

THE UKRAINIAN ELECTIONS: IMPLICATIONS FOR UKRAINE'S FUTURE DIRECTION



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**Briefing of the
Commission on Security and Cooperation in Europe**

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The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

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The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <www.csce.gov>.

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Commission on Security and Cooperation in Europe Washington, DC

The briefing was held at 2 p.m. in room 1539 Longworth House Office Building, Washington, DC, Orest Deychakiwsky, Policy Advisor, Commission on Security and Cooperation in Europe, moderating.

Panelists present: Orest Deychakiwsky, Policy Advisor, Commission on Security and Cooperation in Europe; Oleh Shamshur, Ambassador of Ukraine to the United States; William Miller, Former U.S. Ambassador to Ukraine; and Stephen Nix, Director of the Eurasian Division, International Republican Institute (IRI).

Mr. DEYCHAKIWSKY. Unfortunately, Chairman Hastings is unable to make it at the present time due to very urgent business on the floor of the House. Apparently, four votes have been called all in a row. So hopefully he'll be able to make it a little bit later.

I'd like to welcome you all to today's briefing on Ukraine's elections and their implications for Ukraine's future. I'd particularly like to thank the members of our distinguished panel for taking the time to share their perspectives and insights with us.

I'm pleased that Ambassador Oleh Shamshur, Ukraine's Ambassador to the United States, has joined us today.

I'm also very pleased to have with us Ambassador William Miller, former U.S. Ambassador to Ukraine, who was in Ukraine for the elections as an observer recently with a delegation of the National Democratic Institute, NDI, and Stephen Nix, who is Director of the Eurasian Division at the International Republican Institute, IRI, and was also in Ukraine for the elections.

If you have not already done so, please pick up a copy of our speakers' biographies, which are on the tables outside in the corridor.

A few weeks ago, Chairman Alcee Hastings, Chairman of the Helsinki Commission, introduced a bipartisan resolution congratulating the Ukrainian people for holding free, fair, and transparent parliamentary elections on September 30, 2007.

The resolution was based on the findings of the OSCE-led international observation mission, which concluded that the elections were, and I quote, "mostly in line with OSCE commitments and other international standards for democratic elections."

The OSCE observers, including many OSCE parliamentarians, as well as Helsinki Commission staff, assessed both the voting and counting process as good or very good in nearly all of the 3,000 polling stations that were visited.

These pre-term elections stem from a dispute rooted in weak constitutional delineations of powers of the President and Prime Minister. Now that the elections are over, it's our hope that Ukraine's political leaders will form a government reflecting the will of the Ukrainian people, as expressed by the results of the elections, a government that advances political stability and democratic development and will further undertake the hard work of strengthening the rule of law and an independent judiciary, and fight corruption and increase transparency, especially in the energy, more specifically, in the gas sector.

Now, this past July, Chairman Hastings led a delegation of 13 Members of Congress to the OSCE Parliamentary Assembly in Kiev and the delegation met with President Yushchenko, who assured the delegation that Ukraine would keep moving forward on the path to political reforms and good governance.

The conduct of these elections is a testament to the Ukrainian people's determined path toward the consolidation of democracy as Ukraine advances its integration with the Euro-Atlantic community.

As such, Ukraine serves as the model for the post Soviet countries, too many of which have, sadly, retreated to heavy-handed authoritarianism.

These elections represent a golden opportunity for Ukraine to regain the momentum from the Orange Revolution and continue to build on the democratic, economic, and security progress that has already been made.

We look forward to hearing from our distinguished speakers and, Ambassador Shamshur, you have the floor.

Amb. SHAMSHUR. Thank you. Thanks a lot.

Ambassador Miller, Mr. Nix, Mr. Deychakiwsky, ladies and gentlemen, first of all, I would like to thank you all for your interest in the latest political developments in Ukraine.

It is quite clear that the latest election constituted an important step on Ukraine's role of further consolidation of its democratic institutions and procedures.

I would like to use this opportunity to thank those Americans who were part of the international monitoring effort.

I would also like to extend our gratitude to the Co-Chairs of the Commission, Alcee Hastings and Ben Cardin, for organizing this briefing, as well as to the staff of the Commission, and I would like to underscore that the Commission earned a solid reputation as the champion of liberty and human rights on the international stage.

We highly appreciate our level of cooperation with the Commission and the U.S. Congress.

This electoral campaign in Ukraine officially commenced on the 2nd of August. It was a brief one. But it would be safe to say it was one of the most intense in Ukraine and U.S. history.

Forty-one parties, partly united in blocs, participated in the election. Nine thousand people were running on the party lists and they were competing for 450 seats in the Ukrainian parliament.

According to Ukraine's electoral system, these 450 seats are to be divided among the parties who overcame or passed a 3-percent threshold.

Remember, in the election of 2004, the international community was watching the election with the utmost attention and definitely everyone remembers the parliamentary elections of 2006 that were extremely important for Ukraine's development, as well. And despite some initial concerns, the general assessment was that for the second time in a row and after 2006, Ukraine succeeded in avoiding most of the electoral pitfalls.

Aside from minor deficiencies, there was no harassment of political opponents, no media oppression, no so-called creative counting or use of forged absentee ballots.

The notorious administrative resource, the intrusion in the electoral process by the state officials, found its final rest in the dustbin of Ukrainian history.

Ukraine has once again confirmed its democratic credentials. That's the irreversibility of the democratic change spurred by the Orange Revolution.

