

AFTER THE RADA ELECTIONS: UKRAINE'S CHALLENGES AND CHOICES

Zenovia Sochor Parry Memorial Lecture, February 13, 2006

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I am very pleased to be here to honor the memory of Professor Zenovia Sochor Parry. I knew Zena when we were graduate students and then fellows at Harvard and I admired her work greatly. I am sure that she would have been deeply involved in the tumultuous developments that have taken place in Ukraine in the past year and would have written about them with the great insights she always had.

The subject of my talk today—Ukraine's March 26 Rada elections—is an issue that could have a major impact not only on Ukraine itself, but on its immediate neighborhood, on wider Europe and on the transatlantic relationship. The stakes in this election's outcomes are high for the Ukrainians, for Europe and the United States, and for Russia. But before we turn to the elections, we should review how Ukraine has evolved since Yushchenko's election.

The Orange Revolution

Ukraine's Kuchma regime was similar to most of the governments in the post-Soviet space. These governments, to a greater or lesser degree, remain non-transparent, corrupt and dominated by biological and political clan rule, insider deals and differing degrees of political repression. Elections have increasingly become a tool to legitimize the ruling elite and manage successions. Seats in legislatures are often for sale and freedom of expression is limited.

The response by populations in some of the states of Eurasia has been the phenomenon of "color" revolutions, such as Georgia's Rose Revolution, Ukraine's Orange Revolution and Kyrgyzstan's Tulip Revolution. They share common features:

- Perception of fraudulent presidential or parliamentary elections.
- An incumbent with low credibility and little public support.
- Regime unwillingness or inability to use the level of violence required to suppress large-scale civil disobedience, often due to divisions within the security forces.
- A political opposition capable of challenging the regime and able to organize around a mobilizing issue.
- Public and elite support for the Opposition in urban centers, especially the capital.
- Support for the Opposition from at least one prominent media outlet and from key economic interests.
- Use of modern technology, especially text-messaging, to circumvent regimes attempts to block Opposition efforts to organize and publicize large-scale activities.

- Assistance of international NGOs and activists from states within the region in training civil society, especially youth, in democratization tactics.

Scholars have argued about whether the events in Georgia, Ukraine and Kyrgyzstan—and there are major differences between them—can truly be classified as revolutions. One can debate the use of the concept, but it is undeniable that each popularly-induced regime change has learned something from the previous one.

Of all the colored revolutions, Ukraine's undoubtedly had the most ambitious agenda. It is important to remember why Ukrainians camped out in the Maidan during the freezing weeks of December 2004 to protest what they viewed as a fraudulent presidential election. The Kuchma regime, although it secured for Ukraine its sovereignty and a multipolar foreign policy, was perceived as being increasingly corrupt and repressive. The media were given instructions—*temniki*—on how to cover news, and insider clan politics were the norm. Ukraine's political system had created a strong presidency, but relations between the President and the Rada were increasingly dysfunctional. However, it was unclear for a few weeks after the revolution began what the ultimate outcome would be. Without the intervention of Polish President Kwiasnewski, Lithuanian President Adamkus and EU High Commissioner for Foreign Policy Solana, the outcome might have been different. The refusal by the authorities to use force against the protestors was key in facilitating the success of the revolution, as was the self-discipline of the protestors.

What was the orange agenda? President Viktor Yushchenko and Prime Minister Yulya Tymoshenko promised to end politics as usual, to tackle corruption, ensure media freedom, reform the economy and bring justice to those guilty of crimes under the Kuchma regime, including those who killed the journalist Hyhoriy Gongadze and those who poisoned Yushchenko. Certainly, the new EU members—in particular Poland and the Baltic states—hoped that the Orange Revolution would bring Ukraine into Europe and change the centuries-old pattern of Russian interactions with its neighbors. The stakes for the United States were also high—a democratic Ukraine could have a stabilizing effect on the difficult Eurasian neighborhood.

Russia's view of the 2004 events was quite different. Unprepared for Yushchenko's victory after supporting his rival Viktor Yanukovych, the Kremlin understood that if Ukraine succeeded in moving closer to Europe, the correlation of forces, to use an old Soviet term, in Eurasia would change. Hence the Russian claims, supported by some in the West, that the Orange Revolution was paid for and orchestrated by Washington and Brussels, especially those new EU countries who were formerly members of the Warsaw Pact.

