

CRS Report for Congress

Received through the CRS Web

Ukraine's Orange Revolution and U.S. Policy

April 1, 2005

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Summary

In January 2005, Viktor Yushchenko became Ukraine's new President, after massive demonstrations helped to overturn the former regime's electoral fraud, in what has been dubbed the "Orange Revolution," after Yushchenko's campaign color. The "Orange Revolution" has sparked a great deal of interest in Congress and elsewhere. Some hope that Ukraine may finally embark on a path of comprehensive reforms and Euro-Atlantic integration after nearly 15 years of half-measures and false starts. Others are interested in the geopolitical implications of a pro-Western Ukraine in the former Soviet region and in relations between Russia and the West. Some analysts detect a new wave of democracy sweeping the post-Soviet region.

Yushchenko has said that his key domestic priorities include reducing the size of the unofficial, "shadow" economy, maintaining macroeconomic stability, and fighting corruption, a major problem in Ukraine. Other critical priorities include improving the independence and effectiveness of the judiciary and attracting foreign investment. Yushchenko has vowed to prosecute those guilty of crimes, including fraud during the election, the 2000 murder of Ukrainian journalist Georgi Gongadze, and an attempt on Yushchenko's life during the campaign, which has left him disfigured. In foreign policy, Ukraine seeks closer ties with the European Union, NATO, and the United States, with the goal of eventual NATO and EU membership. Yushchenko has said that he views Russia as a "strategic partner" of Ukraine, but that integration with the West will supercede Russian-led integration efforts.

The Bush Administration has hailed the "Orange Revolution" as a part of a wave of democratization sweeping the region and the world, and has proposed a modest increase in U.S. aid to Ukraine. Experts believe that prompt U.S. and international assistance may be needed to help the new government to boost public support before crucial March 2006 parliamentary elections. The United States has also expressed hopes that the United States and Ukraine will work together more effectively on such issues as weapons proliferation and trafficking in persons. The Administration has downplayed Yushchenko's decision to honor a campaign pledge to pull Ukraine's troops out of Iraq by the end of this year. The first stage of the withdrawal was implemented in March 2005. President Yushchenko visited the United States on April 4-7.

During the Ukrainian presidential election campaign and during the ensuing electoral crisis, Congress approved legislation calling for free and fair elections in Ukraine and urged the Administration to warn the previous regime of possible negative consequences for Ukraine's leaders and for U.S.-Ukraine ties in the case of electoral fraud. The 109th Congress will consider aid funding for Ukraine, and may take up extending permanent Normal Trade Relations to Ukraine, terminating the application of the Jackson-Vanik amendment to Ukraine, which bars permanent NTR status for countries with non-market economies that do not permit freedom of emigration. This report will be updated as needed. For background on the Orange Revolution, see CRS Report RL32691, *Ukraine's Political Crisis and U.S. Policy Issues*.

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Ukraine's Orange Revolution and U.S. Policy

Introduction

Ukraine's "Orange Revolution" has sparked a great deal of interest in Congress and elsewhere. Some hope that Ukraine may finally embark on a path of comprehensive reforms and Euro-Atlantic integration after nearly 15 years of half-measures and false starts. Others are interested in the geopolitical implications of a pro-Western Ukraine in the former Soviet region and in relations between Russia and the West. Some analysts detect a new wave of democracy sweeping the post-Soviet region, from the "Rose Revolution" in Georgia in November 2003-January 2004, to the "Orange Revolution" in November 2004-January 2005, and possibly to the overthrow of the regime in Kyrgyzstan in March 2005.

In 2004, many observers believed that Ukraine was at a key period in its transition that could shape its geopolitical orientation for years to come, in part due to presidential elections held on October 31, November 21, and December 26, 2004. In their view, the elections could move Ukraine closer to either integration in Euro-Atlantic institutions, real democracy and the rule of law, and a genuine free market economy; or they could move Ukraine toward a Russian sphere of influence, with "managed democracy" and an oligarchic economy. For the past decade, Ukraine's political scene had been dominated by President Leonid Kuchma and the oligarchic "clans" (regionally based groups of powerful politicians and businessmen) that supported him. The oligarchs chose Prime Minister Viktor Yanukovich as their candidate to succeed Kuchma as President. The chief opposition candidate, former Prime Minister Viktor Yushchenko, was a pro-reform, pro-Western figure.