On election day, 63 percent of the registered voters came to the polling stations. It is required by Ukrainian law that over 50 percent, we need 50 percent plus one, turn out for the election necessary to make the ballot.

There was another report on incomplete votes. There were other procedural malfunctions, but aside from that, the international observers didn't register any systematic violations.

Ukraine was commended for making another important step in the way of democratic reforms. The United States, the European Union, other countries congratulated President Yushchenko on holding a free and transparent election.

I am not going to repeat what was said by Chairman Hastings, but I can tell you that we were extremely pleased by this statement and the high appreciation of the way the election, and it's important to stress not only the election itself on election day, but how the whole election process was conducted.

So just to remind you, on October 17, the Central Electoral Commission announced the final results; 33.37 percent of votes for the Party of the Regions, that gives them 175 seats; 30.71 percent for Yulia Tymoshenko bloc, it means 156 seats; 14.15 percent to Our Ukraine National Self-Defense bloc, giving them 72 seats; 5.39 percent for the Communist Party, giving them 27 seats; and 3.96 percent for the Lytvyn bloc, giving them 20 seats.

These results mean a win for two electoral blocs associated with the Orange Revolution, the Yulia Tymoshenko bloc and Our Ukraine, who, combined, will command 228 seats out of 450.

On the same day, leaders of the Yulia Tymoshenko bloc and Our Ukraine National People's Self-Defense, it's better just to say People's Self-Defense, signed a coalition agreement. It's a big document, over 100 pages, and it formulates the program concerning main goals of the future, plus future coalition priorities and distribution of chairs in the cabinet.

I would like to stress here that one of the key points of coalition agreement is development of the strategic partnership with the United States. The document also declares NATO membership as Ukraine's imperative and unconditional goal.

For the second time in a row, we held a free and transparent election and one should acknowledge an instrumental role played in this process by President Yushchenko, who was deeply committed to the democratic transformations of this country.

Once the polling stations were closed, he called upon political parties to put aside their ideological differences and to start working on country consolidation around national priorities—fighting poverty, moving toward Europe, and enhance the energy independence and the others.

According to him, the new coalition should focus on five priorities. First, adopting a comprehensive program of country economic development, curbing inflation, stabilizing and optimizing incomes, creating a new policy of the social security in Ukraine.

Second, lift the legal immunity of members of the parliament. Until now, members of parliament have been accountable during their tenure only to the parliament itself and not liable under national judiciary, which created sometimes, I would say, unnatural incentives for entering the parliament.

The general perception in Ukraine is that with the immunity lifted, it would bring about a major shift in the way Ukrainian politics function and make our political system more results oriented and much more transparent.

Third, deliberate and pass the new budgets for 2008 that would include the President's social initiatives.

Fourth, adopt and pass a package of anticorruption legislation, create a national anticorruption bureau.

And last, enhance the energy security of Ukraine. In fact, from that, the President stressed that the primary goals of the 2000 political crisis in Ukraine was the poorly devised constitutional reform of 2004. He asked the parliament to support his efforts in amending the existing constitution in a way that would prevent similar political deadlocks in the future.

And only yesterday, the president announced that he expects Our Ukraine People's Self-Defense and Yulia Tymoshenko blocs to form a coalition government during the first 10 days of November.

Let me conclude and definitely I would be ready, if time permits, to answer your questions.

I would simply like to state at the end that I am satisfied and proud and, once again, while assessing Ukraine's election day outcome, we speak and assess them, I would say, almost exclusively in positive terms.

The last election showed that political processes in Ukraine are further developing in the manner that solidly anchors Ukraine in a community of countries with shared democratic values and this all is extremely good for the development of our bilateral relations with the United States.

Thank you.

Mr. DEYCHAKIWSKY. Thank you very much, Ambassador Shamshur. There will be an opportunity to ask questions after all of our speakers have finished. Ambassador Miller.

Amb. MILLER. Thank you. Ambassador Shamshur, Steve. I was very fortunate to be able to attend the parliamentary elections that were held in Ukraine on September 30 as an invited guest of the Government of Ukraine to be an international observer.

As a member of the NDI delegation, I had the chance to visit eight polling stations on election day and night. Four of them were in Kiev and the other four were outside, two to the north and two to the south, and they ranged from districts where the major

group of inhabitants were intellectuals, to workers, regions, to the village, and to small towns.

Even though 8 is not the same as 34,000, which is the total of polling stations in Ukraine, it's a chance to see a little bit of what's going on.

I also was in Ukraine in June and then again in July, first, a conference on Ukraine's future as a member of NATO and, second, a study on corruption in Ukraine. And during that time, I was able to meet with the candidates of all the parties, including their leaders, the key election commission officials, present members of the government and the major funders in Ukraine for the locomotives, as they're called by Ukrainians, and, of course, press and media, and politically aware citizens.

I've also had the chance to witness elections from 1994 on. So I have a little sense of the path of the electoral process since independence.

In my view, the September 30 elections were relatively free and fair. There were, of course, some violations of election law. There were some incidents of fraud and, certainly, procedural incompetence, but on the whole, the 64 percent of the electorate who voted were able to cast votes that were counted properly.

Indeed, it was clear to me that the electorate gave its judgment that the incumbent government should be replaced. It was an election with a purpose and a result that came from a sense of public outrage.

For the first time in Ukraine since independence was declared in 1991, there's a democratic majority in the parliament, Verkhovna Rada. The winning democratic coalition, led by Yulia Tymoshenko in BYUT and the Nasha Ukrayina forces led by Viktor Yushchenko, have cobbled together a bare majority of two votes, but it's enough to begin the process.

