

# Jamestown Foundation Blog

Timely analysis and commentary on geopolitical developments in Eurasia

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## **New Western Policies Are Needed to Deal with Ukraine's Authoritarian Path**



By Taras Kuzio

At the March 27 Brookings Institution seminar “Ukraine’s Drift Away From Europe and the Western Response” ([http://www.brookings.edu/events/2012/0327\\_ukraine.aspx](http://www.brookings.edu/events/2012/0327_ukraine.aspx)) former US Ambassador to Ukraine Steven Pifer asked, “Does Yanukovich get it? [Up to last] fall I thought he did.” He added he is “less sure now.”

Nadia Diuk, Vice President of the National Endowment for Democracy (NED), asked a similar question: “I have puzzled over the Tymoshenko case and still don’t understand why this case continues when it is obviously damaging Ukraine’s interests on all fronts and its participation in the EU.” Diuk believes other factors may be at stake such as a “possibly personal vendetta” but added, “I haven’t come up with a solution as to why the Ukrainian government is not at least giving some semblance in line with the rule of law, some rules, constitutional regulations. That really is a puzzle.”

Ambassador Pifer and Diuk are in effect arguing that the Viktor Yanukovich administration is being “irrational” and “illogical” as its policies are harming their own interests. Ambassador Pifer asks, “Does he care?” and answers, “He is not going to have the luxury of not caring.” Meanwhile, Diuk argues Yanukovich is “Infinitely capable of doing damage to his own interests.”

Ambassador Pifer and Diuk differ from fellow panelist Edward Chow and audience participant Ambassador Keith Smith (both Senior Fellows at the Center for Strategic and International Studies [CSIS]) who analyze Yanukovich’s policies from the perspective of the Ukrainian President’s logic – not from that of Washington or

Brussels. From the Yanukovych administration's perspective, everything Yanukovych and his team are undertaking is perfectly logical – as Serhiy Kudelia and this author have long argued (see <http://www.gwu.edu/~ieresrgwu/assets/docs/ponars/KudeliaOct18.pdf>; [EDM](#), November 4, 2011). Kudelia provided eight factors “explaining the rationality of his choice” while this author gave ten reasons why Tymoshenko will remain imprisoned.

Kudelia's and this author's eight to ten factors have grown since late 2011. A poll in *Ukrayinska Pravda* (April 3) found that Tymoshenko (and Arseniy Yatseniuk) would both defeat Yanukovych in a presidential election by seven to eight percent of the vote. In the 2010 elections, then opposition leader Yanukovych had expected to easily defeat Prime Minister Tymoshenko. A February 2010 US cable from Kyiv reported, “The 2.88 percent gap between Yanukovych and Tymoshenko surprised many political experts, including those in the Yanukovych campaign. Yanukovych advisors had expected a ten percent or more margin of victory” (<http://wikileaks.org/cable/2010/02/10KYIV199.html#>).

Yanukovych and the oligarchs are petrified by Tymoshenko and her allies, such as former Interior Minister Yuriy Lutsenko, because of their rhetoric and because they – unlike the majority of Ukrainian political leaders such as former President Viktor Yushchenko – cannot be bought or co-opted. Ambassador Pifer and Diuk did not address the main purpose of the sentences given to Tymoshenko and Lutsenko aimed at removing them from the next three parliamentary and two presidential elections, giving Yanukovych a monopoly of power until at least 2020.

In addition, no panelist mentioned the more than ten additional criminal charges, including murder, leveled against Tymoshenko since her October 2011 sentence (see Deputy Prosecutor Renat Kuzmin on Inter television, <http://www.pravda.com.ua/news/2012/04/7/6962288/>). Some of these charges were raised on the eve of the initialing of the Association Agreement on March 30 and are not the actions of an administration committed to European integration.

It was left to Ambassador Smith to point out at Brookings, “And I think that when we talk about actions by the government that are against their own interest, we have to put ourselves in their place, which is something I failed to do many times over my career. And I think that they see this as, no matter what, the most important thing is to make sure they never lose another election, no matter what; no matter what it takes.”

Four factors below explain why there may not be sanctions imposed against Ukraine.

The first is that it assumes the EU will follow the US in imposing sanctions and visa black lists against Ukraine. Yet, the case of Belarus has shown that the Bush administration had to cajole Europe into imposing sanctions and visa denials when the EU was initially reluctant to do so (on sanctions against Ukraine see *Ukrayinska Pravda*, August 24, 2011).

The second is that Kyiv over-played its geopolitical hand partly because of inconsistencies in Western policies. Western sanctions are only applied to one (Belarus) out of eight “consolidated authoritarian regimes” in the CIS, as defined by Freedom House (<http://www.freedomhouse.org/report/nations-transit/nations->

transit-2011). Why should Kyiv not assume Ukraine would be treated like superpower Russia or oil rich Azerbaijan and Kazakhstan where there are no sanctions – rather than like Belarus where there are sanctions in place?