International observers criticized the election campaign and the first and second rounds of the election as not free and fair, citing such factors as government-run media bias in favor of Yanukovich, abuse of absentee ballots, barring of opposition representatives from electoral commissions, and inaccurate voter lists. Nevertheless, Yushchenko topped the first round of the vote on October 31 by a razor-thin margin over Yanukovich. Other candidates finished far behind.

After the November 21 runoff between the two top candidates, Ukraine's Central Election Commission proclaimed Yanukovich the winner. Yushchenko's supporters charged that massive fraud had been committed. Hundreds of thousands of Ukrainians demonstrated against the fraud, in what came to be known as the "Orange Revolution," after Yushchenko's chosen campaign color. They blockaded government offices in Kiev and appealed to the Ukrainian Supreme Court to invalidate the vote. The court invalidated the runoff election on December 3, and set a repeat runoff vote on December 26. Yushchenko won the December 26 re-vote,

with 51.99% of the vote to Yanukovich's 44.19%. After several court challenges by Yanukovich were rejected, Yushchenko was inaugurated as President of Ukraine on January 23, 2005. On February 4, 2005, the Ukrainian parliament approved President Yushchenko's appointment of Yulia Tymoshenko as Prime Minister of Ukraine by a vote of 373-0. Tymoshenko is an energetic, charismatic leader with a sometimes combative political style who campaigned effectively on Yushchenko's behalf. She is a controversial figure due in part to her alleged involvement in corrupt schemes as a businesswoman and a government minister during the Kuchma regime.¹

During the campaign, Yushchenko accused the authorities of trying to poison him. On September 6, 2004, he fell seriously ill, shortly after attending a dinner with the chief of the Ukrainian security services. After his condition worsened, he was rushed to the Rudolfinerhaus medical clinic in Austria. Doctors were unable to determine the cause of the illness at the time. Yushchenko soon resumed campaigning, but his face was, and remains, severely pockmarked. On December 11, doctors at Rudolfinerhaus, reportedly with the help of American experts, confirmed that Yushchenko had been poisoned with a massive dose of the toxic substance dioxin. Ukrainian law enforcement officials are investigating the poisoning plot, and say they have developed information on who was behind the plot and who carried it out, but have not disclosed details. Ukrainian officials have hinted that the poison may have come from Russia, although the Ukrainian government has not accused the Russian government of complicity in the plot.

Ukraine's Priorities

President Yushchenko has set an ambitious set of domestic priorities for the new government. Yushchenko has said that his key domestic priorities include reducing the size of the unofficial, "shadow" economy, especially by reducing taxes and eliminating loopholes and exemptions for favored businesses. Another key goal is to maintain macroeconomic stability, although this effort may be challenged by campaign promises to increase social spending. Yushchenko has pledged to fight corruption, a critical problem in Ukraine, including through administration and civil service reforms. Other priorities include improving the independence and effectiveness of the judiciary; and attracting foreign investment.² Yushchenko has vowed to prosecute those guilty of crimes, including fraud during the election, the 2000 murder of Ukrainian journalist Georgi Gongadze, and the attempt on Yushchenko's own life.

Yushchenko has said that he does not envision wholesale reversal of the sometimes dubious privatization deals of the past 15 years (a possible relief to some oligarchs) but that he will revisit highly questionable privatizations that have occurred in recent years, which he has estimated at about 20-30 firms. One

¹ For more background on the Ukrainian presidential election, see CRS Report RL32691, *Ukraine's Political Crisis and U.S. Policy Issues*, by Steven Woehrel.