The Regions Party more or less held their own and they are going to be a formidable minority group in the new Rada. The Communists somehow survived and received enough votes to play a role in key issues as they arise.

And Lytvyn crossed the threshold and his 20 seats are described as a "golden share." Whether that's the case will be determined.

With such a small majority of 228 seats out of 450, the ability to govern effectively will depend upon coalition discipline and the degree to which the democratic coalition can get support from the Lytvyn bloc and from some Regions deputies on particular issues.

Party discipline in the past was not a significant issue, certainly, from the beginning in 1991, when Ukraine declared its independence, until 2002, when Viktor Yushchenko's democratic coalition produced what many have described as a sea change in Ukrainian political attitudes.

Until, then, in 2002, the so-called "party of power," that is, the inherited vertical structure of governance from the Soviet Union, maintained political control, despite a free political landscape which allowed for a multiplication of personality groups and factions, which numbered as many as 154 registered parties at its highest point.

Over 20 parties were registered for the September 30 elections, but only four parties crossed the 3-percent threshold. The once significant Socialist Party, led by the former speaker of the Rada, Alexander Moroz, for example, did not cross the threshold.

The Orange Revolution, which was triggered by a massive citizen public outrage at election fraud, manipulation and the illegal use of government and administrative

resources, set a standard for measuring government performance which was applied in the recently concluded September 30, 2007 elections.

These standards, those political goals were developed over the several months of the three rounds of the Orange Revolution. The demands made by the millions who stood in the cold day and night, night after night, day after day, from September until Christmas, when, finally, the last vote was taken and decisively resulted in Viktor Yushchenko's election as president.

Those demands were, among others, free and fair elections, with no administrative resources used as pressures on the voters, a call for clean government, free of bribery, manipulation and self-enrichment, lawbreakers to jail, a reformed judiciary, a reformed law enforcement system, a reformed parliament, and a reformed government.

There was developed an agenda for what was called by Ukrainians a "normal civil society" based on the rule of law, care for the less fortunate, and attention to the social infrastructure.

However, as we all know, both the Yanukovich government, which came to power by an unfortunate breakup of the democratic coalition due to a failure of leadership and rivalry between the inner circle around the president, and the presidency of the hero of the Orange Revolution, Viktor Yushchenko, both Yanukovich and Yushchenko were seen by the electorate as failures and betrayers of the promises made on the midan of 2004.

The electorate, on September 30, expressed its will and the new mandate was given to a new democratic coalition, led by Yulia Tymoshenko and some younger leaders of the Nasha Ukrayina bloc, Kyrylenko, Lutsenko, Katerynychuk, among others.

The old party of power, that is what existed certainly before 2002, used the powers of the state to maintain power, including electoral power. The party in power controlled politics from top to bottom, from the president's office down to the desk in the village and farm leaders.

In Soviet times, force, that is, the KGB and police, were used to keep discipline, while perks of power, that is, housing, cars, vacations, privileges for children, food, clothes, travel, and so on, were inducements and rewards for loyalty to the regime.

Money was not then an instrument of power. Since 1991, with the breakup of the Soviet Union, money has become the chief instrument of power in Ukraine, as in Russia. The first generation of leaders, those who had, in fact, been the leaders at the end of the Soviet Union, became the first to realize that money, both as an instrument of power and its symbol, was the key new power.

In an economy totally owned by the state, money would have to come from somewhere, that is, from the sale of assets, state assets. As in Russia, in Ukraine, the first generation oligarchs were allowed to obtain or were given, with the expectation of generous kickbacks, state assets in order to start banks, new businesses, barter for cash and to amass fortunes.

There was no egalitarian distribution of state assets beyond the personal realm of apartments actually lived in or plots of land actually worked upon.

The pattern of "red directors," that is, the Soviet managers of industries and enterprises, becoming businessmen, as they were called some years ago, and now oligarchs, is well understood by ordinary Ukrainians. The ordinary Ukrainian sees this process as corrupt and criminal and they are victimized.

Until the Orange Revolution, the electorate, that is, the general public, was unable to do anything about the rampant corruption that surrounded them and corrupted everything. The democratic coalition victory of September 30 offers a second chance to break the cycle of corruption, to break the power of the oligarchs, but the chance is seen as a small one.

Money has corrupted the electoral process, even the successful September 30, even the Orange Revolution, to some extent. There are no effective limits to campaign contributions. It is well understood there is no present way to avoid the necessary use of locomotives, that is, oligarchs who pay for power and position, and, up to now, seats in the parliament for all parties can be bought, positions in the government purchased, more control votes purchased on key issues, judges bought, investigative and judicial outcomes determined by money rather than by merit or justice.

Yulia Tymoshenko and all of the current leadership rose in wealth and power in this first generation of oligarchs, this first generation of so-called free market and the inequitable distribution of assets.

Whether any of those leaders who come from this legacy can break the hold on politics of money and those who use massive amounts of money to further enrich themselves at the expense of the Nation and its people is the key question of this election.

A good portion of the politically aware public do not think real reform can come from the present generation of leaders. They are deeply skeptical and are looking to the future for the needed reforms to take place.

But there is a chance, and this is a view that I share, a hopeful possibility that Yulia and Viktor and the democrats will fulfill finally the promises they made with their hands on their hearts on the Maidan. As the election outcome showed, a slim majority thinks it could happen.

