

**Testimony of Stephen B. Nix  
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**Developments in Ukraine Following the Orange Revolution  
Subcommittee on Europe and Emerging Threats  
House Committee on International Relations  
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Mr. Chairman, I wish to thank you for the opportunity to testify before this subcommittee today. I would like to request that my statement be submitted to the record. This hearing in itself is testimony to the strategic importance of Ukraine's democratic and economic development as it relates to the interests of the United States.

Mr. Chairman, the world watched with admiration as the citizens of Ukraine took to the streets last winter to demand that their right to vote be respected. The Orange Revolution not only brought about a peaceful and legitimate transfer of power, it also ushered in a new era of hope for the people of Ukraine and their desire for integration into the Euro-Atlantic Alliance.

In the wake of the Orange Revolution, Viktor Yushchenko and his team face an equally daunting challenge: to achieve full political and economic transformation and integration into Euro-Atlantic structures. In order to achieve those goals, President Yushchenko and his government must implement numerous reforms and face many challenges. It should be the policy of the United States to continue to assist in the democratic and economic development and integration of Ukraine, because of its vitally important geopolitical location, and for its commitment to freedom and democracy as evidenced by the Orange Revolution.

The Yushchenko government has made significant achievements in its first six months. First, it has improved the state of civil liberties in Ukraine. Religious pluralism is flourishing in Ukraine, unlike in Russia. Second, press freedoms have significantly improved since the Orange Revolution. Prior to it, the Ukrainian government, and specifically the presidential administration, routinely practiced censorship through sending "temniki" - or theme lists - to the press, indicating what topics should be covered and how these topics should be covered. Following the change of power in Ukraine, print and electronic media are finally reporting events without censorship; journalists are able to practice their profession freely; and the media are independent.

Third, commitment to democracy has been evident not only in the internal policies of the Yushchenko government but has also become a new focus of Ukrainian foreign policy, as has been declared by Ukraine's Foreign Minister Borys Tarasiuk. President Yushchenko made a commitment to supporting democracy worldwide during his working visit to the United States in early April. In a statement issued jointly with President Bush, Yushchenko pledged that Ukraine will work together with the United States "to back reform, democracy, tolerance and respect for all communities, and peaceful resolution of

conflicts in Georgia and Moldova, and to support the advance of freedom in countries such as Belarus and Cuba.” Later in April, Ukraine’s representative to the United Nations supported the U.N. Resolution on Human Rights in Cuba.

The Ukrainian government has intensified its involvement in the Transdnistria region of Moldova, assisting the Moldovan government in negotiations with the parties concerned towards reaching a political resolution. The conflict in Transdnistria is an all-European, rather than regional issue, since this militarized zone serves as a smuggling corridor to Europe for arms, drugs and trafficking of women. Therefore, Ukraine’s contribution towards the resolution of this conflict should be noted and commended.

After the Orange Revolution, Ukraine took on a leadership role in reviving the Georgia-Ukraine-Azerbaijan-Moldova organization (GUAM) with the goal of it becoming a full-value regional organization for democracy and economic development. All these countries occupy favorable geographic positions as potential transporters of Caspian oil and participate in this organization with the goal of achieving European Union (EU) and North Atlantic Treaty Organization (NATO) membership. GUAM has allowed Ukraine to become a regional leader in the sphere of promoting democracy and human rights. The Ukrainian government hopes that future cooperation within GUAM will include a free trade area among its members.

Despite early and significant progress in these important areas, the Yushchenko government faces major constitutional, political, legal, and economic issues. And part of my message here today is to affirm to you that the International Republican Institute remains committed to supporting the growth of reforms and democratic initiatives in Ukraine, just as we have since 1994.

In the midst of the Orange Revolution, the Ukrainian parliament adopted a package of legislation, consisting of an amendment to the existing election law to prevent fraud in the repeat run-off of the vote and a bill on constitutional reform. The constitutional reform reduces some of the powers that are currently enjoyed by the president of Ukraine and awards them to the parliament and the prime minister. The most important of these powers is the right to appoint and to discharge the prime minister as well as several key ministers, such as defense and foreign ministers. The prime minister is awarded the right to create reform and eliminate ministries.