² Text of President Yushchenko's speech to the World Economic Forum, Ukrainian TV Kanal 5, as carried by the BBC Monitoring Service, January 28, 2005.

privatization, the huge Kryvrizhstal steel works, has already been overturned. According to press reports, international steel companies, including U.S. Steel and Russian firms, may be interested in bidding on the firm if it is re-privatized. However, Prime Minister Tymoshenko has launched a much broader inquiry, which could involve over 3,000 firms. Some Western observers have expressed concerns that if large numbers of privatizations are called into question, it could have an unsettling effect on Ukraine's investment climate. Potential long-term investors could fear that their property could be expropriated if politically-determined "rules of the game" are changed once again in the future, instead of firmly establishing the rule of law.

Foreign Policy

Yushchenko's main foreign policy priority is expanding ties with the EU, seeking EU designation as a market economy as a first step. After Ukraine receives World Trade Organization membership, which Yushchenko wishes to achieve by the end of 2005, Ukraine will seek a free trade zone with the EU, and by 2007 start talks on EU membership, an objective Yushchenko believes can be achieved within a decade. However, EU officials have tried to downplay the chances for Ukrainian membership in the EU, instead calling for practical steps to improve relations within the context of the EU's European Neighborhood policy, which could include EU designation as a market economy, assistance for Ukraine's WTO candidacy, a feasibility study for an EU-Ukraine free trade area, and other forms of assistance.

President Yushchenko has said that he favors eventual Ukrainian membership in NATO, although he has given much more emphasis to the goal of EU membership. The Kuchma regime, at least until the presidential election campaign, when it recanted under alleged Russian pressure, claimed to seek membership in the Alliance, and the United States expressed support for Ukraine's aspirations. Ukraine and Ukraine formed in a NATO-Ukraine Commission to foster cooperation. In 2002, the two sides developed a NATO-Ukraine Action Plan to outline goals and objectives for political and military reform in Ukraine. However, Ukraine's lack of progress on reforms under Kuchma made such efforts largely ineffective. New Defense Minister Anatoli Gritsenko has said that NATO membership is not a priority for Ukraine at present, given other, more urgent challenges facing the Ukrainian armed services, such as dealing with socio-economic problems in the military and reducing the size of the armed forces.

Ukrainian officials may have taken this position partly to avoid alarming Russia, but also, as Yushchenko has noted, because public support for NATO membership in Ukraine is still rather low. According to a February 2005 poll by the Fund for Democratic Initiatives, 48% of those polled opposed NATO membership for Ukraine, while 15% were in favor and 36% were undecided.³ Ukrainian officials believe an extensive public information effort will be needed to strip away misinformation and Soviet-era prejudices toward the Alliance. Some observers have speculated that a stronger push for NATO membership may have to wait until after the March 2006 elections, in order to avoid giving the government's opponents a

³ Agence France Presse wire service dispatch, February 23, 2005.

campaign issue, particularly in eastern Ukraine, where pro-Russian sentiments are strong.⁴

Despite Russia's strong support for his opponent during the campaign, Yushchenko has said that he favors good relations with Russia. In his first foreign visit as President, Yushchenko held meetings with Russian President Vladimir Putin in Moscow on January 24. Yushchenko called Russia a permanent strategic partner of Ukraine, but insisted that he will subordinate participation in the Russian-led Single Economic Space (SES) and the Commonwealth of Independent States to his goal of Euro-Atlantic integration. Specifically, Ukrainian leaders have said that they may consider a free trade zone within the SES, but not a customs union or a currency union.

Russian observers have expressed concern about how Ukraine's new European orientation and reprivatization plans will affect bilateral economic ties. A very large proportion of Ukraine's energy supplies comes from Russia or is transported through Russia. Russia is also Ukraine's largest export market, absorbing 18% of Ukraine's exports in 2003. 78% of Russia's lucrative natural gas exports to Western Europe transit Ukraine.⁵ Russia and Ukraine have established a joint consortium to supply Western Europe with gas, but Ukraine is seeking to include western European firms as well. Russian businessmen could see advantages in a more favorable climate for foreign investment in Ukraine. Ukraine has moved to assure Russia that Ukraine's NATO aspirations would not affect the status of the Russian Black Sea Fleet in Ukraine, which holds a lease there through 2017.

