

**Statement before the Senate Foreign Relations Committee
Subcommittee on European Affairs**

***Developments in Ukraine and
Implications for U.S. Policy***

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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 two 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. Yanukovich until he alters his internal political policies. The West should seek to crystallize in Mr. Yanukovich'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-à-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 long-standing 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 two 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 multi-year 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 relations 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 Yanukovich 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. Yanukovich 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 run-off round by about three 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 Yanukovich 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 anti-government protests. SBU officers also reportedly approached non-governmental 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 seven 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 decision-making." 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. Yanukovych.

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 convicted her. The European Union responded by postponing a planned Yanukovich 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 Yanukovich, 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 Yanukovich. 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 Yanukovich with President

Obama or Vice President Biden, but without success. The lack of enthusiasm to meet with Mr. Yanukovich undoubtedly reflects the U.S. government's critical attitude toward the democratic developments that have taken place the past two 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. Yanukovich'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. Yanukovich'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. Yanukovich 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. Yanukovich 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. Yanukovich 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. Yanukovych. 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 Yanukovych 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. Yanukovych 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. Yanukovych 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. Yanukovych'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. Yanukovych has reasons to opt for the latter course. The West should face him with the choice as clearly as possible.

Thank you for your attention.

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