

Domestic Sources of Ukraine's Foreign Policy:
Examining Key Cases of Policy towards Russia, 1991-2009

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ABSTRACT

Ukraine's foreign policy has puzzled observers since the dissolution of the Soviet Union due to its unusual inconsistency. This inconsistency exhibited itself in contradictory decisions by the Ukrainian executive carried out within a short period of time, which signalled either greater cooperation with Russia and relative cooling of relations with the West, or integration into Western institutions and worsening of the relations with Moscow. This study aims to explain the inconsistency by examining the sources of Ukraine's foreign policy through process-tracing in four policy cases: Ukraine's renouncement of nuclear weapons (1991-1994), the status of the Black Sea Fleet (1991-1997), the Odesa-Brody pipeline (2002-2004), and the 2006-2009 gas disputes. Contrary to dominant interpretations of Ukraine's foreign policy vacillation that emphasise the role of external influences, especially that of Russia and the West, this study concludes that Ukraine's inconsistent foreign policy decisions are best explained by domestic factors – intra-executive divisions and the influence of vested interests on policy-making. The work relies on the use of primary sources including archival research, elite interviews, and Ukrainian and Russian newspaper reports.

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ABBREVIATIONS & ACRONYMS

m: millions	bcm: billion cubic metres
bn: billions	mmcm: million cubic metres
mm: millimetres	mcm: thousand cubic metres

AIOC: Azerbaijan International Operating Company
AP: Administration of the President
BAGs: Business Administrative Groups
BSF: Soviet/Russian Black Sea Fleet
BTC: Baku-Tbilisi-Ceyhan oil pipeline
CEE: Central and East European
CIS: Commonwealth of Independent States
CPU: Communist Party of UkrSSR
CSCE: Conference on Security and Cooperation in Europe
EAOTC: Euro-Asian Oil Transportation Corridor
EBRD: European Bank for Reconstruction and Development
EC: European Commission
EU: European Union
FDI: Foreign Direct Investment
FPA: Foreign Policy Analysis
FSU: Former Soviet Union
GCO: Great Caspian Oil
GDP: Gross Domestic Product
HEU: Highly Enriched Uranium
ICBMs: Intercontinental Ballistic Missiles
IMF: International Monetary Fund
IPE: International Political Economy
IR: International Relations
LNG: Liquefied Natural Gas
MFA: Ministry of Foreign Affairs of Ukraine
MFE: Ministry of Fuel and Energy of Ukraine
NATO: North Atlantic Treaty Organisation
NBU: National Bank of Ukraine
NPT: (Nuclear) Non-Proliferation Treaty
NSDC: National Security and Defence Council of Ukraine
OBP: Odesa-Brody-Plock
PM: Prime Minister
RSFSR: Russian Soviet Federative Socialist Republic

RUE: RosUkrEnergo
SBU: Sluzhba Bezpeky Ukraïny (Ukrainian Secret Service)
SDPU(o): United Social Democratic Party of Ukraine
SES: Single Economic Space
START I: Strategic Arms Reduction Treaty I
START II: Strategic Arms Reduction Treaty II
TDA: US Trade and Development Agency
TNK: Tiumenskaia Neftianaia Kompaniia
TNK-BP: Tiumenskaia Neftianaia Kompaniia -British Petroleum
TNWs: Tactical Nuclear Weapons
UkrSSR: Ukrainian Soviet Socialist Republic
UNSC: United Nations Security Council
USA: The United States of America
USSR: The Union of Soviet Socialist Republics
WTO: World Trade Organisation

NOTE on TRANSLITERATION

The system of transliteration from the Ukrainian and Russian used here generally follows that of the U.S. Library of Congress. Most words and names commonly used in English appear in their most familiar variants (for example, Boris Yeltsin and not El'tsin). Place names are transliterated from their official language using Ukrainian or Russian transliteration standards; thus, Kyiv and not Kiev, Odesa and not Odessa, Dnipropetrovsk and not Dnepropetrovsk if transliterated from Ukrainian sources. In Ukrainian and Russian names that start with the letter 'Є' are transliterated as 'Ye' and not 'le', thus Yermilov and not Iermilov, and Yevhen and not levhen.

The Subject and its Significance

The collapse of the Soviet Union ended the strategic stand-off between the Eastern Bloc and Western powers. Central and East European (CEE) states and former Soviet republics faced the challenge of developing their own security and foreign policy. Some pursued integration into Western institutions such as the European Union (EU) and the North Atlantic Treaty Organization (NATO), some remained in close cooperation with Russia, while others continued to define their foreign policy in the evolving security environment of Eurasia. The EU's and NATO's eastern enlargement reinforced foreign and security policy choices for many CEE states. In the case of Ukraine, however, where choices seemed less clear, foreign policy tended to vacillate between greater cooperation with Western institutions frequently resulting in relative confrontation with Russia or, on the contrary, opposition to integration with the West which translated into greater cooperation with Russia. This observed behavioural inconsistency, popularly known as a 'pro-Western' or a 'pro-Russian' orientation of Ukraine, is mainly a result of inconsistent decisions by the Ukrainian leadership which drastically changes its preferences on many given issues within a span of a year or two, sending conflicting messages about its foreign policy aims. Although foreign policies of most states are not always consistent and stable due to changes in popular preferences, changes in leadership or as a result of global systemic shifts, the degree of Ukraine's foreign policy inconsistency is unusual since it manifests itself very frequently and within short periods of time. Therefore, what explains the inconsistency of Ukraine's foreign policy? Under what conditions, domestic and

international, is inconsistency more likely? By examining four selected case-studies of Ukraine's foreign policy towards Russia since independence, I found that domestic factors – intra-executive divisions in conditions of political competition, and domestic and international vested interests – best explain the frequent changes in foreign policy outputs.

Understanding and explaining Ukraine's foreign policy behaviour is important for scholars and policy-makers alike. At present, the influences driving change in Ukraine's foreign policy are poorly understood and systematised.¹ Although much has been written regarding the influence of domestic politics, identity, international influences, and vested interests on the policy options of the Ukrainian leadership, the majority of these works fail to detail whether and how these factors explain specific foreign policy decisions (outputs). Thus, existing scholarship on Ukraine gives a good understanding of what factors potentially frame the choices of the Ukrainian leadership, but much work needs to be done in tracing their effects on the decisions themselves and the behaviour of policy-makers. This work is a step in that direction and an attempt to address the broader question of Ukraine's management of its relations with the outside world, and with Russia in particular.

Two main questions seem to puzzle policy-makers outside of Ukraine. How to make sense of Ukraine's frequent wavering between Russia and the West and what role does Russia play in influencing Ukraine's domestic and international choices? Most states seek stable and thus predictable behaviour from their neighbours, but frequent oscillations by officials in Kyiv gave Ukraine an unsavoury reputation as an unreliable partner, hampering effective policy-making. In light of Russia's increasingly assertive

¹ Paul D'Anieri, "Ukrainian Foreign and Security Studies: Toward a Broader Agenda?" paper presented at the workshop on Understanding the Transformation of Ukraine, 15-16 October 2004, University of Ottawa.

foreign policy in the region, questions arise regarding Moscow's ability to influence the preferences of its neighbouring states, especially Ukraine, since the majority of the Russian elite still does not conceive of Ukraine as being independent of Moscow. For example, in 2000 Russian President Boris Yeltsin stated that "without Ukraine, it is impossible to imagine Russia",² while his successor, Vladimir Putin in 2008 noted that "...Ukraine is not even a state! What is Ukraine? Part of its territory is Eastern Europe, but another part and a significant one for that matter, is a gift from us."³ Consequently, I attempt to examine the conditions under which external pressure, especially from Moscow, interacted with domestic factors to influence the policy choices of Ukrainian leaders. This approach can give us a better understanding of how Moscow's regional ambitions are perceived by its neighbours. I will attempt to evaluate the external and domestic conditions and their effect on foreign policy change in Ukraine.

The Nature of Ukraine's Foreign Policy Inconsistency

Foreign policy inconsistency implies frequent policy changes, but how does one understand foreign policy change? Charles Hermann identified four types of foreign policy change: adjustment changes (level of effort on the part of the executive), programme changes (changes in methods of foreign policy), goal changes, and the most extreme of changes – international orientation change (actor's foreign policy is reoriented or shifted).⁴ In the case of Ukraine's foreign policy inconsistency, two types of foreign policy change are discussed here - a change in the goal/problem and a change in overall orientation. In most cases, a change of policy preference regarding one or two foreign

² Boris Yeltsin, *Midnight Diaries*. Translated by Catherine A. Fitzpatrick (New York: Public Affairs, 2000), p. 243.