The third is that Western Europe is home to many Eurasian oligarchs and deposed elites from kleptocratic regimes. London has nearly half a million oligarchs, businessmen, and political and economic refugees from the CIS. EU member Cyprus and the British Virgin Islands, both offshore tax havens, account for 40 percent of foreign investment into Ukraine (<http://www.epravda.com.ua/publications/2012/01/18/313258/>).

Why should Kyiv not assume that the EU is duplicitous, criticizing Kyiv on the one hand while accepting opaque income brought in by Eurasian elites on the other. The EU does not have the tough money laundering laws such as those in the US.

The fourth factor is that countries can get away with more democratic failings under “enlargement-lite,” (i.e. EU enlargement without a membership perspective) ([http://ecfr.eu/page/-/documents/ECFR\\_eastern\\_neighbourhood\\_report.pdf](http://ecfr.eu/page/-/documents/ECFR_eastern_neighbourhood_report.pdf)). Kyiv had a record of sustained attacks on democracy even before Tymoshenko’s imprisonment (e.g.: the corrupt formation of the parliamentary coalition, changing the constitution, local election fraud, incomplete judicial reforms, media censorship, Security Service intimidation of civil society, and arrests of Lutsenko and other members of the 2007-2010 Tymoshenko government).

Kyiv is right to be confused as to why Western criticism of its actions only began after Tymoshenko was arrested in summer 2011, and which then became a torrent in October when she was sentenced. Why did the EU continue to negotiate with Kyiv throughout the Yanukovich administration’s rollback of democracy in 2010-2011, which sent a signal to the Yanukovich administration that they could continue with more democratic failings under “enlargement-lite?” The Ukrainian authorities continue to insist that democracy is flourishing on their watch (see interview with Prime Minister Nikolai Azarov, Die Welt, March 13). There would have been fewer misunderstandings today if the US and EU had set red lines in 2010 that the Yanukovich administration could not cross if it wished to integrate into Europe. The Yanukovich administration’s policies are set toward an authoritarian path because they have opened up three Pandora’s boxes.

Firstly, criminal code articles 364 and 365 used to sentence Tymoshenko could be used to sentence Yanukovich and his allies if they are voted out of office. If the parliament votes to decriminalize them, as Yanukovich promised EU leaders in fall 2011, Tymoshenko would be freed and win the presidency in 2015.

Secondly, the investigation of the 2009 gas contract opens a precedent for investigation into all other gas contracts, including the badly drafted April 2010 Kharkiv Accords that gave Ukraine a fictitious 30 percent “discount” on the gas price in exchange for an extension of the Black Sea Fleet base in Sevastopol (see Chow, “Bad deal all around,” [http://www.kyivpost.com/news/opinion/op\\_ed/detail/64766/](http://www.kyivpost.com/news/opinion/op_ed/detail/64766/)). As Margarita Balmaceda has written, all of Ukraine’s gas contracts were opaque and benefited members of the elites across the political spectrum (see her Energy Dependency, Politics and Corruption in the Former Soviet Union, Abingdon and New York:

Routledge, 2008). If it returned to power, the opposition would likely accuse Yanukovych and his administration of high treason for the Kharkiv Accords and, if that were to happen, place Ukraine's gas pipelines into a gas consortium.

Thirdly, accusations of Tymoshenko's alleged involvement in a 1996 contract killing could become a precedent for opening investigations into countless other killing, especially in Donetsk, Crimea and Odessa where they were especially prevalent and were never resolved. Prosecutor-General Viktor Pshonka was chief prosecutor in Kramatorsk from 1986, then deputy prosecutor in Donetsk oblast, and chief prosecutor in Donetsk from 1998-2003. Deputy Prosecutor-General Renat Kuzmin held senior positions in Donetsk regional prosecutors' offices before moving to Kyiv (for background to the murders in Donetsk in the 1990s see [http://dt.ua/POLITICS/aktualni\\_spravi\\_minulih\\_dniv-100115.html](http://dt.ua/POLITICS/aktualni_spravi_minulih_dniv-100115.html)).

The Yanukovych administration cannot leave office after opening the above three Pandora's boxes and is prioritizing the consolidation of a domestic monopoly of power and rent seeking over European integration (see recent empty rhetoric on Europe at <http://www.kyivpost.com/news/nation/detail/125325/>; <http://www.kyivpost.com/news/nation/detail/125373/>). It is time to understand their policies using their rationale and thereby understand the path they have set themselves on toward an authoritarian state; Western policies in response should then be formulated accordingly. Now is not the time for contemplation but for action. Posted by [Jamestown Foundation](#) at [4:26 PM](#)