What Happened to the Orange Revolution?

Virtually all experts and observers agree that the original goals of the Orange Revolution have not been achieved, although they disagree as to the reasons for its derailment. They also agree that, as in many revolutions, the original expectations were unrealistic, and the greater the expectations, the greater the ensuing disappointment.

There is a general consensus that Yushchenko and Tymoshenko were mismatched from the start. What united them in destroying the old system was insufficient to unite them once they took power. Moreover, the very structure of the Ukrainian political system made conflict between the president and prime minister very likely. The fissiparous coalition that ousted the Kuchma regime could not maintain cohesion because Ukraine's bicephalous constitution produced a dysfunctional power-sharing arrangement between the president and the Rada. Kuchma was able to manipulate the system, but a more democratic leadership could not. The constitutional reform reducing presidential powers that was passed before the revolution created considerable uncertainty. Moreover, the inherent institutional tensions between Yushchenko and Tymoshenko were exacerbated by personality conflicts, particularly between Tymoshenko and National Security Advisor Poroshenko, both of whom competed for the President's ear. But Yushchenko spent much time abroad and did not resolve the conflicts. This ultimately led to the collapse of the government in September, and Tymoshenko's suspicion of those in the Yushchenko camp who had ousted her. With so much political infighting, the reform agenda was neglected.

Despite these problems, however, some elements of the orange agenda have been implemented. In general, Yushchenko has proven more successful in areas that require lifting controls, as opposed to implementing effective reform measures. There have been significant advances in democratic freedoms and civil society, especially in the media. Ukrainian media are raucous, lively and do not shy away from controversy or criticizing the President himself, which is almost unique in the post-Soviet space. In 2006, Freedom House upgraded Ukraine from "partly free" to "free." So the good news is that the media is free to report on corruption. The bad news is that there is still considerable corruption on which to report.

Thus, the major domestic gain of the Orange Revolution that Ukraine is a pluralistic society where debate is open and civil society is becoming more vocal and better organized and everything indicates that the Rada elections will be free and fair.

The other major achievement of the Orange Revolution has been improved ties with the West. Yushchenko has successfully pursued an agenda of closer integration with Euro-Atlantic structures. Ukraine signed a three-year cooperation plan with the EU, in December 2005, it received market status from

the EU and the United States soon followed suit. This should increase trade between Ukraine and the West. Kyiv has introduced a visa-free regime for EU citizens, despite the lack of reciprocity from Brussels. Yushchenko's policies have had an impact on European public opinion, which is more supportive of Ukraine joining the EU than of Turkey.

Yushchenko's April 2005 visit to Washington underscored his commitment to closer links with the West. He broke with Kuchma-era politics by supporting US views on Cuba and Belarus in the U.N. Human Rights Commission. Foreign Minister Tarasyuk has actively pursued closer ties with NATO and at the April 2005 Vilnius summit NATO invited Ukraine to begin an intensified dialogue.

Despite these accomplishments, the negative ledger is rather long. Corruption has not been effectively tackled and, as the recent gas dispute with Russia shows, Ukraine's economy operates with large areas of nontransparent activity. Each side in Team Orange has accused the other of corruption. Much of Ukraine's economy remains dominated by a few oligarchs and by insider deals.

The failure to introduce market reforms was exacerbated by the conflicting agendas of the Yushchenko and Tymoshenko camps. She initially promised to revisit 3,000 privatizations and she began to impose price controls on meat and gasoline. Her economic policies were more populist than market-oriented. Since her resignation, there has been some improvement in the economic agenda, particularly the reprivatization of Krivoiryzhstal and its sale to a British steel magnate who has pledged to improve the performance of the Ukrainian steel sector. Nevertheless, foreign investors remain wary of putting money in Ukraine because of corruption and uncertainty about future reprivatizations.

There has been minimal political or legal reform, and two outstanding legal/criminal issues need to be addressed: Yushchenko's dioxin poisoning and the Gongadze murder, both of which were major issues during the 2004 contested election.

The gas crisis with Russia, the dismissal of the government by the Rada in January, the upcoming Rada elections and uncertainty about the constitutional reform passed in 2004 have frozen the political situation until March 26. The gas crisis highlights a number of key issues: Ukraine needs to improve its energy efficiency; it needs to reform and make transparent its energy sector, as the role of the shadowy gas middlemen companies Rosukrenergo and Ukhazenergo illustrate; and it needs to find sources of energy other than Russia.