³ Ol'ga Allenova, Elena Geda i Vladimir Novikov, "Blok NATO Razoshelsia na Blokpakety," *Kommersant*, 7 April 2008.

⁴ Charles F. Hermann, "Changing Course: When Governments Choose to Redirect Foreign Policy," *International Studies Quarterly*, Vol. 34, No.1, 1990, 3-21:5.

policy decisions taken by the executive across one or more issue areas undermined or even contradicted the declared foreign policy aims and strategy overall. In turn, such contradictory decisions led to questions regarding a change in Ukraine's general foreign policy orientation.

Consequently, from an examination of Ukraine's foreign policy efforts over the last two decades, most of the major initiatives undertaken by the Ukrainian leadership have been inconsistent in realisation, or at times even reversed the original aim. For example, this dynamic is evident in the agreements with Russia in Massandra in 1993 when President Leonid Kravchuk signed a protocol putting Ukraine's 50% share of the Black Sea Fleet stationed in southern Ukraine (both vessels and infrastructure) into Russian ownership, thus breaking with the established policy regarding this issue since independence. Similarly, unexpected agreements made by President Leonid Kuchma with Russian and German leaders in 2002 regarding the creation of an international gas consortium to manage Ukrainian gas pipelines, contradicted Ukraine's policy of diversification of gas pipelines away from Russia, and went against a legal ban on international control over the Ukrainian pipeline network. Inconsistency is also evident in the executive decision to enter into a customs union, Single Economic Space, with Russia, Belarus and Kazakhstan in 2003 while at the same time seeking membership and negotiating an Action Plan with the EU. Also the executive was inconsistent in regards to the Odesa-Brody pipeline when in the summer of 2004 the cabinet changed its previous decision made four months earlier and decided to ship Russian oil instead of Caspian as originally-intended. Examples of more recent cases of policy inconsistency include energy agreements signed with Russia in 2006, 2009 and 2010, all of which significantly revised Ukrainian gas trade arrangements, arguably the most important area of Ukraine-Russia

relations. This study examines some of these cases in order to trace and explain the sources of this policy inconsistency. A review of the existing literature on Ukraine's foreign policy suggests what these explanations may potentially be.

Existing Literature and Ukraine's Foreign Policy Inconsistency

Several approaches dominate the literature that attempts to explain Ukraine's foreign policy and changes within it. Although mostly empirical, area-specific works are not well-integrated with existing theories of international relations (IR) and political science, they nonetheless could be broadly categorised under four theoretical frameworks: realist and neorealist explanations, constructivist approaches, international political economy and republican liberalism.

Realist and Neorealist Explanations

Within the realist tradition of IR, three separate, but theoretically integrated perspectives, can be used to explain Ukraine's international behaviour and sources of change: balance-of-power, balance-of-threat and the geopolitical school. While the first approach explains the wavering of Ukraine's policy towards Russia as a result of changes in the international system, the latter two explain policy change as an outcome of decision-makers' reactions to external stimuli. However, all three explanations, which also dominate the literature on Ukraine's foreign policy, suggest that initial sources of behavioural change originate outside Ukraine and its decision-makers.

Balance of great powers

While the structural theory on the balance-of-powers⁵ by Kenneth Waltz was not formulated to explain foreign policies of specific nations, let alone 'secondary nations' like Ukraine,⁶ it has been used by observers to explain Ukraine's international behaviour. Writers within this tradition tend to view Ukraine as a balancing or buffer zone, where the wavering of Ukrainian foreign policy is explained as an outcome of the preferences of 'great powers,' such as the United States, Russia and the European Union.⁷

According to this argument, the West and Moscow attempt to influence Ukraine's foreign policy in order to achieve their goals. The interests of great powers are said to either converge or differ, depending on the issue at hand; most frequently the interests of the United States and Russia are held to be in opposition to each other, where Washington wants to prevent Russian influence in Europe. According to this approach, Russia and the United States attempt to balance each other's military capabilities by competing for 'spheres of influence' – achieving alliance or control over weaker states like Ukraine. The wavering of Ukraine's foreign policy decisions are thus explained as an outcome of the policies by the US and Russia.⁸

The work by Anatoliï Hal'chyns'kyï, adviser to the former President of Ukraine Leonid Kuchma, supports this view of international affairs, ultimately arguing that the configuration of great powers such as the US, the European Union and Russia, and the

⁵ Most commonly the 'balance of power' is defined as "an even distribution of power in the international system which precludes any one state or alliance from achieving preponderance." Martin Wight citing Machiavelli in Martin Wight, *Power Politics* (London: Leicester University Press, 1999), p. 173. For more on the concept of the 'balance of power' and the evolution of its meaning through time see Michael Sheehan, *The Balance of Power: History and Theory* (London: Routledge, 2000).

⁶ Kenneth N. Waltz, *The Theory of International Politics* (New York: McGraw-Hill, 1979), p. 127.

⁷ Hryhorii Perepelytsia, *Zovnishnia Polityka Ukraïny: Stratehichni Otsinky, Prohnozy, Pryoriteti* (Kyïv: 2007), p. 65.

⁸ See Anton Buteïko, *Kudy Priamuie Ukraïna* (Kyïv: Yurydychna Knyha, 2001); Dmitri Furman, "A Silent Cold War," *Russia in Global Affairs*, Vol. 4, No. 2, 2006; Konstantin Zatulin, "Fighting for Ukraine: What's Next?" *Russia in Global Affairs*, No. 2, 2005.

degree of cooperation between them greatly determines Ukraine's behaviour.⁹ Similarly, Svitlana Andrushchenko argues that Ukraine's relations with the three geopolitical poles of the EU, Russia and the United States are determined not by Ukraine's position or intentions, but by the degree of cooperation or competition between the three.¹⁰ Andrushchenko analyses Ukraine's energy sector as an example of this competition and its effect on Ukraine's behaviour. She argues that the key issue of great power rivalry in the 21st century is energy scarcity, where the EU, Russia and the United States aim to not only achieve lucrative profits, but also to resolve their own energy needs.¹¹ Ukraine's energy transit capacities made Kyiv into an object of great power competition, where three powers battle for control. A case in point is the construction of the Odesa-Brody pipeline running through Ukraine, which was built with the strategic aim of diversifying the EU's energy dependence away from Russia.¹² Thus, the pipeline was meant to deliver Caspian as opposed to Russian oil to European consumers. However, upon the completion of the pipeline, Ukraine suddenly changed its course and instead decided to reverse the flow of oil in the newly-built pipeline, allowing the Russian firm, TNK-BP, to transport its oil through Ukraine and to the Mediterranean, thus making Russia a winner in this battle. Therefore, according to this structural explanation, the wavering of Ukraine's policy is seen as an outcome of great power preferences – Western and Russian.

⁹ Anatoliï Hal'chyns'kyï, *Ukraïna na Perekhresti Heopolitychnykh Interesiv* (Kyïv: Znannia Ukraïny, 2002), pp. 103-14, 25-34.

¹⁰ Svitlana Andrushchenko, *Ukraïna v Suchasnomu Heopolitychnomu Seredovyshti* (Kyïv: Logos, 2005), pp. 233-41.

¹¹ Ibid, p. 241.

¹² Ibid, pp. 234-244.

Managing the Russian threat

The balance-of-power theory was reformulated by Stephen M. Walt into a 'balance-of-threat' paradigm as the former failed to explain why states would choose to pursue particular alliances. Walt argues that states balance (align against) those nations which pose the greatest threats to their survival.¹³ Writers in this tradition usually define Russia as Ukraine's greatest threat. Russia is perceived as having all of the components that make it threatening to Ukraine: greater material capabilities, geographic proximity, substantial offensive power, and most importantly, aggressive intentions towards Kyiv. The last of these is further differentiated into permanent and changing aggressive intentions. The permanent aggressive interpretation sees Russia as being an inherent threat to Ukraine due to Moscow's historical imperialism towards Kyiv, which in turn predisposes Ukraine to continuously view Russia as a potential threat.¹⁴ The latter assumption presupposes that although Russia does not continuously pose a threat, Moscow can be viewed by Kyiv as dangerous when Russia uses threatening rhetoric and/or actions.¹⁵ Although the two conceptions of a 'threat' are related, the key difference lies in their ability to explain inconsistency. The first one would suggest that e

¹³ Stephen M. Walt, *The Origins of Alliances* (Ithaca : Cornell University Press, 1987), pp. 21-26, 28-31.