One possible area of controversy between Moscow and Kiev could be policy toward post-Soviet countries. Moscow may be uneasy about Ukraine's possibly more active role in the GUUAM group of countries (an acronym based on the countries forming it: Georgia, Ukraine, Uzbekistan, Azerbaijan and Moldova). Although having widely varying political and economic conditions, these countries have in common a desire to maintain their sovereignty that they sometimes see threatened by Russia and the Russian-dominated CIS.

One particular area in which these countries could work together is diversification of sources of energy and the pipelines needed to transport that energy. Ukraine is currently studying how to move forward with a plan to extend into Poland an oil pipeline that currently runs from an oil terminal at the port of Odesa to the town of Brody. The Odesa-Brody pipeline could be used to transport Caspian Sea oil through Georgia, across the Black Sea in tankers to the Odesa-Brody pipeline and into Western Europe, thereby reducing dependence on Russian oil, and reducing Russia's control of regional pipelines. However, due to a decision of the previous government, the pipeline currently runs in "reverse mode," transporting Russian oil to the Odesa terminal and out to the Mediterranean Sea.

⁴ Discussions with Ukrainian experts, February 2005.

⁵ "EIA Country Analysis Brief: Ukraine," January 2005, Department of Energy website, [<http://www.eia.doe.gov/emeu/cabs/ukraine.html>].

Ukraine's new government supports Moldova's desire to reintegrate its breakaway Transnistria region, including Moldova's call for direct U.S. and EU involvement negotiations on this issue and the rapid withdrawal of the 1,500 Russian troops from Transnistria. More crucially, Ukraine could crack down on the lucrative, often illegal trade between Ukraine and Transnistria, thereby putting heavy pressure on the Transnistria leadership. Russia would likely view Ukraine's stance as an effort to undermine Moscow's influence in Transnistria.

Another potential problem for Russian-Ukrainian relations is the fear expressed by some Russian observers that Ukraine may try to "export" its democratic revolution to other countries in the region, including Belarus and even Russia itself. Although Ukrainian leaders deny such intentions, Ukrainian NGOs that played an important role in the Orange Revolution, including the youth group "Pora" have expressed such goals. Moreover, the very existence of a successful democratic revolution could raise expectations in other CIS countries, particularly if Ukraine's reforms result in greater prosperity for Ukrainians.

Prospects

Ukraine's new leaders have several things in their favor in their efforts to reform Ukraine and move it closer to the West. Ukraine's new leadership is largely competent, fairly young, and highly motivated. Yushchenko enjoys strong public support at present. The former regime's supporters have been thrown into disarray by their unexpected defeat, and many of them appear to be currying favor with the new regime. With the exception of the Communist Party, which has declined in importance since independence, the opposition does not have a set of principles to provide cohesion. Ukraine is also benefitting from substantial goodwill from the United States and other Western countries, in marked contrast to the former regime, which had isolated itself from West by its actions and had become more dependent on Russia.

However, Ukraine faces many obstacles as well. Many of its goals, such as rooting out corruption, may be easy to proclaim but very difficult to achieve. It is possible that some in the new leadership, many of whom served in the old regime, may be tempted to engage in corruption and use that regime's quasi-authoritarian methods. Yushchenko is working to form a pro-presidential party from elements of his electoral bloc and other elements, some formerly closely allied with the old regime. The emergence of contending factions within the new leadership could also cause it to lose cohesion. The Communists and remaining supporters of oligarchs from eastern Ukraine could attempt to obstruct the government's legislative agenda. This could slow progress at least until the March 2006 parliamentary elections. A related issue is whether those businessmen who supported the "Orange Revolution" will expect to become the "new oligarchs" of Ukraine, and, if so, what impact a possible struggle between "old" and "new" oligarchs over Ukraine's economic resources will have on reform efforts.