How will this affect the upcoming elections? Whatever happens during the Rada elections, a coalition government will have to be formed and, under the constitutional reforms that came into effect in January 2006, the president will lose power to the prime minister and the Rada. Polls indicate that three parties—Yushchenko's Our Ukraine, Yanukovich's Party of Regions and the Tymoshenko

Bloc, will gain most of the votes, with the socialists and communists also clearing the 3% threshold.

If the elections do not produce a clear majority, what kind of coalition could be formed? The first option would be to reconstitute Team Orange and secure a coalition agreement between Yushchenko, Tymoshenko and Mroz's socialists. However, one assumes that Tymoshenko would insist of the position of prime minister and this could prove problematic, since Yushchenko fired her from this position last year. A coalition between Our Ukraine and Party of Regions is also possible, but it would further disillusion supporters of the 2004 revolution and diminish Yushchenko's support. A coalition between Tymoshenko and Yanukovych is also possible in theory, but the question of who would become prime minister could be divisive.

The Post-Election Agenda

Ukraine's major challenge remains to implement the Orange agenda—that is, to build the institutions of a transparent, law-based, democratic market society. Ukraine is a pluralistic country with freedom of expression, but it needs to institutionalize the December 2004 agenda so that the system does not depend on a few individuals. President Yushchenko said in his 2006 address to the nation that he wanted to introduce a new constitution that will be put to a popular referendum, and he seeks the input of NGOs, local government agencies and outside experts. The 2004 constitutional reform that came into effect in January 2006 remains controversial because it diminishes the power of the presidency, and the central question is how the President, the Rada and legal bodies will interact to strengthen the institutions of an effective democratic system. It is an enormous challenge, but Poland and the Baltic states have experienced these challenges of transition and stand ready to assist Ukraine.

Closely related to issues of governance is the question of corruption. According to international ratings, Ukraine has moved from 122nd place to 107th place on the corruption scale (with 1 being the least corrupt.) That is an improvement, but there is a long way to go. In February the Financial Action Task Force removed Ukraine from the blacklist of countries that fail to tackle money-laundering but, as Interior Minister Lutsenko reported in a recent speech in Washington, although police corruption is being tackled, purchasing places on the Rada lists for the upcoming election in order to gain immunity from prosecution remains a widespread practice.

The third challenge is economic reform. Ukraine has progressed some way, but more reform is needed, including finalizing the legislation for Ukraine to join the WTO. The next government will have to decide whether or not to follow policies advocated by Tymoshenko, which are not market-friendly, or whether to continue creating a more transparent market economy. The Ukrainian economy holds considerable potential for foreign investors, but, in the absence of guarantees for

property rights and uncertainty about whether there will be more reprivatizations, foreign companies remain wary. The energy sector is in need of major reform. Ukrainians were, to quote officials, addicted to cheap energy which they have used inefficiently. A Ukrainian steel factory, for instance, uses 16 times more energy per unit of production than does, for example, a German steel factory.

These domestic challenges frame Ukraine's future foreign policy choices:

US-Ukrainian Relations

The American government is committed to supporting the agenda of the Yushchenko government and has pursued an active policy during the run-up to the election, engaging in a dialogue with all three major political parties. The stakes for Washington in Ukraine's future course are high. If Kyiv succeeds in consolidating a democratic, market society moving closer toward Euro-Atlantic integration, this would represent a sea-change in the political landscape in Eurasia, serving as an example to other newly-independent states seeking to overcome their post-Soviet legacies.

The Bush administration also supports Ukraine's aspirations to join NATO, but has reiterated that NATO is a "performance-based organization" and Ukraine will have to meet the required standards in order to qualify for a Membership Action Plan (MAP). A recent Atlantic Council report on Ukraine's Euro-Atlantic ambitions emphasized that Ukraine needs a more effective and coherent foreign policymaking process if it wants to achieve its goals. It spells out how an effective interagency process would work and urges Kyiv to improve its policy coordination mechanism.

A more fundamental question about Ukraine's NATO aspirations is the attitude of the population. Ukraine has done well in advancing its military readiness, but less than 30% of the population supports NATO membership. A major challenge after March will be to convince the Ukrainian population that NATO membership would be advantageous. Other Central Europe NATO aspirants had to conduct a public relations campaign before they joined NATO and it can be done, but it will take time and effort and commitment from the new government.