¹⁴ This argument rests on a crucial assumption that Ukraine is not a separate territory, but part of Russia and constitutes a key element of the Russian identity. The thinking creates a historical continuity between the various stages of Russian history and its global ambitions. Ukrainian historians of the early 1900s reviewed this historical account, establishing that the princes of Kyivan Rus' were not 'Russian', but Ukrainian in a sense that they were first examples of Ukrainian statehood, which was deposed by the Mongols and then invaded by Moscow. Consequently, historically, relations with Russia are not of union, but of domination, where Russia is viewed as a coloniser of Ukrainian territories and an inherent threat to the Ukrainian statehood. For the Russian historical perspective see Nikolai Karamzin, Vasiliĭ Kliuchevskii, Nikolai Berdyaev, Arsenii Nosonov, and Dmitrii Likhachev. For Ukrainian critique of such interpretations see Mikhaĭl Hrushévskii, *Ocherk Istorii Ukrainskogo Naroda* (Piterburg: 1906); Michael Hrushevsky, *A History of Ukraine* (New Haven: Yale University Press, 1941); Natalia Polonska-Vasylenko, *Two Conceptions of the History of Ukraine and Russia* (London: Ukrainian Publishers Limited, 1968). For substantive review of both positions and their influence on present relations between Ukraine and Russia see Ivan Diak, *Ukraïna-Rosiia: Istoriia ta Suchasnist'* (Kyïv: Knyzhkova Drukarnia Naukovoï Knyhy, 2001), pp. 3-184.

¹⁵ Russia's aggressive intentions arguably are exhibited in three major areas: Ukraine's economic and energy dependency (gas cut-offs and reductions in oil and gas supplies), territorial and property disputes (claims to the Crimea, Sevastopol, the Soviet Black Sea Fleet, and Tuzla Island) and attempts to politically and militarily reintegrate the former Soviet space by such as re-establishing Moscow's dominance (CIS, Eurasian Economic Community, Single Economic Space, Collective Security Organisation, the Eurasian Union).

Ukrainian foreign policy would be continuously anti-Russian based on historical determinism,¹⁶ which does not explain our observations of inconsistency. The second explains the wavering as the changing perception of the Russian threat.¹⁷ Consequently when Moscow is perceived as a threat to Ukraine, Kyiv seeks alternative international alliances, thereby changing its earlier policy.

Geopolitics of inconsistency

Geopolitics as an approach to the analysis of inter-state behaviour has fallen out of favour in the Western study of international relations. However, it remains popular amongst observers and scholars in the former Soviet Union. More prescriptive than explanatory, this approach views the inconsistency of Kyiv's foreign policy as an outcome of Ukraine's geopolitical nature, which by virtue of various geopolitical codes is destined to balance several vectors of its foreign policy orientation at the same time, instead of pursuing one specific orientation.

Within Western geopolitical thought, as within the more recent post-Soviet one, there are two major conceptualisations of geopolitics: traditional and civilisational. If traditional geopolitics refer to the early writers who based their conception of the state power in naturalistic explanations, concluding that the states with strategic geographical

¹⁶ This assumption is either implicit or explicit in the essays by Semyen Appatov, Viktor Glebov, Eugueni Kaminski, Robert Kennedy, Igor Koval, Hryhori Perepelytsia, Olexander Potekhin, Alexander Rahr and Peter Rainow, in David Albright and Semyen Appatov, *Ukraine and European Security* (Basingstoke: Macmillan, 1999); Natalya Yakovenko, "The Russian Dimension in Ukraine's Foreign Policy," *Bairrigg Paper* 29 (Centre for Defense and International Security Studies, 1999); William H. Kincade and Natalie Melnychuk, "Eurasia Letter: Unneighborly Neighbors," *Foreign Policy*, Spring, 1994; John B. Dunlop, "Reintegrating 'Post-Soviet Space'," *Journal of Democracy*, Vol. 11 No. 3, 2000; Keith C. Smith, *Russian Energy Politics in the Baltics, Poland and Ukraine: A New Stealth Imperialism* (Washington D.C.: Center for Strategic and International Studies, 2004). Also Barry R. Posen's 'Defence Concept for Ukraine' is based on this assumption, see Barry R. Posen, "Kontseptsiya Oborony dlia Ukrainy," *Ukraina Problemy Bezopasnosti*, red. Irina Korbinskaya i Sherman Garnett (Moskva: Moskovskii Tsentri Karnegi, 1996).

¹⁷ Olga Alexandrova, "The Premises of Ukrainian Foreign and Security Policy," in Kurt R. Spillman, Andreas Werner and Derek Müller, eds., *Between Russia and the West: Foreign and Security Policy of Independent Ukraine* (Bern: Peter Lang, 1999), p. 40-41; Oles M. Smolansky, "Ukraine and Russia: An Evolving Marriage of Inconvenience," *Orbis*, Winter, 2004. Also see arguments made by Rami Abdelal in Robert Legvold and Celeste A. Wallander, eds., *Swords and Sustenance: The Economics of Security in Belarus and Ukraine* (Cambridge: MIT Press, 2003); John Morrison, "Pereyaslav and After: The Russian-Ukrainian Relationship," *International Affairs*, Vol. 69 No. 4, 1993.

location, state size, numerous population, well-endowed natural resources would be more powerful actors in the international system, thus arguing for territorial and naval expansion to increase state power,¹⁸ the civilisational geopolitics emphasise the role of identity, history, culture and technology as the objects of state and regional relations in the world.¹⁹

Both traditionalist and civilisational writers are present in Ukraine, with the latter dominating the literature. Contemporary Ukrainian civilisational authors such as Vladimir Dergachov, Bohdan Hawrylyshyn, Hryhoriï Perepelytsia, and Sviltana Vasylenko argue that Ukraine's foreign policy must be build on the 'geopolitical code' of Ukraine, which has developed due to geographical and historical evolution of the land.

The code consists of three internal and external vectors of foreign policy: Western (EU and the US), Eastern (Russia) and Southern (Mediterranean), which are products of Ukraine's historical location on the periphery of three civilisations: Euroatlantic, Eurasian and Islamic. The three vectors also represent the three parts of Ukraine: Eastern, due to long-standing historical Russian domination of the territory; Western, inclusion of the western territories of Ukraine into the Lithuanian, Polish and Austro-Hungarian dominions; and Southern, with Crimea and Odesa being historically part of the Greek influence and Turkish control. This peripheral location has traditionally allowed Ukraine to play a role as a bridge between these three civilisations and act as a communicator

¹⁸ See works by Friedrich Ratzel, Halford John Mackinder, Alfred Thayer Mahan, Rudolf Kjellen, Karl Haushofer, and later Hans W. Weigert, Owen Lattimore and Nicholas Spykman. Russian scholar Eduard G. Solov'iov divides them into traditionalist and revisionist. If *traditionalists* in Russia synthesised Western European traditional geopolitics with Russian *Eurasianism* of the 20th century that emphasised Russia's economic and cultural self-sufficiency, the *revisionists* amended the forms of control countries can have beyond geographical and military factors to include political, civilisational, communicational, demographical, etc. Eduard G. Solovyev, "Geopolitics in Russia - Science or Vocation?," *Communist and Post-Communist Studies*, No. 37, 2004. Also, Eduard Solov'iov, *Geopolitika Postsovetskogo Prostranstva* (Moskva: Institut Evropy Rosiiskoi Akademii Nauk, 1993).

¹⁹ In the West, civilisational writers include Francis Fukuyama, *The End of History and the Last Man* (London: Hamish Hamilton, 1992); Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

between them.²⁰ Thus, Ukraine's foreign policy inconsistency is a result of its geopolitical location and historical relations with powerful civilisations that have crossed it. In this sense inconsistency is driven by exogenous factors, beyond the control of Ukrainian decision-makers.

The realist and neorealist explanations point to external, mainly material sources that determine the inconsistency of Ukraine's foreign policy. However, although these approaches help to identify potential external factors of inconsistency they do not explain how they come to matter in specific foreign policy decisions made by Ukrainian leaders, since similar international systemic stimuli are dealt with differently by the various Ukrainian leaders. Consequently, approaches that show how and why particular choices are made by decision-makers, with a focus on the domestic dimension, can be more fruitful in identifying sources of inconsistency.