The constitutional reform was scheduled to take effect on September 1, 2005, provided that the parliament would adopt a law on the improvement of local self-governance. Since this law has not yet been passed and it is unlikely that it will be by the September 1 deadline, the constitutional reform will come into effect on January 1, 2006. Therefore, starting next year, the authority of the president of Ukraine will be decreased, and the parliament and the prime minister will enjoy expanded powers.

Critics of the constitutional reform argue that these changes are not timely because a strong office of the president would ensure that the much-needed radical reforms are implemented, and awarding key powers to the parliament through weakening the

executive decreases the potential for change. Several members of the Yushchenko team, such as the Secretary of the National Security Council Petro Poroshenko and Head of Presidential Administration Oleksandr Zinchenko, as well as Prime Minister Yulia Tymoshenko and Deputy Prime Minister Anatoli Kinakh, publicly criticized the reform and have promised to challenge it by putting it up for national referendum. The law is also subject to challenge in the Constitutional Court, since procedural violations allegedly took place in the voting process, specifically adopting a change to the constitution together with another piece of legislation. In short, President Yushchenko must either challenge the constitutional amendments in court, or must be willing to surrender certain powers to the parliament and the prime minister. In any event, this separation of power issue must ultimately be clarified.

Parliamentary elections in Ukraine are scheduled for March 2006. They also pose a significant test to the Yushchenko team. This will be the first election since the Orange Revolution and, therefore, will present a test to the new Ukrainian leadership to demonstrate the consolidation of democracy in Ukraine by conducting a free and fair election. The United States should therefore monitor the election process closely by delegating election observers to Ukraine.

This will also be an opportunity for the Ukrainian citizens to send a signal to their new leadership evaluating its progress. IRI recently conducted focus group research, which revealed that the Ukrainian people are becoming increasingly frustrated with the fact that while many reforms have been happening at the highest levels of government, their everyday lives have not changed. While reforms take time to be implemented, much more could be done in terms of economic, political, and bureaucratic reforms. If not, the people in the IRI focus groups have indicated that they, while they are patient, are willing to consider voting for other forces in the parliamentary election. IRI will continue to conduct polling during the campaign to help candidates focus on relevant issues and potential reforms just as we did in the run-up to the 2004 presidential election. IRI will also offer training to all parties which will compete in the election.

Currently, Viktor Yushchenko's party still enjoys the highest rating amongst political parties in Ukraine. President Yushchenko established his "People's Union Our Ukraine" political party in March 2005. It represents an ongoing attempt to consolidate center-right political forces and unite them in a single party. However, individual party leaders that supported Yushchenko in the past were reluctant to dissolve their individual parties and to merge into a new one. Only three of the 10 parties that formed Yushchenko's Our Ukraine bloc in 2002 agreed to join the new party. Currently, People's Union Our Ukraine is proposing to consolidate its efforts with the Bloc of Yulia Tymoshenko, Ukraine's prime minister as well as People's Party of Ukraine, represented by Volodymyr Lytvyn, the speaker of Ukrainian parliament, and uniting into a coalition for the parliamentary ballot. In addition, for the first time, all of Ukraine's 450 parliamentary seats will be elected via proportional - or party list - system. This should prove to be a vast improvement for Ukraine, as a number of businessmen currently hold single-mandate seats, which provide them with immunity from criminal prosecution.

Judicial reform is also a critical challenge to the Ukrainian government. Ukraine's Supreme Court should be congratulated for its contribution toward the triumph of democracy in Ukraine. On December 3, 2004, based upon evidence of massive fraud and violations of the election law, it nullified the official results and ordered the Central Election Commission to conduct a repeat of the second round of the election. In this ruling, the Supreme Court signaled judicial concern for election fraud, and underlined the court's constitutional role as an independent, co-equal branch of government.