Regional differences in Ukraine may present another problem. Ukrainian officials have sharply warned leaders in eastern Ukraine that any talk of separatism

would be severely punished. Yushchenko's electoral support was overwhelmingly concentrated in western and central Ukraine. In a poll taken just over a week after Yushchenko took office, two-thirds of Ukrainians expressed trust in Ukraine's new leader. However, in western and central Ukraine, this figure was 85%, while in southern Ukraine it was 54% and in eastern Ukraine only 39%.⁶

Due in part to the previous regime's propaganda that attempted to portray Yushchenko as anti-Russian and an extreme nationalist, even as a Nazi, the new government may face a challenge in gaining the support of people in eastern and southern Ukraine. Purges of the local administrations in eastern Ukraine and proposed Central European-style "lustration" laws to bar from public office those involved in electoral fraud or cooperation with Russian intelligence could further increase tensions with the elites in these regions. A large-scale redistribution of property from oligarchs in eastern Ukraine to those supporting Yushchenko could produce similar effects. More generally, people from eastern and southern Ukraine may fear a transfer of government resources from their regions, which they view as more economically productive, to poorer regions in western Ukraine. Opponents of the current government may try to play on linguistic fears in eastern Ukraine, where Russian is overwhelmingly spoken. Ukrainian officials have assured people in eastern Ukraine that no efforts would be made to force use of the Ukrainian language on people in their region, for example by shutting down Russian-language schools and media.

There is also the possible impact of the constitutional changes approved by the Ukrainian parliament in December 2004 as part of a political compromise to end Ukraine's political crisis. The reforms, which will reduce the powers of the presidency, which will go into effect in September 2005 if a new law on local government is passed and in January 2006 if it is not. Under the reform, the Cabinet of Ministers will be the supreme executive body in Ukraine. The President will have the power to nominate the prime minister, the foreign minister, and the defense minister, subject to the approval of parliament. The rest of the government will be nominated by the prime minister and approved by the parliament.

Ukraine could also face important international obstacles. Perhaps the most important is Russia's policy. It is unclear whether Russia will genuinely treat Ukraine as an equal, instead of attempting to pressure or punish the new leadership. Russia could attempt to manipulate Ukraine's heavy dependence on Russian energy. However, as in the past, Russia's leverage is limited by Ukraine's control of the main pipelines for Russian energy exports to Western Europe. Another way Russia could attempt to "punish" Kiev could be to bolster "pro-Russian" opposition forces in eastern and southern Ukraine. However, it should be noted that Russia has in the past tried to play upon regional differences in Ukraine, most recently during the presidential elections, without success. Ukraine's reform efforts might be hampered if Western countries do not provide timely and effective assistance, which could come in the form of political support, economic aid, lower trade barriers, and support for WTO membership.

⁶ Democratic Initiatives/Kiev Institute of Sociology poll, UNIAN news agency press dispatch, February 25, 2005.

One indicator of success will be if Ukraine experiences a substantial increase in foreign investment. This would indicate that investors are happier with Ukraine's progress in such areas of perennial concern as fighting corruption, reducing red tape, and enforcing the rule of law. Perhaps a more important indicator from the point of view of the majority of Ukraine's population would be an increase in living standards and a decrease in poverty. In recent years, Ukraine has experienced high levels of economic growth, but the benefits of that growth have not reached all sectors of the population. International observers may want to closely monitor the March 2006 parliamentary election campaign for signs of media access for opposition candidates, improved election laws and administration, and other signs of free and fair elections.

In the longer term, Ukraine's foreign policy success may be measured by whether it receives a signal from the EU that it can be considered a candidate for eventual EU membership, and a similar signal from NATO, perhaps in the form of a Membership Action Plan. However, it should be noted that success in these areas depends as much or more on such issues as intra-EU politics, trans-Atlantic ties, and perceptions of Russia's future, as on Ukraine's own efforts. France, Germany, and other EU countries stress the importance of maintaining good ties with Moscow, in order to preserve regional stability and key economic ties with Russia. In addition, possible membership for Ukraine poses difficult problems of its own for the EU, which is struggling to incorporate ten recently admitted members, as well as possible future new members in Turkey and the Balkans. On the other hand, many of the EU's new members in central Europe, especially Poland and the Baltic states, are looking to counterbalance Russia and stabilize their eastern borders. They continue to push strongly for one day incorporating Ukraine, and possibly other post-Soviet countries, into the EU.