Constructivist Approach: National Identity in Ukraine's Foreign Policy

The second most developed explanation in the literature on the sources of Ukraine's foreign policy is the constructivist approach of IR, where ideas/beliefs of decision-makers and the general population are used more broadly to explain the foreign policy choices of Ukrainian leaders.²¹ Within the constructivist paradigm two broad

²⁰ Bohdan Hawrylyshyn, "Ukraine between East and West, North and South: Geopolitical Options and Constraints," in Lutz Hoffman and Felicitas Mollers, eds., *Ukraine on the Road to Europe* (Heidelberg: Physia-Verlag, 2001); Svitlana Vasylenko, *Ukraïna: Heopolitychni Vymiry v Zahal'noievropeï's'komu Protsesi* (Odesa: ODMA, 2000); Vladimir Dergachov, *Geopolitika* (Moskva: Iuniti-Dana, 2004), Vladimir Dergachov, "Teoritieskie Geoeconomicheskie Osnovy Natsional'noi Bezopasnosti," in *Geoeconomicheskie Osnovy Natsional'noi Bezopasnosti*, red. Vladimir Dergachov, N. Kuharskaya i N. Tarakanov (Odessa: Institut Problem Rynka i Ekonomicheskikh Isledovanii NAN Ukrainy, 2005), Hryhorii Perepelytsia, *Zovnishnia Polityka Ukraïny: Stratehichni Otsinky, Prohnozy, Pryoritety* (Kyiv: 2007).

²¹ For more on constructivist approaches to understanding and explaining foreign policy behaviour of the decision-makers see Martha Finnemore, *National Interests in International Society* (Ithaca: Cornell University Press, 1996); Alexander Wendt, *Social Theory of International Politics* (New York: Columbia University Press, 1996); Walter Carlsnaes, *Ideology and Foreign policy: Problems of Comparative Conceptualization* (Oxford: Basil Blackwell, 1986); and constructivist approaches in relation to Ukraine's foreign policy Paul J. D'Anieri, "Constructivist Theory and Ukrainian Foreign Policy," in Moroney, Kuzio and Molchanov, *Ukrainian Foreign and Security Policy : Theoretical and Comparative*

schools of thought may be distinguished – cognitivists and ideational constructivists. While cognitivists tend to examine the psychology and cognitive frameworks of key executive leaders and decision-making groups, and their effects on foreign policy, ideational constructivists deal with issues of unifying ideas and norms such as national identity and political culture that enable social cohesion, state action and change. However, national identities and political culture are continuously re-constituted through social interaction, rather than remaining static or defined by nature, which further indicates the sources of their changes, and consequently changes in foreign policy. The writings on Ukraine's foreign policy mainly deal with the latter approach and concentrate on the construction and the role of Ukraine's national identity and its effect on foreign policy behaviour.

Unlike many existing nation-states of Europe, Ukraine as a present-day state gained its independence without a "unifying national mythology and heroes."²² Instead, several competing national identities seem to exist and compete in Ukraine and their composition is predicated on the different linguistic, ethnic, historical, economic and regional cleavages throughout the history of the people. Historically, the population and regions of Ukraine found themselves under different sovereigns, political and economic systems, titular language and state boundaries (southern regions – Ottoman and Russian Empires, western regions – Romania, Polish-Lithuanian Commonwealth and Austro-Hungarian Empire, and central and eastern regions under Polish and Russian Imperial rule). In addition to different pre-communist pasts, the population and territory of contemporary Ukraine shared a common past as part of the Soviet Union known as the

Perspectives (Westport: Praeger, 2002), pp. 37-55; Ruth Deyermund, *Security and Sovereignty in the Former Soviet Union* (London: Lynne Rienner Publishers, 2008).

²² Ilyya Prizel, *National Identity and Foreign Policy: Nationalism and Leadership in Poland, Russia and Ukraine* (Cambridge: Cambridge University Press, 1998), pp. 372-373.

Ukrainian Soviet Socialist Republic (UkrSSR). However, Soviet economic and nationalities policies added to the existing divisions in Ukraine, by emphasising the industrial development of eastern and southern Ukraine and by resettling many ethnic Russians into these territories. Such historical processes in turn produced ethnic, linguistic and regional divisions within Ukraine which affect various aspects of politics in contemporary Ukraine. A well-documented, albeit somewhat simplistic vision of the effects of these competing identities is that of an 'East-West' split in Ukraine. Thus, western regions of Ukraine are less developed economically, with a higher number of predominantly Ukrainian-speaking populations that also tend to vote for right-wing, nationalist parties. Whereas, southern and eastern regions have a large number of ethnic Russians, with the population being predominantly Russian-speaking who support parties, candidates and policies that emphasise close political, economic and cultural relations with Moscow.²³

Although few empirical studies have been carried out that detail the effects of these fractures on Ukraine's foreign policy, Paul J. D'Anieri, Natalie Mychajlyszyn, Ilyya Prizel, and Taras Kuzio have argued that they produce 'Western' and 'Eastern' identities amongst the population at large and amongst the country's governing elites, and

²³ See Sarah Birch, "Interpreting the Regional Effect in Ukrainian Politics," *Europe-Asia Studies*, Vol. 52, No. 6, 2000, 1017-1041; Stephen Shulman, "The Contours of Civic and Ethnic National Identification in Ukraine," *Europe-Asia Studies*, Vol. 56, No.1, 2004, 35-56; Paul Kubicek, "Regional Polarisation in Ukraine: Public Opinion, Voting and Legislative Behaviour," *Europe-Asia Studies*, Vol. 52, No.2, 2000, 273-294; Lowell Barrington, "Language, Ethnicity, and Region as Sources of Identity and Determinants of Political Behaviour in Ukraine: What We Know and What We Still Need to Do," paper presented at the workshop on Understanding the Transformation of Ukraine, University of Ottawa, 15-16 October 2004; Anatol Lieven, *Ukraine and Russia: A Fraternal Rivalry* (Washington D.C.: United States Institute of Peace Press, 1999); Dominique Arel, "Introduction: Theorizing the Politics of Cultural Identities in Russia and Ukraine," in Dominique Arel and Blair A. Ruble, eds., *Rebounding Identities: The Politics of Identity in Russia and Ukraine* (Baltimore: John Hopkins University Press, 2006); Iurii Ohyl'chans'kyi, *Etnichna Struktura Ukraïns'koho Suspil'stva Uïavni ta Disni Problemy* (Kyiv: Kyievo-Mohylians'ka Akademiia, 2006); Janusz Bugajski, "Ethnic Relations and Regional Problems in Independent Ukraine," and "Regionalism: An Underestimated Dimension of State-Building," in Sharon L. Wolchik and Volodymyr Zviglyanich, eds., *Ukraine: The Search for a National Identity* (Oxford: Rowman and Littlefield, 2000), pp. 165-197; on the role of political identities and their effects on conflict/cooperation in Ukrainian regions see Gwendolyn Sasse, *The Crimea Question: Identity, Transition, and Conflict* (Cambridge, Mass.: Harvard university Press, 2007); Mikhail A. Molchanov, *Political Culture and National Identity in Russian-Ukrainian Relations* (College Station: Texas A&M University Press, 2002), pp. 166-206.

consequently influence the foreign policy decisions of the Ukrainian leadership.²⁴ Thus, politicians who represent the views of western regions, defined by Prizel as “nationalist” and by Kuzio as “Westernisers”, would promote more confrontational relations with Russia. “Eurasian” or “Slavophile” identities would be upheld by politicians representing eastern and southern Russian-speaking regions, and would seek to promote more cooperative relations with Russia. Crucial to this argument is the link between electoral preferences and the behaviour of elected representatives. Studies show that even in respect to domestic policies, Ukrainian parliamentarians rarely behave according to the preferences of those who elected them.²⁵ In respect to the Ukrainian executive, similar arguments have been made that although presidential candidates may campaign on a certain pro-Russia or against-Russia policy platform and in fact come from one of these regions, once in office, their decisions are rarely consistent with the preferences of their constituents.²⁶ Consequently, further research is necessary in tracing the relationship between the electorate, national identities of the Ukrainian leaders and the foreign policy decisions they make.

International Political Economy

Another body of literature that has developed within the writings on Ukraine’s foreign policy can be broadly grouped under the heading of international political

²⁴ Paul J. D’Anieri, “Constructivist Theory and Ukrainian Foreign Policy,” in Moroney, Kuzio and Molchanov, eds., *Ukrainian Foreign and Security Policy : Theoretical and Comparative Perspectives*, Natalie Mychajlyszyn, “From Soviet Ukraine to the Orange Revolution: European Security Relations and the Ukrainian Identity,” in Oliver Schmidtke and Serhy Yekelchuk, eds., *Europe’s Last Frontier: Belarus, Moldova, and Ukraine between Russia and the European Union*, (New York: Palgrave Macmillan, 2008), pp. 31-53; Taras Kuzio, “Slavophiles versus Westernizers: Foreign Policy Orientations in Ukraine,” in Kurt R. Spillman, Wenger, Andreas and Derek Müller, ed., *Between Russia and the West: Foreign and Security Policy of Independent Ukraine* (Bern: Peter Lang Publishing, 1999) , Ilya Prizel, *National Identity and Foreign Policy* (Cambridge: Cambridge University Press, 1998).