EU-Ukraine Relations

As events during the Orange Revolution showed, the enlargement of the EU to Central Europe and the Baltic states represented a new departure for European foreign policy. The new EU members are champions of greater activism in Ukraine and of promoting a rapprochement between Brussels and Kyiv that could eventually lead to Ukrainian membership. Other EU states are visibly less enthusiastic about this prospect, because of problems associated with digesting the last tranche of new members and internal strains within the EU over the failure to adopt a constitution, as well as the difficult issue of Turkish

membership. President Yushchenko has actively pursued rapprochement with Europe, but Kyiv feels that the EU has not been as receptive to Ukrainian overtures as it might have been. Some EU members are also wary of taking steps that might antagonize Russia.

As of now, Ukraine is included in the EU's New Neighborhood policy, which is designed for those states that are not candidates for membership. Brussels and Kyiv have signed a partnership agreement which expires in 2008, and the EU's policy toward Ukraine appears to be one of "constructive ambiguity". Membership for Ukraine is not on the table for the foreseeable future but neither is it definitively ruled out. Thus it is possible that Ukraine could join NATO without a clear perspective for joining the EU, which would be a new precedent for a post-communist state.

Ukraine-Russia Relations

Ukraine's location and history mean that it has to and will continue to have to engage with Russia. Putin's Russia, which has now regained its great power status through energy, not military might, views Ukraine through two major lenses: since Putin himself has said that the collapse of the Soviet Union was the greatest catastrophe of the twentieth century, Russia finds the idea of a sovereign, independent Ukraine moving closer to Europe and the United States and away from the Russian orbit very difficult to accept. In the minds of many Russians, Ukraine's development calls into question Russia's sense of itself as a nation and a state. Secondly, the Kremlin watched the events of the Orange Revolution with dismay, and it fears the spread of "colored" revolutions into other Eurasian states. Thus, Ukraine is in some ways a domestic and foreign policy anti-model for Russia.

There are five major issues in Russian-Ukrainian relations that the new government will have to address:

- *The Single Economic Space.* Since the Orange Revolution, Russia has been pressuring Ukraine to commit itself to the SES. The SES was founded in September 2003 between the Presidents of Russia, Belarus, Kazakhstan and Ukraine to promote the exchange of goods, services and capital among ties members. Yushchenko has been ambivalent, citing its potential incompatibility with closer ties to the EU.
- *Energy.* The January deal between Russia and Ukraine that resolved the cutoff of Russian gas remains controversial. It will have to be revisited and clarified. The role of the middleman companies that transport gas from Central Asia to Ukraine highlight issues of non-transparency and corruption in the agreements. The January events were only the first round in what will be an ongoing process of renegotiating Ukraine's energy relations with Russia.

- *Trade.* Russia represents 40% of Ukraine's imports and 19% of its exports and is one of Ukraine's largest trading partners.
- *Regional organizations.* Will Ukraine continue in the CIS and how will Russia view the Community of Democratic Choice (of which Ukraine was a co-founder), Kyiv's active participation in GUAM and its role in trying to resolve the Transnistrian problem, all of which could challenge Russian influence in the post-Soviet space?
- *The Black Sea Fleet.* How will Russia and Ukraine continue to deal with this issue and how will it affect Ukraine's NATO aspirations?

Underlying all of these issues is a basic challenge for Ukraine: Russia and Ukraine remain interconnected at many levels, through a common history, through education, intermarriage and also through close business ties between Russians and Ukrainians. How will President Yushchenko and his new government balance the need for productive relations with Russia with the desire to promote Kyiv's Euro-Atlantic aspirations? This will partly depend on what policies Russia follows and, in the run-up to the 2008 Russian presidential elections the situation could become more complicated.

Conclusion

Ukraine thus faces many serious challenges after the Rada elections. The new government will have to make difficult choices that will rile some vested interests and the process of becoming a viable democracy with effective governance and a thriving market economy is one of decades, not years. Moreover, the coalition-building process that will follow the election could slow down progress on reform. Russia will remain a challenge for a Ukraine that pursues a reformist, pro-Western course. The United States and Europe remain committed to working with Ukraine to pursue its reform agenda, but there is a limit to what any outside country can do to influence the situation. Ultimately Ukraine's own choices will determine whether it fulfills the promise of the Orange Revolution.