U.S. Policy

U.S. officials supported the "Orange Revolution" in Ukraine, warning the former regime of negative consequences if it engaged in fraud, sharply criticizing fraud in the November 21 runoff vote, and hailing Yushchenko's ultimate victory. The United States also provided assistance to Ukrainian non-governmental organizations that monitored the election and conducted exit polls to detect fraud.⁷ In a show of support for the new leadership, President Bush and other NATO leaders met President Yushchenko at a NATO summit on February 22, 2005. President Yushchenko is visiting the United States from April 4-7, and has had meetings with President Bush and Secretary of State Rice. He is to address a joint session of Congress on April 6.

Current U.S. aid levels for Ukraine are relatively modest. According to the FY2006 budget submitted by the President, Ukraine will receive an estimated \$93.5 million in U.S. aid in FY2005. The Administration proposes \$115.9 million in aid for Ukraine in FY2006. The President sought an additional \$60 million to aid reform in Ukraine in an Iraq/Afghanistan FY2005 supplemental appropriations request (H.R. 1268).

⁷ For background, CRS Report RL32691, *Ukraine's Political Crisis and U.S. Policy Issues*.

The United States will also be interested in seeing how the new government tackles such issues as weapons proliferation and human trafficking. During the Kuchma era, several arms trafficking scandals damaged Ukraine's international reputation. In September 2002, the Administration announced that it had authenticated a conversation taped in Kuchma's office in July 2000, in which Kuchma gave approval for the sale of four Kolchuga early warning radar systems to Iraq, a sale banned by a U.N. Security Council arms embargo. The Yushchenko government has recently opened investigations into other arms sales, including the sale of 18 nuclear-capable long-range cruise missiles to Iran and China in 1999-2000.

The 2004 State Department Trafficking in Persons report says that Ukraine is a source country for women and girls trafficked for purposes of sexual exploitation. The report designates Ukraine as a "Tier 2" country, which means that it does not comply with minimum standards for the elimination of trafficking, but is making "significant efforts" to do so. The report says Ukraine has increased the number of prosecutions and convictions of traffickers, but that shortcomings exist in several areas including law enforcement coordination with destination countries and government corruption. The new government has said that it aims to improve Ukraine's performance on both of these issues.

Iraq

A key issue for U.S. policymakers is the withdrawal of Ukrainian troops from Iraq. U.S. officials said during 2004 that Ukraine's contribution of over 1,600 troops, while appreciated, would not cause the United States to overlook Ukraine's democratic shortcomings during the presidential elections. However, some observers were concerned that the leaders of the former regime were hoping that the United States would downplay election irregularities if Ukraine continued its troop deployment in Iraq. During the campaign, Yushchenko pledged to quickly withdraw the troops if elected, while Yanukovich supported the deployment, but raised the possibility that a continued deployment could be conditioned on such factors as the granting of more reconstruction contracts in Iraq to Ukrainian firms.

After taking office, President Yushchenko confirmed that he would pull Ukraine's troops out of Iraq after consultation with other Iraq coalition members and the Iraqi government. On March 11, 2005, over 130 Ukrainian troops were withdrawn from Iraq. Ukrainian officials said a further 550 would leave Iraq in May, and the remaining troops would be withdrawn as early as mid-October and by the end of the year, at the latest. However, a small number of Ukrainian troops may remain in Iraq after the withdrawal of the peacekeeping contingent to perform liaison functions and train Iraqi military and police forces.⁸ The Administration has downplayed the significance of the Ukrainian withdrawal. After an April 4 meeting with President Yushchenko, President Bush said that Yushchenko was "fulfilling a campaign pledge. I fully understand that. But he also has said that he's going to cooperate with the coalition in terms of further withdrawals, and I appreciate that."⁹

⁸ Associated Press wire service dispatch, March 22, 2005.