²⁵ See Frank C. Thames, "Searching for Party Effect in Post-Communist Ukraine," *Communist and Post-Communist Studies*, No. 38, 2005.

²⁶ See Taras Kuzio, "Neither East nor West: Ukraine’s Security Policy under Kuchma," *Problems of Post Communism*, Vol. 52, No. 5, 2005.

economy, since the works explain Ukraine's foreign policy outputs in light of the global and regional economic environment, which offers opportunities for specific domestic economic groups to push for particular policies.²⁷ This body of literature explains changes in Ukraine's foreign policy as an outcome of competing domestic-industrial, regional groups and lobbies attempting to direct overseas economic policy and perhaps also security policy to achieve decisions benefiting their preferences and aims.²⁸ In some cases, total capture by these interests of the domestic and foreign policy-making process through economic patronage and rents translated into a problem of regulatory state capture and corruption, which have been prevalent in Ukraine since independence.²⁹ As a consequence of this, several business-administrative groups or BAGs (clans) have emerged in Ukraine (Kyiv, Donetsk, Dnipropetrovsk) that at times cooperate and at times compete with each other in influencing domestic and foreign policy making. Empirical works detailing the effects of these groups on particular foreign economic policy outputs have been rare, but those that do exist suggest that the influence is carried out through formal and informal institutions – through the direct representation and holding of public

²⁷ Margarita M. Balmaceda, *Explaining the Management of Energy Dependency in Ukraine: Possibilities and Limits of a Domestic-Centred Perspective* (Mannheim: University of Mannheim, 2004), p. 16.

²⁸ See Paul Kubicek, *Unbroken Ties: the State, Interest Associations, and Corporatism in the Post-Soviet Ukraine* (Ann Arbor: University of Michigan Press, 2000); Tor Bukkvoll, "Defining a Ukrainian Foreign Policy Identity: Business Interests and Geopolitics in the Formulation of Ukrainian Foreign Policy 1994-1999," in Moroney, Kuzio and Molchanov, *Ukrainian Foreign and Security Policy: Theoretical and Comparative Perspectives* (Westport: Praeger, 2002), Rosaria Puglisi, "Clashing Agendas? Economic Interests, Elite Coalitions and Prospects for Co-Operation between Russia and Ukraine" *Europe-Asia Studies*, Vol. 55, No.6, 2003; Rosaria Puglisi, "The Rise of the Ukrainian Oligarchs," *Democratization*, Vol. 10, No.3, 2003; in part this is also an argument of Margarita M. Balmaceda in *Energy, Dependency, Politics and Corruption in the Former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy, 1995-2006* (Abingdon: Routledge, 2008); Hryhoriy Nemyria, "Regional Identity and Interests: The Case of Eastern Ukraine," in Kurt R. Spillman, Andreas Werner and Derek Müller, eds., *Between Russia and the West: Foreign and Security Policy of Independent Ukraine* (Bern: Peter Lang, 1999), pp. 303-323.

²⁹ Tor Bukkvoll, "Private Interests, Public Policy: Ukraine and the Common Economic Space Agreement," *Problems of Post-Communism*, Vol.51, No.5, 2004, 11-22; Andreas Wittkowsky, *Piatiletka bez Plana: Ukraina 1991-1996* (Kiev: Sfera, 1998), pp. 117-132; Yevhen Holibard, *Kuchmizm i Kuchmonomika: Chastyna Persha* (Kyiv: Pul'sary, 2005); Heiko Pleines, "Manipulating Politics: Domestic Investors in Ukrainian Privatisation Auctions, 2000-2004," *Europe-Asia Studies*, Vol. 60, No.7, 2008, 1177-1197; Hans van Zon, "Political Culture and Neo-Patrimonialism Under Leonid Kuchma," *Problems of Post-Communism*, Vol. 52, No.5, 12-22; Marko Bojcun, "Ukraine: Beyond postcommunism," *Debatte*, Vol.13, No.1, 2005, 9-20; Mikhail A. Molchanov, "Ukraine and the European Union: a Perennial Neighbour?" *European Integration*, Vol. 26, No.4, 2004, 451- 473.

offices and through the influence of policy-agenda by patronage and lobbying.³⁰ Although in most cases these vested groups attempt to influence the state's foreign economic rather than security and foreign policy, it can also affect the latter if external actors (Russia, the EU, the US, international organisations) create a linkage between the economic accommodation of these groups and particular political transformations within the country as well as its geopolitical orientation. Thus, external pressures act to affect domestic economic coalitions and bring about particular political outcomes within Ukraine. In this light, NATO, the US, the EU and Russia use conditionality ('soft' means of persuasion – mostly economic and ideational incentives) to encourage domestic political transformations in Ukraine, while domestic groups react with either acceptance or rejection of particular external policy stimuli. However, in addition to persuasion, Moscow has arguably used economic pressure and coercion in order to achieve its political and economic ends in Ukraine.

A number of recent works have concentrated on Moscow's use of Ukraine's economic vulnerability and its dependence on the Russian monopoly of energy supplies to elicit more compliant domestic and foreign policy decisions from the Ukrainian political leadership.³¹ The Kremlin, through the Russian energy companies, has on several occasions threatened, and at times reduced or halted the supply of energy (oil, gas, nuclear fuel) to Ukraine due to Kyiv's political positions and debt arrears, oftentimes in

³⁰ Influence of vested interests on Ukraine's energy/foreign policy outputs see Margarita M. Balmaceda in *Energy, Dependency, Politics and Corruption in the Former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy, 1995-2006* (Abingdon: Routledge, 2008) and on foreign economic policy outputs Tor Bukkvoll, "Private Interests, Public Policy: Ukraine and the Common Economic Space Agreement," *Problems of Post-Communism*, Vol.51, No.5, 2004, 11-22.

³¹ Paul J. D'Anieri, *Economic Interdependence in Ukrainian-Russian Relations* (Albany: State University of New York Press, 1999), pp. 45-96; Keith C. Smith, *Russian Energy Politics in the Baltics, Poland and Ukraine: A New Stealth of Imperialism* (Washington D.C.: Center for Strategic and International Studies, 2004); Margarita M. Balmaceda in *Energy, Dependency, Politics and Corruption in the Former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy, 1995-2006* (Abingdon: Routledge, 2008), pp. 5-8.

return demanding control of the Ukrainian assets.³² In addition, the timing of many of these cuts or reductions seems to have been politically motivated, as for example in the gas crisis of early 2006, when Russia significantly halted gas supply to Ukraine, affecting European gas deliveries. The cut-off occurred right before the key parliamentary elections were to take place in Ukraine, where several party blocs competed for control of the country, several of which adhered to Ukraine's neutrality and non-membership in NATO, which was Moscow's preference. The cut off, it is argued, was politically timed and meant to remind businesses and the people of Ukraine, heavily dependent on Russian energy supplies, that a Kyiv which ignores Russian interests would have to pay an economic price.³³ Similarly, the more recent 2009 gas cut-off for 20 days by Moscow was noted by observers to be an attempt by the Kremlin in cooperation with Gazprom to influence the domestic and foreign policy of Ukraine. Arguably, this resulted in a more Russia-accommodating political force, Party of Regions, and its leader, Viktor Yanukovych, came to power after the presidential elections of 2010.

However, despite Moscow's ambitions, it is clear that it is not the pressure itself that matters, but "what political leaders make of...economic dependency, and of the Russian factor."³⁴ Thus, the way in which the preferences of certain external economic and political actors bring about particular domestic and foreign policies in Ukraine needs to be further explained. The domestic institutional perspective on the determinants of Ukraine's foreign policy offers a few answers to that end. Consequently, the IPE paradigm brings about the importance of vested interest groups (regional, sectoral, or individual)

³² In the case of nuclear weapons, Moscow halted the supply of nuclear fuel rods during 1990s to Ukraine as a way to pressure Kyiv into renouncing its nuclear arsenal. See Chapter 2.

³³ Simon Pirani, *Ukraine's Gas Sector* (Oxford: Oxford Institute for Energy Studies, 2007), p. 9.

³⁴ Robert Legvold and Celeste A. Wallander, *Swords and Sustenance: The Economics of Security in Belarus and Ukraine* (Cambridge, Mass.: The MIT Press, 2004), p. 229.

on domestic and foreign policy-making by emphasising how their preferences, in light of the international environment, affect the state's foreign policy. Frequent changes in Ukraine's foreign policy can be explained by the preferences of the winning groups within Ukraine's political system. Thus, Ukraine's foreign policy is likely to waver with the changes of their preferences or their relative position/access to political power.