It is now necessary to build upon the solid foundation laid by the Supreme Court and further strengthen democracy through reforming the judicial system of Ukraine. For this purpose, Secretary of the National Security Council Petro Poroshenko is heading a working group to advise President Yushchenko on judicial reform. The United States should provide support for this effort and should encourage the working group to be open and transparent in its undertakings.

Currently, Ukrainian courts lack administrative and financial independence from the executive branch, proper organization and adequate mechanisms to enforce their decisions. This is compounded by a non-existent bar association to internally regulate lawyers and judges. These structural problems combine to make the rule of law difficult to understand, apply and enforce. Beyond the structural reforms necessary to create a functioning legal framework for Ukraine, procedural reforms are necessary to enhance transparency, independence and confidence in the rule of law. Clear guidelines must be established to standardize issues of jurisdiction and venue in electoral disputes, make court decisions promptly available to the public, and to end ex parte communications in an effort to avoid appearance of impropriety. The Civil and Commercial Codes also need to be harmonized. These reforms are a critical piece of democratization, since it would be difficult for Ukraine to cement recent democratic gains without these structural and procedural changes. The United States should aid Ukraine's judicial reform by providing expert assistance and consultation on these necessary structural and procedural changes. IRI is prepared to assist the Yushchenko government in the area of legal and judicial reform and we encourage the United States Agency for International Development to fund such efforts.

The Yushchenko government has declared membership in NATO as an important strategic priority. Ukraine has been cooperating with NATO since 2002 in the framework of the action plan. Under the government of Leonid Kuchma, who was alleged to have approved of the sale of radar systems to Saddam Hussein's government, as well as numerous violations of democratic principles domestically, the best NATO could offer was the NATO-Ukraine Action Plan and annual target plans. Despite this, Ukraine has an excellent record of cooperation with NATO. Ukraine participates in the Partnership for Peace Planning and Review Process (PARP), which supports implementation of Ukraine's State Plan for Reform of the Armed Forces. Ukraine contributed peacekeeping forces in the Balkans and other international peacekeeping efforts under the PARP.

In April of 2005, at the NATO summit in Vilnius, Lithuania, Ukraine and NATO started an Intensified Dialogue, a step toward the Membership Action Plan (MAP). Ukraine and NATO expect to move to a MAP following a free and fair parliamentary election in March 2006, which would demonstrate the progress of democracy in the country. The Ukrainian government will need to implement the reforms outlined by the MAP in order to achieve NATO membership.

Unlike NATO, the European Union (EU) has not opened its door to Ukraine's membership, even though the events of the Orange Revolution clearly demonstrate that Ukraine is a truly European nation. The Yushchenko government has repeatedly declared EU membership as the top priority of its government. Though Ukraine should be considered for membership solely on the basis of merit and the success of its government's implementation of the necessary reforms, the EU should declare its commitment to accepting Ukrainian membership if Ukraine meets the qualifications. The United States should use its influence with its European allies to press for such a commitment – this is the most effective way to encourage democratic, structural, and legislative progress within Ukraine.

The Yushchenko government also declared Ukraine's accession to the World Trade Organization (WTO) among its top priorities. Indeed, joining the WTO would lead to an additional annual growth of GDP, additional exports, and the opening up of new markets to Ukrainian goods. It is also a key component of Ukraine's Euro-Atlantic integration plan. The United States should actively support Ukraine's membership. Ukraine has made important steps towards reforming its trade laws and legal system by recently adopting six out of 14 legislative acts needed for WTO membership. Passage of these laws should allow Ukraine to be considered for membership at the WTO biannual conference in December of this year.

On July 6, the Ukrainian parliament also passed bill #7032 "On Incorporating Amendments into Some Laws of Ukraine Concerning the Harmonization of National Legislation with Requirements of Multilateral WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)." This bill is commonly known as the law on laser disks and is significant, since Ukraine has long been a major player in the worldwide market of pirated compact discs. Adoption of this law was not required for WTO membership, but was seen as critical by the United States.