⁹ Federal Document Clearing House transcript of President' Bush's press conference with (continued...)

Policy Issues

One important issue for U.S. policy will be whether to take additional steps to help Ukraine, now that a more democratic leadership is in power. Many analysts say that the United States could provide additional support to Ukraine, for example by helping it obtain loans from international financial institutions for its reform plans. Ukraine's trade with the United States could be enhanced if the Department of Commerce determined Ukraine to be a market economy. Ukraine could also benefit from U.S. advice and support in its efforts to join the WTO.¹⁰

Some experts have said that Ukraine should receive funding under the Millennium Challenge Account when it qualifies for such assistance. Finally, some observers have suggested that leading Western countries should hold an aid donor conference this year in order to seek aid pledges and coordinate assistance efforts. In addition to assistance for political and economic reform, Ukraine needs help in fighting HIV/AIDS and recovering from the 1986 Chernobyl nuclear accident. In particular, the "sarcophagus" that was built during the crisis to cover the damaged reactor is decaying and must be replaced. U.S. assistance tailored to Yushchenko's near-term agenda, and similar support from the EU, could be important to consolidating the gains of democratic forces in Ukraine in the run-up to the March 2006 parliamentary elections.

Another issue, perhaps less immediate given Yushchenko's stated current priorities, is whether the United States should strongly signal support for Ukraine's NATO aspirations. If the United States decided to make such a move, it would likely also have to cope with Moscow's strident opposition, as well as tension with several European NATO allies more eager to accommodate Moscow on the issue. At present, Administration officials are approaching the issue of NATO membership for Ukraine with caution. They have called on Ukraine to focus on implementing its current Action Plan with NATO. During a February 11 press conference with European journalists, Secretary of State Condoleezza Rice said that Ukraine should focus on current efforts to reform the Ukrainian armed forces with NATO help, adding that "we should focus on the practical work before us, not the issue of membership, although we have also said that NATO has to remain open to all European democracies."¹¹

There is also the issue of the impact of Ukraine's political crisis on the bilateral relationship between the United States and Russia. Some Russian observers have viewed the "Orange Revolution" as an American-engineered humiliation of and

⁹ (...continued)

President Yushchenko, April 4, 2005.

¹⁰ One possible stumbling block is Ukraine's record on intellectual property rights. In 2001, the United States withdrew Ukraine's benefits under the Generalized System of Preference, due to rampant optical media piracy. Although the U.S. Trade Representative has reported that Ukraine's record has improved on this issue, extremely high levels of piracy continued in 2004, according to the USTR.

¹¹ State Department transcript of Secretary Rice's remarks, February 11, 2005, from the State Department website, [<http://www.state.gov>].

threat to Russia, as well as a part of a geopolitical offensive against Russian interests in the region. Administration officials have tried to avoid confrontation with Moscow on the issue, saying that the United States is only interested in promoting democracy in the region and throughout the world. However, such assurances may be of little comfort to Russian elites, who may fear greater democracy could undermine their power at home and abroad, and to the Russian public, much of which views Ukraine as inseparable from Russia.¹²

Congressional Response

During the Ukrainian presidential election campaign and during the ensuing electoral crisis, the 108th Congress approved legislation calling for free and fair elections in Ukraine and urged the Administration to warn Ukraine of possible negative consequences for Ukraine's leaders and for U.S.-Ukraine ties in the case of electoral fraud. On July 22, 2004, the Senate passed S. Con. Res. 106 by unanimous consent. The resolution noted the violations against OSCE standards for free and fair elections that took place during the Ukrainian election campaign. The resolution pledged Congress's support for Ukraine's establishment of democracy, free markets, and a place in the Western community of democracies. H.Con.Res. 415 was passed by the House on October 4. It was identical to S.Con.Res. 106, except that it added two clauses that "strongly encourage" the President to fully employ U.S. government resources to ensure a free and fair election and to stress to the Ukrainian government that the conduct of the elections would be "a central factor in determining the future relationship between the two countries." On November 18, 2004, just before the second round of the election, the Senate passed S.Res. 473 by unanimous consent. As in the case of H.Con.Res. 415, it warned Ukrainian leaders against conducting a fraudulent election. However, it went further than H.Con.Res. 415 in that it "strongly encourages" the Administration to impose sanctions against persons encouraging or participating in fraud.