Republican Liberalism: Preferences and Institutional Process

The Republican liberalism of Andrew Moravcsik, as a newer paradigm of liberal theory of International Relations, best captures the emerging literature on Ukraine's foreign policy which examines the role of domestic institutions in foreign policy-making. This approach looks at "ways in which domestic institutions and practices aggregate [domestic and international] pressures, transforming them into state policy."³⁵ Ukraine's foreign policy behaviour, including its inconsistency, is likely to depend on both: changes in societal preferences (be they of the general population, of groups or leaders), and changes in the domestic institutional setting (formal and informal) through which these preferences compete and determine foreign policy. Within this framework two areas of research dominate – political structure and elite competition. While political structure refers to the structure of the government and the division of powers between the branches, both de-jure and de-facto, elite competition refers to the competition within governmental structures and between various political and economic preferences (which might reflect the interests of the general public, private interests of the elites, or vested interests of specific groups). Put simply, if the former concentrates on the study of inter-relationships between the president, the cabinet, and the parliament and its effects on

³⁵ Andrew Moravcsik, "The New Liberalism," Chapter 13 in Christian Reus-Smit and Duncan Snidal, eds., *The Oxford Handbook of International Relations* (Oxford: Oxford University Press, 2008), pp. 244-245.

foreign policy making, the latter emphasises elite competition within the parliament and potentially the cabinet.

Authors working on the domestic sources of Ukraine's foreign policy suggest that these institutional factors do matter. Kataryna Wolczuk has argued that the policy of Ukraine's European integration has suffered from the contradictory nature of Ukraine's political structure and its institutional setting, which impedes reform and policy-making.³⁶ Marc Nordberg has identified the structure of the government – almost total presidential control of foreign and security policy – and the structure of competing elites amongst the leading domestic factors influencing Ukraine's foreign policy.³⁷ The role of the Ukrainian parliament in foreign policy-making remains unclear. While Aleksandr Parfionov has argued that party preferences do not play much of a role in the Ukraine's foreign and security policy, Taras Kuzio suggests a stronger role for the parliament and political parties in influencing Ukraine's foreign and security policy.³⁸ Margarita M. Balmaceda in her extensive study of Ukraine's domestic and international energy policy has argued that institutional framework, both formal and informal, through which interests are articulated in Ukraine, explains the outcomes of Ukraine's energy policy towards Russia, namely Ukraine's continued dependency on Russian energy supplies.³⁹ Consequently, these authors emphasise the role of interests and institutional factors in the formation of Ukraine's foreign policy and suggest that they can be the sources of foreign policy continuity or change.

³⁶ Kataryna Wolczuk, "Domestic Politics and European Integration in Ukraine," *International Spectator*, No.4, 2006, 7-23: 12-16.

³⁷ Marc Nordberg, "Domestic Factors Influencing Ukrainian Foreign Policy," *European Security*, Vol. 7, No. 3, 63-91: 85-86.

³⁸ Aleksandr Parfionov, "Foreign and Security Policy Views of Relevant Ukrainian Political Forces," in Kurt R. Spillman, Andreas Werner and Derek Müller, eds., *Between Russia and the West: Foreign and Security Policy of Independent Ukraine* (Bern: Peter Lang, 1999), pp. 75-93; Taras Kuzio, "The Domestic Sources of Ukrainian Security Policy," *Journal of Strategic Studies*, Vol. 21, No.4, 1998, 18-49:35-39, 43.

³⁹ Margarita M. Balmaceda, *Explaining the Management of Energy Dependency in Ukraine: Possibilities and Limits of a Domestic-Centred Perspective* (Mannheim: University of Mannheim, 2004), p. 34.

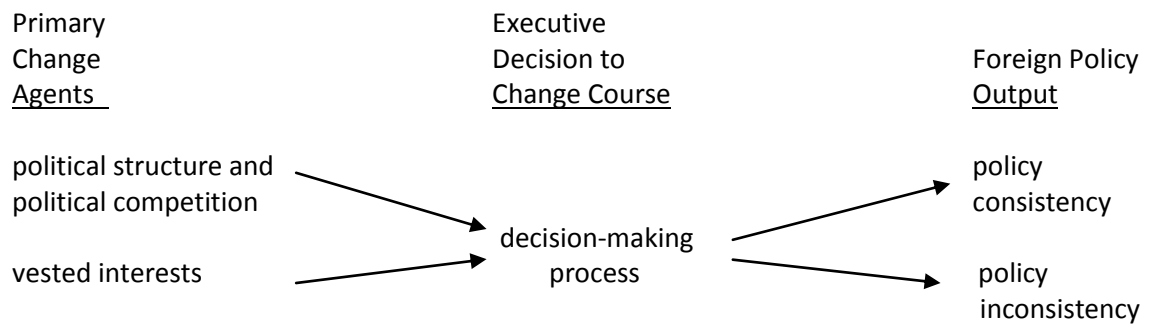
Domestic Sources: An Approach

Sources of Inconsistency

The reviewed literature on Ukraine's foreign policy pointed to either domestic (ideational changes within the leadership, competition between political and economic interests, and governmental structures) or systemic sources (external factors) of inconsistency. The Foreign Policy Analysis (FPA) literature also classifies similar sources of foreign policy change: leader driven, bureaucratic advocacy, domestic restructuring and external shocks.⁴⁰ Leader driven policy change results from the preferences of an authoritative decision-maker who, through persuasion or coercion, imposed his preference. Changes due to bureaucratic advocacy result from a group, within the executive, which is in a position to direct the policy and implement the change. Domestic restructurings refer to changes in the political system where agents of change are elites, who legitimise the government, and alter their preferences due to a change of their views or composition. External shocks refer to international events which trigger policy change in respective governments. The approach taken in this study is to examine domestic sources of inconsistency as intervening variables between systemic sources and foreign policy change. Consequently, building on both the reviewed literature and Hermann's sources of foreign policy change, I examine two key domestic sources that influence the change in the foreign policy preferences of the leadership: the nature of the political structure and political competition within it and the influence of vested interests on decision-making.

⁴⁰ Charles F. Hermann, "Changing Course: When Governments Choose to Redirect Foreign Policy," *International Studies Quarterly*, Vol. 34, No.1, 1990, 3-21:11-13.

Fig. 1.1: Domestic Sources of Ukraine's Foreign Policy Inconsistency⁴¹



Political structure and competition

Political systems differ in the distribution of foreign policy-making powers between various branches of the government.⁴² In presidential systems, the making of key foreign policy decisions tends to be confined to the leader and a small group of advisors within his administration, who are likely to be a part of the National Security and Defence Council, while various ministries and security agencies supply the information and carry out presidential directives. In less institutionalised systems, like that of the Russian Federation, central leadership matters most. Thus, the president with a small group of his closest associates, who are in constant flux as their roles are not constitutionally defined, would make all decisions regarding Moscow's foreign and security policy.⁴³ In a more de-centralised political system, where significant foreign policy decision making powers are given to the parliament, or to the cabinet, conflicts are likely to arise between the branches over which has the ultimate authority on foreign policy making. Thus, in semi-presidential systems like that of France, foreign policy is made by

⁴¹ Hermann's approach to sources of foreign policy change modified by author, see Charles F. Hermann, "Changing Course: When Governments Choose to Redirect Foreign Policy," *International Studies Quarterly*, Vol. 34, No.1, 1990, 3-21:13.

⁴² Christopher Hill, "The Domestic Sources of Foreign Policy," in *The Changing Politics of Foreign Policy* (Houdsmill: Palgrave Macmillan, 2003), p. 230-235.

⁴³ Stephen White, "The domestic managements of Russia's foreign and security policy," in Roy Allison, Margot Light and Stephen White, eds., *Putin's Russia and the Enlarged Europe* (London: Chatham House, 2006), p. 41; Neil Malcolm, "Foreign Policy Making," in Neil Malcolm, Alex Pravda, Roy Allison and Margot Light, *Internal Factors in Russian Foreign Policy* (Oxford: Oxford University Press, 1996), pp. 106-129.

both the President and the Prime Minister (PM) who jointly sign international treaties and ambassadorial appointments. This division usually becomes significant in polities where the president and the prime minister are from different political orientations or have opposing policy preferences on a given issue. In these cases a stalemate can occur and foreign policy decisions could become hostage to domestic political competition.