Thank you.

Mr. DEYCHAKIWSKY. Thank you very much, Ambassador Miller.

Steve?

Mr. NIX. Thank you, Orest. And on behalf of the International Republican Institute, our thanks go out to Chairman Hastings and the members of this Commission for hosting this important event for a country that's critical to U.S. interests.

My remarks today will focus in three areas. I'll comment first on the actual conduct and administration of the recent parliamentary elections. Second, I'll discuss the implications of the results of those elections for the future of party building and elections in Ukraine. And then, third, I'd like to discuss, in brief, the issue of constitutional reform in the post-election period.

Ukraine has conducted five elections in the last 3 years and IRI has deployed observation missions to monitor each of them. IRI's election observation delegation found that Ukraine's recent parliamentary elections broadly met international standards.

Election officials at polling stations, territorial commissions, district commissions should be commended for providing a calm, peaceful environment on election day. The major political parties should be commended for their efforts in the process. Party activists served as members of polling station commissions, election commissions, and as party observers.

IRI found that during the campaign period, parties and candidates were allowed to campaign freely and had access to media outlets. Journalists were allowed to cover the

campaign without undue interference. Parties were able to purchase time on television, radio and in newspapers without restriction.

Importantly, as was such a key issue in previous elections, the use of administrative resources during the campaign was de minimis.

While Ukraine continues to demonstrate improvements in various aspects of election administration, problems with the voter lists do continue to undermine public confidence in the elections, with reports of inaccuracies persisting.

Last minute regulations by the CEC, the central election commission of Ukraine, did create confusion along the electorate and possibly led to the disenfranchisement of thousands of voters. After conducting five electoral events in less than 3 years, Ukraine should be beyond the problems seen in these elections.

IRI urges the Ukrainian parliament and election officials to address the quality of the voter lists to ensure their accuracy for the next national election.

This effort will require the commitment of Ukraine's political parties and IRI urges them to take a positive role in reaching a solution.

The ability of their judicial system to act as an equal and independent branch of government during the election campaign was called into question. Doubts of the judiciary's impartiality and ability to make decisions in a timely fashion called into question its ability to resolve election disputes.

However, overall, the conclusion of these elections is that they did meet international standards and I was very pleased to underline the fact that those issues that we outlined and made recommendations for improvement revolve around technical and legal aspects of election administration and don't speak to systemic fraud.

The implications for party building from this election are great. They have profound implications for the future. Since independence, Ukraine's electorate has been divided between east and west, Russian-speaking and Ukrainian, respectively. This divide dates back centuries.

The third round of voting in the 2004 Presidential election demonstrated the strength of the Party Regions in the east and the dominance of the Orange forces in the west.

In 2004, Viktor Yanukovich received 44 percent of the national vote, while Viktor Yushchenko received nearly 52.

In 2006, during the parliamentary election, this divide was reinforced. The Orange forces were unable to break out of their regional base and the same could be said for Regions.

Combined, the Orange side won 36 percent of the vote, where Regions earned 41. However, the 2007 parliamentary election marked a subtle, yet fundamental change that the geographical split for one party in particular, that of the bloc of Yulia Tymoshenko or BYUT.

The results demonstrate the striking returns for BYUT, while the Party of Regions and the Our Ukraine bloc remained relatively unchanged in their percentages.

In general, BYUT increased its national vote total by over 8 percent, from 22 percent to over 30 percent in 2007. BYUT made inroads in the east by aggressively reaching out to eastern voters. Ms. Tymoshenko made appearances in the densely populated Russian-speaking cities across the east.

The party established efficient campaign headquarters throughout the east and worked diligently to break through the geographic divide. In addition, the BYUT Party fashioned issued-based messages which resonated with voters in the east.

In the blue-dominated densely populated oblasts of Kharkiv, Dnipropetrovsk, and Zaporizhia, BYUT was able to gain roughly 4 percentage points on its 2006 results. This is significant, as BYUT was able to also increase its base in the west.

What does this portend for political parties and their respective futures? IRI is engaged in an effort to build strong national political parties using national appeals to a broad spectrum of the electorate.

The 2007 results demonstrated that BYUT is growing into a truly national party, capable of bridging the regional divide and turning out voters outside of its historical base.

In my view, BYUT has fundamentally changed the voting trends of the electorate and broken through regional barriers that some believed impenetrable. This is a significant achievement for party building in Ukraine.

The Our Ukraine bloc is also contemplating new ways to appeal to a broader segment of the voting population. Conversely, the Party of Regions has been largely unable to expand upon its electorate and continues to rely primarily on its base.

In order to remain viable, the Party of Regions must take steps to reach out to western voters. One of the ways that Regions might achieve this is by refraining from making language a key issue in its platform and by more openly embracing Euro-Atlantic integration.

Presidential elections are scheduled for 2010. The ability of the elected parties to form a governing coalition in the parliament, the success of that ruling coalition and the implementation of lessons learned from the 2007 campaign will all play major factors in who is elected the next President of Ukraine.

With regard to constitutional reform, with the successful conduct of elections and upon the formation of a new government, Ukraine must take steps to resolve the constitutional issues that were the very reason these elections were called.

It's clear that this constitutional conflict between the President and the Prime Minister, which I would liken to an inter-executive branch separation of powers issue, has dominated Ukraine. It has distracted Ukraine and prevented it from building institutions that would strengthen its democratic standing, institutions such as an independent judiciary based upon the rule of law, a functional legislative branch, and continued economic reforms.

