a groundbreaking Action Plan on visa-free regime between Ukraine and the EU and completed negotiations on the Association Agreement, including the Deep and Comprehensive Free Trade Area. Ukraine is moving towards its goal of a full integration with the European Union, which is and has always been the top foreign policy priority of our country.

Ukraine's place is in Europe, and Europe is not whole without Ukraine. We are interested in the EU, and we know that the European Union is interested in Ukraine, the largest country on the European continent, with its rich human and economic potential.

We appreciate the U.S. support of Ukraine's European aspirations and are determined to continue our comprehensive cooperation and frank and productive dialogue in the spirit of Strategic Partnership between our nations.

Sincerely yours,



Olexander Motsyk
Ambassador