Ukraine's political system has continuously evolved since independence and so has presidential authority over foreign and security policy. Three different periods with markedly different political arrangements, de-jure and de-facto, have been in practice in Ukraine since 1991: presidential-parliamentary (1991-1996), presidential-parliamentary by design and presidential in practice (1996-2006), and premier-presidential with a dual executive in charge of decision-making (2006-2010). Throughout the early 1990s, before the constitution was adopted in 1996, foreign policy making powers were not formally well-defined due to institutional legacies from the Soviet Union. During the UkrSSR, the legislative and executive power was fused in one body, the Supreme Council, whose leaders were members of the Presidium of the Communist Party of Ukraine, while the Cabinet of Ministers (the executive branch) was subordinate to the Presidium. Upon the dissolution of the Soviet Union, the majority of the Presidium and cabinet members kept their positions albeit the names of their positions changed. Up until 1996, governance in Ukraine was carried out based on the Soviet constitution where the Supreme Council, now the parliament, still held significant powers over foreign and security policy, despite the introduction of the presidential post in 1991 through popular elections. Foreign policy decisions, although formally carried out by the president, his administration and the Ministry of Foreign Affairs, in fact were usually made in significant cooperation with the Presidium of the parliament (as will be shown in Chapter 2 on nuclear weapons

renouncement). On the other hand a failure to secure the cooperation of the majority in the parliament led to the inability of the president to carry out his policy preferences (as discussed in Chapter 3 on the division of the Black Sea Fleet). Upon assuming the office of the president in July 1994, Leonid Kuchma attempted to centralise the political system by transferring many of the economic, foreign and security making powers to the presidency.

With the adoption of the 1996 constitution, the President took away some of the powers of the parliament and the cabinet to issue quasi-legislative acts that would derail the implementation of foreign policy decisions. Although the 1996 constitution created a presidential-parliamentary system, it is best to view the regime in Ukraine from 1996 to 2006 as presidential-parliamentary by institutional design with great leanings towards presidentialism, but certainly presidential until 2006 in outputs. Consequently, while the cabinet was supposed to be accountable to both the president and the parliament, in reality the president could dismiss the PM unilaterally, rendering him more subordinate to the president.⁴⁴ Thus, the president, through formal and informal powers, exercised an unusual degree of control over policy-making, both domestic and foreign. In addition, with the creation and the institutionalisation of the National Security and Defence Council (NSDC) of Ukraine under its secretary, Volodymyr Horbulin, the making and coordination of Ukraine's foreign and security policy moved towards this agency, further strengthening presidential control. In this system, similar to that of Russia, the president wielded substantial foreign and security policy-making powers, but he still needed to cooperate

⁴⁴ For Ukraine being semi-presidential during this period see, Oleh Protsyk, "Intra-Executive Competition between President and Prime Minister: Patterns of Institutional Conflict and Cooperation under Semi-Presidentialism," *Political Studies*, Vol. 54, 2005, 219-244, and Kataryna Wolczuk, *The Moulding of Ukraine: The Constitutional Politics of State Formation* (Budapest: CEU Press, 2001), p. 241; for Ukraine being presidential during this period see, Paul D'Anieri, *Understanding Ukrainian Politics: Power, Politics, and Institutional Design* (Armonk, NY: M.E. Sharpe, 2007), p. 135.

with the major factions in the parliament to ensure successful implementation.⁴⁵ Throughout both of his terms, President Kuchma was rather successful in carrying out major international decisions through the parliament by formal and informal means.⁴⁶ Yet, even in this formally presidential-parliamentary political system, the foreign policy preferences of the President occasionally differed from those of the members of the cabinet and the prime minister himself. In this case, disagreements over policy preferences between President Kuchma and the cabinet occasionally contributed to the inconsistency of foreign policy (as will be argued in Chapter 4 of this study, where policy over the direction of the Odesa-Brody was being made).

Due to a pact between the elites during the Orange Revolution, Ukraine's political system was significantly altered. The December 2004 constitutional changes, which did not formally come into effect until 1 January 2006, transformed the nature of the executive in Ukraine by creating a premier-presidential system of governance.⁴⁷ These changes empowered the office of the prime minister, who now received his/her legitimacy not from the president, but from the governing coalition in the parliament. In this way a dual-executive structure was created in Ukraine and consistent foreign policy direction depended on the cooperation between the president and the prime minister. In light of sharp political divisions in Ukraine this cooperation was rare, and instead, foreign policy-making became hostage to the intra-executive competition over the distribution of functions and divergent policy preferences (as will be shown in my examination of the 2006-2009 gas disputes in Chapter 5). Although democratic theory states that the

⁴⁵ "The Principles of Foreign and security Policy," in Kurt R. Spillman, Andreas Werner and Derek Müller, eds., *Between Russia and the West: Foreign and Security Policy of Independent Ukraine* (Bern: Peter Lang, 1999), p. 21.

⁴⁶ Anatolii Grytsenko, "Ukraine's Defence Sector in Transition: Impacts on Foreign and Security Policy," in Kurt R. Spillman, Andreas Werner and Derek Müller, eds., *Between Russia and the West: Foreign and Security Policy of Independent Ukraine* (Bern: Peter Lang, 1999), p. 115-116.

⁴⁷ For constitutional changes see V. Tymoshchuk i O. Struts. red., *Vzaiemodiia Verkhovnoi Rady Ukrainy, Prezidenta Ukrainy ta Kabinetu Ministriv* (Kyiv: Tsentr Polityko-Pravovyykh Reform, 2006).

separation of powers should lead to greater policy stability since divided governments slow down policy change, in the case of Ukraine, it seems that a dual-executive led to policy inconsistency.

Vested interests and parties

The domestic influences on the foreign policy preferences of leaders can originate mainly from two sources: public opinion and preferences within the parliament (from political parties and lobby groups interacting within it).⁴⁸ In a democratic system the public does not have a direct influence on the making of foreign policy, but the electorate wields significant power over the president or the government to punish foreign policy choices made contrary to public preferences by withdrawing their political support in the subsequent elections. Consequently, in such a system the executive is judged after an event and not before. In this way elections can transform public opinion into an important factor, guiding the foreign policy choices of its leaders who want to stay in power rather than directly affecting foreign policy decisions.⁴⁹

Generally, public opinion has not been seen as playing a significant role in Ukraine's foreign policy decisions. However, some evidence exists to support the claim that in the context of free and fair electoral practices executive foreign policy choices have either been constrained or even punished by the electorate at the ballot box. For example, during the presidency of Leonid Kravchuk, Ukraine's frequent anti-Russian policies in the economic and security realms were opposed by a large part of the Ukrainian population in the south and east of the country, who argued for closer relations with Moscow. This arguably led to his political demise, since his successor, Leonid

⁴⁸ Alex Pravda, "The Public Politics of Foreign Policy," in Neil Malcolm, Alex Pravda, Roy Allison and Margot Light, *Internal Factors in Russian Foreign Policy* (Oxford: Oxford University Press, 1996), p. 169.

⁴⁹ Nathaniel Copsey, *Public Opinion and the Making of Foreign Policy in New Europe: a comparative study of Poland and Ukraine* (Farnham: Ashgate Publishing, 2009), p. 13.

Kuchma, won primarily on the policy platform of the re-establishment of links with Russia. Although in the political system of the first period (1991-1995), elections were more free and fair in Ukraine, those of 1996-2004 period were manipulated, transforming elections from real to “virtual” competition.⁵⁰ The Orange Revolution of 2004 made elections in Ukraine fairer and freer once again and in turn made electoral competition and voter preferences more significant in guiding the foreign policy choices of leaders. For example, PM Tymoshenko’s desire to conclude a prompt gas deal with Russia in January 2009 was in part motivated by political concerns in light of the upcoming parliamentary and presidential elections. Similarly, upon assuming office in 2010 the new President Viktor Yanukovich removed Ukraine’s immediate NATO entry from the foreign policy agenda, citing popular opposition despite supporting the membership as prime minister during 2002-2004. Consequently, only in the circumstance of free and fair elections can we say that popular preferences influenced the foreign policy choices of the Ukrainian leaders, but this may be more indirect than direct as the direct influence of popular preferences on foreign policy decisions is very difficult to trace.

As discussed previously in the literature review, observers have noted that Ukrainian parties have played a small role in influencing the foreign policy choices of the executive throughout the presidency of Leonid Kravchuk and Leonid Kuchma. During Kravchuk’s presidency, parliament occasionally blocked executive decisions, however, not so much due to party preferences, but rather due to the conflict between the chairman of the parliament and the president. President Kuchma and his administration spent considerable amounts of time fostering ‘majority coalitions’ or the ‘party of power’ in the parliament, to ensure that presidential prerogatives were not thwarted. Thus, parties

⁵⁰ Andrew Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World* (New Haven: Yale University Press, 2006).

themselves were a poor source of influence on the foreign policy preferences of the executive. However, lobby groups and individual interests, here broadly termed as 'vested interests,' have played a considerable role in influencing the policy preferences of both parties and the executive.