In addition to the foregoing, the constitutional crisis distracted Ukraine from playing the critical role of serving as a model for democratic transition, a role played so well after the Presidential election of 2005.

Like it or not, civil society organizations and political actors throughout the Eurasia region look to Ukraine as an example. It is imperative that Ukraine reenergize its efforts in this area and reclaim its role as an exporter of democracy.

In conclusion, I would note that in addition to successfully conducting two consecutive parliamentary elections, the Yushchenko government has made significant achievements since taking power. First, it's improved the state of civil liberties in Ukraine. Religious pluralism is flourishing.

Press freedoms have improved. Print and electronic media are reporting events without censorship. Journalists are able to practice their profession freely. The media are independent.

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.

Ukraine took on a leadership role in reviving the Georgia-Ukraine-Azerbaijan-Moldova organization, or GUAM, with the goal of becoming a full value regional organization for democracy and economic development.

In this post-election phase, Ukraine must take further steps to solidify its democratic orientation. The new government is obligated to utilize this opportunity post-elections to build and strengthen democratic institutions, which have suffered in the midst of political instability.

In addition, it must exercise its newfound political capital to undertake robust constitutional, political and economic reforms and cultivate a democratic consensus within society to advance further down the path to Euro-Atlantic integration.

Thank you.

Mr. DEYCHAKIWSKY. Thank you, Steve.

Now, before going to questions from the audience, I first want to give the opportunity for any of our panelists to either comment or ask each other questions.

Mr. NIX. I always agree with what Ambassador—

Mr. DEYCHAKIWSKY. You agree with what the others say. All right.

If you could please come up to the podium on my left, your right, and ask questions from there, because there's a mike there and that helps the transcriber. The podium is right here.

Well, while you're thinking of your questions and coming up, I'll maybe ask the first one.

That is, differences over the separation of powers were a factor that clearly precipitated the political crisis that led to these preterm parliamentary elections.

Taking into consideration the election results, where do you see the prospects for reforms to address the role of the President and the parliament?

Anyone is welcome to take this.

Amb. SHAMSHUR. Actually, I presume everyone who was discussing the outcome of the elections, they were mentioning constitutional reform. And I would say that—well, actually, there is a common understanding among all political parties that there should be a reform of power structure.

Mostly what will be happening would be, I presume, a very intense discussion on how it should be done, but there is a common understanding that there should be a reform of the government, meaning government in the larger sense of this world, so that we are going to see change, and that was happening in 2006 and especially 2007.

And what is really at stake is to form a working government. At the same time, there is a common understanding that it should be done on a democratic basis. So definitely there would be absolutely no backsliding on democratic reform.

And what is important is to find the right balance of power between different branches of power. The current crisis demonstrated that when one part of the government

tries to reserve power, you have an excess of power, so to say, then it might create a major crisis.

And coming back to the initial question, I would claim that there is a large consensus on the need to reform the way the government and the state's mission works and that presumably would be one of the major tasks that the new government will be confronted with.

But definitely it's not going to be just the government, it will be the joint effort of the government, of the parliament, of the president and civil society.

Mr. DEYCHAKIWSKY. Thank you. I just want to acknowledge we're joined here by Congressman Aderholt, who is a Helsinki Commissioner and who also attended the OSCE Parliamentary Assembly session in Kyiv in early July.

Next question, please?

QUESTIONER. Thank you. I happened to be in Ukraine the week of the election and on Sunday, September 30, and I wonder if Mr. Nix and others could elaborate a little bit on religious pluralism.

It seemed anecdotal that the Russian Orthodox Church is undergoing a renewal and revival perhaps. But what are the other denominations? I mean, it also seems completely dominant.

What are other denominations that are emerging in Ukraine?

Mr. NIX. Sure, thank you for that. Again, religion is an issue in Ukraine and it gets caught up in politics.

In terms of pluralism, there are divides within the Orthodox church that I think everyone here is cognizant of. Many of the parishes of the churches in Ukraine, Orthodox churches, belong to the Moscow patriarchy. Others belong to the Ukrainian patriarchate.

So there is certainly a divide there and, again, this is consistent somewhat with the east-west divisions that we alluded to earlier. There was evidence that there were a number of rallies that the church, the Orthodox church, the Moscow patriarch did organize in favor of one side and took clear sides during the campaign.

But political issues aside, pluralism is thriving. In western Ukraine, you have an altogether different situation and you have Catholic churches, Roman Catholic churches, Ukrainian Catholic churches, Orthodox churches, all seeming to be working together very well.

Again, as we form national political parties and Ukraine forms a national identity, I think that these problems will subside over time. They are an issue now, but I think, overall, religious pluralism is thriving.

Amb. SHAMSHUR. If I may add a couple of words. First of all, the issue of tolerance of the freedom of religious expression. From the very outset, since 1991, one of the major issues and the major, I would say, principle that was adhered by all political forces in Ukraine and this, I would say, is our common asset.

Definitely it's very important and it's not limited to the Orthodox church, but actually we have a sizable Muslim population, Roman Catholic, whatever, and so anyone is free to express their beliefs and preach, as long as it doesn't contradict existing legislation. That's firstly. And actually all communities are thriving.

Second, the basic principle is a separation of the state from the church and it's very important and I think it's a major factor that makes relations between the church and the state, the church and the larger society as healthy as we see it in Ukraine.