Considering Ukraine's cooperation on the adoption of laws protecting intellectual property rights, it is crucial that the U.S. remove outdated trade barriers with Ukraine. The Congress should lift the Jackson-Vanik amendment. It has been in force since 1974 to punish the Soviet Union for limiting the immigration of its religious minorities. This no longer pertains to Ukraine. Consequently, this provision that bans normal trade relations between Ukraine and the United States should be lifted, which will allow Ukraine to gain most favored nation status and will stimulate its economy by increasing trade with the United States. This would bring economic benefits to the people of Ukraine and give them more confidence in the current government.

With its focus on Euro-Atlantic integration and gaining access to world markets, the new Ukrainian government has at the same time repeatedly stated that a fully-developed, close and friendly relationship with Russia is its top foreign policy priority. Ukraine has traditionally had very close ties to Russia, a nation with which it shares much history and culture. In the 2004 presidential race, President Vladimir Putin openly backed Viktor Yushchenko's opponent – then-Prime Minister Viktor Yanukovych – and traveled to Ukraine several times in the course of the election campaign to rally support for the government's candidate. Despite this, Yushchenko made a commitment to the development of Ukraine-Russia relations and traveled to Moscow on his first foreign trip as president of Ukraine, just a few days after his inauguration.

However, mending the relationship with Russia has been challenging for Ukrainian authorities. Russia has become a safe haven for former government officials currently under investigation in Ukraine. The former head of the management of the presidential administration of Ukraine Igor Bakai is wanted in Ukraine on charges of abuse of office and causing material loss to the state. Those offenses are punishable by a prison term of seven to ten years in Ukraine. To avoid prosecution, Mr. Bakai, sought internationally, fled to Russia, where he was arrested, but then released for unknown reasons. Former Interior Minister Mykola Bilokon is also wanted for questioning in Ukraine on suspicion of abuse of office. He fled to Moscow, where he has frequent contacts with Mr. Bakai. Ruslan Bodelan, who was ousted as Odessa mayor in April 2005, is also wanted in Ukraine on charges of abuse of power. Bodelan underwent a heart operation at the Russian Defense Ministry's Vishnevskiy hospital outside Moscow, where he is residing now with no plans to return to Ukraine. Russian authorities have provided no assistance in detaining and extraditing these individuals.

In September 2004, during the presidential election campaign period in Ukraine, Russian authorities filed criminal charges against Yulia Tymoshenko, then an opposition leader and a member of the Ukrainian parliament, accusing her of bribing military officials while she headed a gas trading company in the mid-1990s. These charges are denied by Ms. Tymoshenko. Russian authorities refused to close the case after Tymoshenko's appointment to the post of prime minister.

Ukraine hosts the Russian Federation's Black Sea Fleet on its territory. Russia leases hundreds of acres of land in Crimea under the terms of an agreement that is set to expire in 2017. At that time, in line with the Ukrainian Constitution, no foreign troops are allowed on its territory. Russia is interested in extending this agreement, but the Ukrainian side is not expected to comply in light of its goals of NATO membership and considering that the Russian fleet has violated the lease agreement numerous times by using the land and premises it occupies for commercial purposes, and establishing military prosecution offices on the territory of Ukraine.

Another outstanding issue with Russia is border demarcation between Ukraine and the Russian Federation in the Black and Azov Seas, specifically the jurisdiction over the Kerch Strait, a key shipping gateway between the two seas, and the island of Tuzla. Ukraine is intent on keeping the borders that were marked during the soviet times as administrative boundaries between the Russian and Ukrainian Soviet Republics. Russia,

on the other hand, is arguing that there were no marine boundaries among the republics. If this issue is not resolved between the two parties, it may have to be decided by the international court.