Senator Richard Lugar, chairman of the Senate Foreign Relations Committee, monitored the November 21, 2004 runoff at the request of President Bush. He said after the vote that "it is now apparent that there was a concerted and forceful program of election day fraud and abuse enacted with the leadership or cooperation of the authorities." Senator Lugar said that he had carried a letter from President Bush to President Kuchma that warned that a "tarnished election" will cause the United States to "review" its relations with Ukraine. Senator Lugar stressed that Kuchma "has the responsibility and the opportunity for producing even at this point an outcome which is fair and responsible."¹³

The 109th Congress passed resolutions after President Yushchenko was inaugurated. On January 25, 2005, the House passed H.Con.Res. 16, and the Senate passed S.Con.Res. 7 on the 26th. The identical resolutions include clauses congratulating Ukraine for its commitment to democracy and its resolution of its

¹² Jamestown Foundation, *Eurasia Daily Monitor*, Vol. 1, Issue 145, December 13, 2004.

¹³ Text of statement from Sen. Lugar's website, [<http://lugar.senate.gov>].

political crisis in a peaceful manner; congratulating Yushchenko on his victory; applauding the candidates, the EU and other European organizations and the U.S. Government for helping to find that peaceful solution; and pledging U.S. help for Ukraine's efforts to develop democracy, a free market economy, and integrate into the international community of democracies.

If the "Orange Revolution" continues to show progress, Congress could consider further legislation on Ukraine. On January 24, 2005, Senators Carl Levin and Richard Lugar introduced S. 46, a bill to give permanent Normal Trade Relations treatment to Ukraine. The bill also expresses support for Ukraine's efforts to secure WTO membership. On February 17, 2005, Representative Henry Hyde introduced H.R. 885, which would also terminate the application of the Jackson-Vanik amendment to Ukraine. Senator McCain offered an identical bill in the Senate, S. 410. Another bill, H.R. 1053, also would terminate Jackson-Vanik with respect to Ukraine.

The Jackson-Vanik amendment bars permanent NTR status for countries with non-market economies that do not permit freedom of emigration. The amendment was originally intended to pressure the Soviet Union to permit Jewish emigration. The success of legislation on granting permanent NTR status may depend on issues not directly related to the provisions of Jackson-Vanik, such as the assessment of Ukraine's efforts in fighting anti-Semitism and returning communal property to Jewish groups, and progress in dealing with U.S.-Ukraine trade disputes. Ukraine currently enjoys NTR status, subject to annual determinations by the President that it permits free emigration.¹⁴

Congress also faces the issue of U.S. aid to the new government in Ukraine, including whether it would like to increase or cut the aid provided for Ukraine in the FY2006 foreign operations request and the FY2005 Iraq/Afghanistan supplemental. On March 16, the House approved H.R. 1268, the Iraq/Afghanistan supplemental appropriations bill. The bill reduced the Administration's \$60 million request for Ukraine to \$33.7 million. In its report (H.Rept. 109-16), the House Appropriations Committee "lauds the democratic initiative of the Ukrainian people and intends this funding to be used for projects that will quickly show support for the Yushchenko government, as well as for costs associated with supporting the upcoming parliamentary elections." In its report, the Committee did not address why it had decided to reduce the President's request for Ukraine, but the Committee criticized the bill in general for containing items that did not constitute true emergencies, which therefore should be handled in the regular appropriations process. The Senate may consider efforts to restore the full amount that the President requested. H.Res. 44 calls for a staff exchange program between the House of Representatives and the Ukrainian parliament.

¹⁴ See CRS Report 98-545, *The Jackson-Vanik Amendment: A Survey*, by Vladimir Pregelj.