As far as the internal developments in the church are concerned, that's a church matter and actually it's not a state matter, although, of course, we are conscious of the divisions existing in the Orthodox community of Ukraine.

I think it's extremely important and it's an important factor defining the development of Ukraine as a whole.

Thank you.

Amb. MILLER. I would agree with what Ambassador Shamsur and Mr. Nix had to say.

It's a paradox, a paradox that we share that we have the separation of church and state, and, yet, it's a nation of believers. And Ukraine has had a resurgence since the end of the Soviet Union of belief. The belief was always there, but certainly the rebuilding of churches and the very vibrant religious life that is evident throughout Ukraine is a testament to a civil society in which you can have a separation between church and state.

But it's a difficult one and as we know from our own history, the election of 1800 not being one of the least examples, these issues come up of what the proper distance between religious expression and the affairs of state should be.

But I would say that my experience in Ukraine from the beginning of independence to now is that it's an extraordinarily tolerant society. It welcomes any kind of belief or non-belief. It has a huge variety of belief systems and it has a very complicated religious history, certainly in the hierarchical sense, and some of these problems devolve to questions of property and churches and who owns them and so on.

But everyone is free to worship as they please, to express themselves as they please, and it's a great testament to the strength of the Ukrainian nation.

Mr. DEYCHAKIWSKY. Questions? Katie?

QUESTIONER. I'm Katie Fox from NDI. I was very interested in what you said, Ambassador Miller, about Ukrainians hoping in this election that they had given a mandate to new leaders who would actually take on some of the issues of corruption in its many forms.

My question is, given the realities of Ukraine, as you said, it's pretty much impossible to break the lock of the so-called locomotives and a number of other things, what realistically could the new government do to restore people's faith?

And is there anything that folks like NDI could do to help? This is for everybody, not just for Ambassador Miller.

Amb. MILLER. You go right to the heart of the matter, don't you? It's going to be very difficult to put the bandits in jail. One of the most ringing slogans of the Orange Revolution was send thieves to jail.

That didn't happen and, in fact, some of those on the platform became thieves themselves and the people understood that.

That's the overriding cloud that hangs over Ukraine, Ukrainian politics, and it's the great doubt that's expressed particularly by youth, but by all generations and all sectors of society.

The basic unfairness of what has happened since 1991 and independence, in the evolution of state assets, the power to acquire wealth and position and respect unjustly in the view of the majority, I would say, these are the issues.

It's quite possible that the new leadership will send a few malefactors to jail. It could happen. There are enough instances of criminality to deal with and if it can be put into an investigative and judicial framework that had integrity itself—that's the problem, is that it's affected everything.

You may have a case, but you can't pursue it. You may get a conviction, but it will be appealed. It may never get to that because of interventions of those who are higher up or who have great piles of disposable income.

It's a grievous problem for the country and it's the No. 1 issue politically of reform. All of the reforms that are spoken about, the issues between the prime minister and the president, really revolve around this issue of who is going to control the assets and whether the assets that have been taken over the last 17 years are going to remain free of inquiry, whether there will be amnesty for the first generation, whether there will be a fresh start growing along and then saying, "Whatever happened then we understand is a result of transition, that we're going to be clean now."

It's a very tough issue and it's the one that will—for people like Yulia Tymoshenko and Viktor Yushchenko and all those who were up on the midan platform who pledged solemnly and with prayers and with the full panoply of making an oath to the Nation may have to produce. That's their legacy.

I can't tell you how many Ukrainians I've talked to about this and in every part of the society from the top to the bottom about this issue of can they do it, but it's the key question.

Amb. SHAMSHUR. Actually, I definitely have a much less pessimistic assessment, not only because I am supposed to have it as Ambassador, but also while thinking over what has been happening in Ukraine since I've been here and before.

So I would like to say that—well, the question I would like to start with, I've been posed quite often since my arrival, the question related to lost opportunities since 2004, in 2005, and what's happening.

Actually, yes, of course, if you look at the evolution since 2005, early 2005, you will see a lot of lost opportunities and mistakes which might have been avoided.

But my usual answer to those curious is very simple. So definitely that was a painful educational period for Ukraine to learn or, to some extent, to understand how to act within the new configuration of power and new type of society emerging in Ukraine.

So in this sense, it would be extremely incorrect, I think, and Bill actually mentioned that in his expose, that if you look at what has been achieved in 2005–2006 as far as the economy is concerned, even the issues related to corruption, issues related to the development of civil society, issues related to reforms in many sectors of Ukraine, actually, you will see that there was progress.

The progress might have been much more rapid and more profound. And when we were thinking about what might have happened after the election, I had a chance to speak at the Heritage Foundation, so my point was actually before the election and now I can now reconfirm.

So it was a very important election for Ukraine. Many things were at stake. But, actually, it's important and an important change since 2004, now speaking about since

1991, was that the question was not whether democracy would survive, but what kind of democracy it will be, how profound, how mature.

It was not about whether we will have reform, definitely we will have, but how deep the reforms will be and how rapid they will be. And I think what is really important now is the effects of time. Unfortunately, we lost a lot of time since 2004. But it's not about backsliding.

So even if you're speaking about configuration of the government, I can say in my present capacity, definitely, the democratic government would send a much more coherent message and I'm convinced the reforms would be much more consistent.

But if we can imagine other configurations of the government, definitely it will be an improvement compared to what we had recently. So it, again, will be more consistent and I also hope more rapid.