Overall, despite the efforts of the Ukrainian government to mend the relationship with Russia after the Orange Revolution, it remains strained. Russian leadership is threatened by the democratic developments in Ukraine and its western orientation following the change of power. It is also displeased by the Ukrainian government's attempt to diversify its sources for energy following a sharp rise in oil prices on the Ukrainian market by the Russian traders.

The Russian pro-Putin party Yedinaya Rossiya recently openly endorsed the Party of Regions of the former Prime Minister Yanukovich, Viktor Yushchenko's opponent in the contested presidential race, and wished the party victory in the coming parliamentary vote. The Russian leadership is clearly hoping a more favorable leader will come to power in Ukraine soon.

Despite strained relations between the two countries, Viktor Yushchenko has reached out to the Russian business community to attract investment. In fact, the new leadership has been working hard to demonstrate the investment attractiveness of Ukraine to foreign entrepreneurs. President Yushchenko and Prime Minister Tymoshenko have been meeting with the business community leaders from Europe and the United States, and in mid-June Ukraine hosted a mini-Davos, an offshoot of the famous Davos World Economic Forum, which attracted nearly 250 prominent guests and decision-makers.

However, investors have been slow to move into Ukraine due to an uncertain business environment. Viktor Yushchenko made a promise during his campaign to take back large enterprises that have been sold by the previous leadership for considerably less than its market value and to auction them off under fairer circumstances. The most prominent re-privatization case is that of the largest steel maker in Ukraine, Kryvorizhstal, which courts have now declared was illegally sold for 3.59 billion hryvni (approximately \$720 million) under the Kuchma government to a company controlled by his son-in-law and Renat Akhmetov, an oligarch from the eastern region of Donetsk and Ukraine's richest man. Recently a court ordered the shares of Kryvorizhstal to be returned. The government expects that its re-sale would bring up to 10 to 12 billion hryvni (\$2-2.4 billion). However, lack of clarity with respect to re-privatization and what other enterprise sales will be re-visited has had the most negative impact on foreign investors. The United States should assist Ukraine in its efforts to stabilize the business environment and attracting investment by establishing a dialogue between U.S. and Ukrainian business, economic and finance leaders. Helping Ukraine prosper would serve to ensure its population that the path of freedom, democracy, and market economy that they chose is the right one.

The United States should further assist Ukraine's development by including Ukraine as an eligible country to compete for the Millennium Challenge Account (MCA) assistance. The MCA was established in 2002 as a vehicle for providing developmental assistance to

nations that “govern justly, invest in their citizens, and encourage economic reform.” After the Orange Revolution, Ukraine is a precise example of a country that is qualified under these provisions. Ukraine also qualifies as a candidate based on the country’s per capita income level. With the assistance of the MCA funds, Ukraine could implement programs for fighting corruption, reforming its bureaucracy and developing its economy.

In conclusion, Ukraine has had a long and brutal history. Having suffered under decades of communism, which oppressed Ukrainian national identity and basic human freedoms and murdered millions of Ukraine’s population by starvation in a synthetic famine, Ukraine was not able to fulfill the promise of independence after the fall of the Iron Curtain. Ukraine’s first decade of independence was marked by government corruption and infringements on human rights and media freedoms. It was not until the Ukrainian people stood up in the unprecedented mass peaceful protests against the government’s attempt to steal the 2004 presidential election that Ukraine became truly free. Ukraine’s path to democracy has been a long and challenging one and it will take time for its new leadership to implement the changes necessary to reforms Ukraine’s economic and political systems. Mr. Chairman, IRI stands ready to continue its role in assisting Ukraine in developing and implementing those critical reforms.

The United States should take steps to fulfill President Bush’s promise, made during his second inauguration speech, to support “the expansion of freedom in all the world” and “the growth of democratic movements and institutions in every nation and culture,” and assist the Yushchenko administration in overcoming the significant challenges it faces. With such assistance, I am hopeful that President Yushchenko will succeed in implementing the reforms long awaited by the Ukrainian people that will lead this strategically important country toward a democratic and prosperous future.