Also, what is important is that we have consensus on a number of issues, no matter which party we are speaking about. Of course, the Cabinet is difficult. The Ukrainian parliament is still there, a difficult case, but if you're speaking about the other parties and if you look at the most important issues, judicial reform, and every one should be done, the economy cannot function normally, corruption can be fought, constitutional reform, call it constitutional reform or do it the other way, there should be balance of power.

Even foreign policy, if we speak about the major choice, pro-European choice, is definitely great for everyone, including Communists, and it's understood that it's not only about joining EU formally, maybe that's the most difficult part of it, but it's about transformation of the country according to European standards.

So in this sense, understanding all the challenges, I think they'll be on the right track. And if you look at our development since 1991, maybe with the exception of the late Kuchma era, it was a steady upward movement and they have no reason to doubt that it would continue this way.

The critical question is how quickly and how profound the reform will be.

Thank you.

Amb. MILLER. What you just expressed and the passion that you used to express it is why people believe so fervently in Ukraine's future. I didn't mean to be pessimistic. I was being descriptive.

And I think the remedies will be taken, I have that confidence. And the very fact that these are issues and that they're issues that are raised without fear of being killed or put in jail, which certainly would have been the case before 1991, is a virtue.

The agenda is there and the people believe in this agenda. They don't like what has been done to them. They don't like the travails and they have a right to expect that they will get their will.

Mr. NIX. In answer to your first question, I would say, very simply, that Ukraine has to clarify these constitutional issues, the separation of powers issues that have plagued them.

Whether Ukraine does that by overturning the constitutional reform in the constitutional court, whether it changes or amends its current constitution or adopts a new constitution is up to Ukraine, but very clearly, they've got to delineate power that is understood so the government can function.

Second, as Ambassador Miller puts it, they have to deliver on promises. And I would note in the 2002 parliamentary election campaign when Viktor Yushchenko was thrust into the national spotlight, people had forgotten his campaign slogan was, not words, but deeds. And a lot of the people have heard the words and are still waiting for the deeds.

And then in response to your second question, NDI and IRI and others who are working in the democracy promotion area, don't give up. It's easy to get discouraged. Lots of people became discouraged when the reforms didn't happen, the scope and the pace of the reforms didn't take place, didn't meet expectations.

But unfortunately, we don't have the luxury of being disappointed and giving up. We have to continue our work and I know NDI will join us and we're going to be around for a long time, I hope, continue building national political parties, as I said, and further Ukraine's democratic development.

QUESTIONER. I'm Ihor Gawdiak, Ukrainian American Coordinating Committee. President Yushchenko has consistently championed a government that is an inclusive one, a government that represents the many interests of the entire nation, and since the last election, he's clearly called for a government in which the opposition, the Party of Regions, would be given important positions.

Now, Yulia Tymoshenko I don't think shares exactly this point of view. My question to you, gentlemen, is what kind of government do you anticipate, one in which the Party of Regions will play an important role or one in which the Party of Regions would simply act as an opposition?

Thank you.

Amb. SHAMSHUR. Actually, it's the most difficult question which might be posed at this stage. Looking at how the situation develops, again, in my personal capacity, I'm not supposed to make any projections, but it looks like the possibility of Our Ukraine plus Tymoshenko working are plausible.

Coming back to what this president—I think it's also important to understand how the whole process works. I think he was absolutely correct, after the election, sending the message to all parties who were in parliament, just get into consultation and we shall see what government can come out of that.

Recently, as I mentioned in my presentation, only yesterday, looking at how the situation develops, he sent the message that he expects Tymoshenko plus Our Ukraine to form a coalition government early enough in November.

What is important, on the other hand, is that actually all parties, and the biggest party, Party of Regions, are part of the political process and, in this case, if they become—they are the opposition, they should be a stronger position, the opposition that can be a constructive force, to the extent opposition can be a constructive force anywhere, understandably.

But he would like to—and as I understand, that's the common understanding, that one of the changes that should be coming, that opposition should be empowered especially with controlling functions. That's at least my understanding of what is happening now in Ukraine.

Amb. MILLER. It seems to me that the government is or rather the system that exists is inclusive by de facto. They have to deal with each other. They have to deal with each other in the Rada. They have to deal with each other because of the close divisions that exist.

There are no dominant single leaders. There are, at a minimum, three that are vying for the leading power or political power, political leadership, and it came from no one person, neither Yulia or Viktor Andreyevich or Yanukovich can run away with it.

The feel in this past year was that by the buying of votes, one group could run away with it and one of the driving reasons for the election was to stop that process of purchasing votes in the Rada, you get a new mandate and try again.

I would say that in order to succeed, given the divisions in the country, political divisions, that the three major leaders will have to work together on most of the major issues and that, as in our system of government, where we have parties that are bitterly divided on many issues, but come together on many other issues, so, too, that'll be the case and is the case in Ukraine now.

I've been reading this marvelous book on the elections of 1800, the struggle between Adams and Jefferson, and you know it took, I guess, 39 votes in the electoral college before Jefferson was elected and a lot of shady business went on surrounding the election.

And if you remember Jefferson's inaugural address, we're all members of the same nation was basically his message, not the one party or the other, we are Americans.

And I would say that that is happening in Ukraine, too, that despite the divisions, which are marked, that the system of government that's been devised in the process of developing a democratic independent nation, that it's the handling of the disparity of views, the diversity of views by vote, by vote, rather than diktat, rather than by ukaz .

Mr. DEYCHAKIWSKY. Thank you. Next question?

QUESTIONER. Martha Matselioukh, Chemonics International. I want to commend the Helsinki Commission for organizing this excellent event. And my question is now that the elections have taken place, what do each of the panelists foresee as the next steps in bilateral U.S.-Ukraine relations?

What challenges, what issues, if you can please answer the question. Thank you.

Amb. SHAMSHUR. I think the most important thing we should achieve in our relationship is definitely to break what they call the election cycle. So when people are waiting before election, looking at the run-up and then waiting, the way elections are conducted, and what will come out of the election.

I think one of the most important lessons of the last election is any election is going to be democratic and I don't think that we should be put to any new democratic or election test anymore. I think that was very convincing proof.

Any government which will come out of the election will be a legitimate government and I'm quite sure that any government will have a reform agenda of sorts, but definitely that would be the most important thing.

So in this sense, I think that we should really be trying to pick up speed in the bilateral relations. In my priorities, I see a couple of things. First of all, to enhance our trade and economic agenda.

Second, to intensify our political dialogue and, first of all, that we should definitely have the visits on both sides that were not taking place exactly for the reasons of schedules on both sides.

Definitely, we should be working out the new, as we call it, roadmap that would substitute the previous statement as actually it was fulfilled. Definitely, we should have more intense consultations and a consultative mechanism should be working more productively.

And, third, what they call people-to-people diplomacy, just to encourage and to enhance the changes at all levels, at local levels, between young people, students, teachers, all those things.

Actually, I think that our relations are in very good shape, but we should really pick up after the formation of the government to add more substance and more, if you wish, efficiency to the relations.

Thank you.

Amb. MILLER. I agree with what the Ambassador had to say. I would hope that the next administration, our next administration will return to intensive engagement as a diplomatic approach to be used certainly in Ukraine.

There's no substitute for the leaders of nations to work with each other, to know each other. During the time that I was Ambassador, President Clinton came to Ukraine four times, which meant there were at least eight meetings between the leaders. Vice President Gore and the Secretary of Defense came eight times and this was true throughout the government down the line.

There's no substitute for knowledge, direct knowledge of leaders with one another. Particularly, for us, Americans, the importance of Ukraine's future for the stability of the former Soviet Union is critical in a very important way, as many here fully subscribe to the idea that a strong Ukraine will help Russia's development, as well, that it's the stability of a critically important part of the world can be enhanced by assisting Ukrainian democratic development.

Mr. NIX. Again, not speaking on behalf of the U.S. Government here, but just some comments. I'm very optimistic about bilateral relations in the post-election period and I would just say I agree that a stronger level of communications between two governments is necessary.

I'd remind the audience that this administration was discussing a possible Presidential visit to Ukraine after the 2006 parliamentary elections, but one of the conditions for such a visit, as I understand it, was the formation of government in a timely fashion and that did not happen.

So if, in fact, the government is formed in a timely fashion after this election, perhaps those negotiations could resume and if not a Presidential visit, certainly high level visits between the two countries.

Mr. DEYCHAKIWSKY. Any further questions?

QUESTIONER. I think you'd all agree, I'm sure, that elections are a necessary part of democracy, but obviously at a basic level. And you've discussed some of the deeper issues, the corruption and so forth.

And I was wondering what you thought, any of you, about the issue of the rule of law and where that might be going and where that might be going vis-a-vis Russia. Obviously, two different paths might be in the future, but thinking of certain basic promises that Yushchenko made in the past regarding the Gongadze case and so forth.

For me, I'm also interested in that and the issue of public trust, because that could be a lingering area where people might not have trust in the government.

Thank you.

Mr. NIX. In terms of judicial reform, I think all of us had high hopes after the Supreme Court took jurisdiction of and rendered the decision that it did with regard to

the Presidential election of 2004 and, again, I think our hopes were dashed by performance after that.

As I alluded to in my remarks with regard to the elections, I think public confidence in the judicial system is very low at the moment and the causes are many, but I would point to a couple of key ones.

First and foremost, the elections, actually, the dissolution of parliament and calling these elections was questioned by one side and there was a petition filed with the constitutional court challenging the constitutionality of the President's action.

And fair and good legal minds on both sides had different opinions and in a democracy, that's the way it should work. And the fact of the matter is that that constitutional court took the case, but has never rendered a decision, and this certainly doesn't help ensure or promote public confidence in the judicial system.

I think this is an area that Ukraine really, really has to devote a significant amount of time to. I think it's an area that the United States can be of particular help with, as well as its European allies.

But judicial reform is really of the essence and it goes to all things beyond elections, honoring contracts, enforcement of contracts, implementation of judicial decisions by the administrative branch, a host of legal issues.

It's going to take time and effort and political will and, again, it's going to be up to this new government when it is formed to take on reform of the courts of general jurisdiction of Ukraine.

Amb. SHAMSHUR. I can simply say actually what I said before, that's the major central issue to any reform and the area is very well understood. So now action is needed. That's it. Very simple.

Mr. DEYCHAKIWSKY. All right. If there are no further questions.

I'd like to first say that there will be a transcript of this briefing and it will be available on our Web site as early, I believe, as tomorrow. Our Web site is "WWW.CSCE.GOV".

I'd like to thank Ambassador Shamshur, Ambassador Miller, and Steve Nix for a very insightful, interesting and informative presentation and discussion. I'd like to thank you all for coming.

And the briefing is concluded.

[Whereupon the briefing ended at 3:20 p.m.]



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