In the Ukrainian context these groups are essentially driven by economic calculations and are known as business-administrative groups, BAGs, or clans. Due to the delay in economic reforms and privatisation, there were no discernible economic interest groups until 1995, and vested interests mainly consisted of individual oligarchs making profit from commodity trades and state credits.⁵¹ BAGs emerged in mid-1995, when regional interest groups (namely Dnipropetrovsk, Donetsk, and Kyiv) supported the political regime of President Kuchma in exchange for economic favours and policies which benefited them. By 1998, the initial stage of capital accumulation had occurred and business interests consolidated and entered the formal political life of the country. Different business groups were represented formally in the parliament and informally in the presidential administration and the ministries.⁵² Under Kuchma the regime became highly oligarchic and the President used his role as a buffer to arbitrate between the different groups. Not all of the business interests participated in this relationship, and Balmaceda makes a distinction between the 'non-system' and 'in-system' interest articulators, where BAGs were part of the latter. Although the membership and interests of these in-system groups continued to evolve, some of the key groups and oligarchs included: System Capital Management, an industrial conglomerate of Rinat Akhmetov from Donetsk; Industrial Union of Donbass represented by Serhii Taruta and Vitalii

⁵¹ Anders Aslund, "The Ancient regime: Kuchma and the Oligarchs" in Anders Aslund and Michael McFaul, eds., *Revolution in Orange: the Origins of Ukraine's Democratic Breakthrough* (Washington D.C.: Carnegie Endowment for International Peace, 2006), p.10.

⁵² Yuriï Zushchik, *Lobbizm v Ukraine* (Kyiv: Ukraïns'kyï Nezalezhnyi Tsentrl Politychnykh Doslidzhen', 2000).

Haiduk; Interpipe of Viktor Pinchuk from Dnipropetrovsk; Privat Group represented by Ihor Kolomoyskii, Henadii Boholiubov and Alexei Martynov from Dnipropetrovsk; and Kyiv-based Hryhorii Surkis and Viktor Medvedchuk. However, the president increasingly began to lose his role as an arbiter when several minor politicians and oligarchs joined the opposition, including Yulia Tymoshenko, Viktor Yushchenko, Petro Poroshenko (sweets and agriculture), David Zhvania and Mykola Martynenko (nuclear power distribution companies), Yevhen Chervonenko.⁵³ Following the 2002 parliamentary elections, the president clearly lost his role as balancer and the ensuing cabinet was dominated by oligarchs, mainly from the Donetsk and Dnipropetrovsk groups.⁵⁴ Consequently, the 'in-system' BAGs were present in formal and informal policy-making through their participation and representation in political parties, control of political and economic life in the regions, ownership of media, and presence or patronage in the presidential circles and/or the government and they were easily recognisable by the larger public through their leading oligarchs.⁵⁵

The Orange Revolution took place on the backdrop of this significant split within the politico-economic elites of the country, and it is the 'non-system' groups that made the transformation of the regime during the Orange Revolution possible. Although the constitutional and electoral reform of 2006 was meant to change this politico-oligarchic structure in the parliament and make politicians more accountable to the people rather than vested interests, the actual changes seemed to have had the opposite effect due to weak regulations governing the behaviour of party members, party financing, party

⁵³ Anders Aslund, "The Ancient regime: Kuchma and the Oligarchs" in Anders Aslund and Michael McFaul, eds., *Revolution in Orange: the Origins of Ukraine's Democratic Breakthrough* (Washington D.C.: Carnegie Endowment for International Peace, 2006), p.18-19.

⁵⁴ Ibid, p. 16.

⁵⁵ See Margarita M. Balmaceda, *Energy Dependency, Politics and Corruption in the Former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy, 1995-2006* (Abingdon: Routledge, 2008), pp. 38-39, 121-122.

organisation, and the behaviour of factions and parties within the parliament.⁵⁶ Consequently, this formal and informal system of interest articulation did not inherently change under President Yushchenko, and vested interests continued to significantly influence executive policy choices.⁵⁷ These groups were most influential on the formulation of economic policy, both domestic and international. While those benefiting from a greater transparency and the establishment of the rule of law tended to prefer integration with European institutions and domestic economic reform, interest groups benefiting from continued state subsidisation and sheltering from the economic impact of market-based competition maintained greater status quo and tended to orient towards trade with the states of the former Soviet Union.

Hypotheses

Reflecting on the suggested approach of analysing domestic sources of foreign policy inconsistency, two main hypotheses emerge that can help to explain the changes in the position of the leadership on given foreign policy issues:

- 1) Foreign policy inconsistency is an outcome of an unclear distribution of functions and powers within the executive in the context of divergent policy preferences and political competition.
- 2) Foreign policy inconsistency is likely to arise in policy areas (political or economic) that are of particular interest to external and especially domestic

⁵⁶ As part of the 2004 political compromise, Ukraine's parliamentary electoral system was changed from a mixed (proportional and single-seat) to a fully proportional representation system with closed party and bloc lists. See Anzhela Yevgenyeva and Denys Kovryzhenko, *Why Europe Matters? Europeanisation of the Lawmaking Process and Parliamentary Practices: Lessons for Ukraine* (Kyiv: Agency for Legislative Initiatives, 2010), p. 35; Y. Ruban, *Ukraina v 2005-2009 rokakh: Stratehichni Otsinky Suspil'no-Politychnoho ta Sotsial'no-Ekonomichnoho Rozvytku* (Kyiv: Natsional'nyi Instytut Stratehichnykh Doslidzhen', 2010), pp. 37-43.

⁵⁷ Margarita M. Balmaceda, *Energy Dependency, Politics and Corruption in the Former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy, 1995-2006*, pp. 121-122.

groups of interest and lobbies. The closer such stakeholders are to decision-making circles, the greater their likely impact on foreign policy outputs.

Explaining Inconsistency: An Argument

The wavering of Ukraine's foreign policy between the West and the East since independence is mainly the result of inconsistent decisions by the Ukrainian executive. Frequent changes in the preferences of the leadership contributed to the perception of inconsistency in foreign policy orientation and policy outputs. This study attempts to explain why Ukrainian decision-makers or leaders often abruptly altered their policy preferences regarding particular foreign policy issues. I will argue that these preference changes were mainly changes in policy goals and were conditioned by domestic preference changes and to a lesser extent by international factors. Sometimes these changes in goals over a particular issue were part of a larger pattern (like in the case of Odesa-Brody and to a lesser extent during the 2006-2009 gas crises) and suggest a shift in foreign policy thinking. However, more often the change in policy aims regarding a specific issue was the result of a range of domestic factors. These included the unclear distribution of functions and powers in the executive under conditions of intense political competition and/or the influence of domestic and foreign vested interests. Policy consistency/inconsistency is best understood as varying along a spectrum from high to low. The presence of several of the domestic factors and conditions this study has identified is associated with inconsistency at the higher end of the spectrum, such as outright reversal of the executive decision within a short period of time. Sharply contrasting domestic conditions are associated with high levels of foreign policy consistency. It should be noted that under those domestic conditions that do foster policy

inconsistency, external pressures can be more influential and can often find a more accommodating policy response from the Ukrainian leadership.

Methodology

Key Concept: Inconsistency

As I mentioned at the start of this chapter, this study attempts to understand and explain the phenomenon of inconsistency of Ukraine's foreign policy. Sometimes referred to by others as 'policy instability' or 'erratic foreign policy', foreign policy inconsistency is understood here as frequent changes in foreign policy.⁵⁸ Hermann identified four types of foreign policy change – adjustment changes, program changes, goal changes, and international orientation change. In this study I primarily deal with two types of change: goal changes and international orientation change. Goal or problem changes refer to changes resulting from a redefinition of a policy aim regarding a specific issue by the decision-makers. Thus, for example, in the case of the 2009 gas crisis, initially the executive position was to re-configure Ukraine's gas trade with Russia by removing intermediaries, making the relationship transparent and equal with a gradual transition to market prices for gas. However, PM Tymoshenko redefined the policy goal as a quick removal of the intermediaries at all costs, despite the economic ramifications of the settlement. This type of foreign policy change characterised three out of four cases examined in this work. A change in foreign policy orientation was noticeable only in one case-study – the reversal of the Odesa-Brody pipeline. A change in the orientation is a result of policy goal changes across a number of issues and foreign policy areas, not just

⁵⁸ See Christopher Hill and Reuben Wong, "Many Actors, One Path? The meaning of Europeanization in the context of foreign policy," in Wong and Hill, *National and European Foreign Policy: Towards Europeanization* (Aldershot: Routledge, 2011); Kjell Goldmann, *Change and Stability in Foreign Policy: the Problems and Possibilities of Détente* (London: Harvester Wheatsheaf, 1988).

one or two decisions, and signals a more fundamental restructuring of foreign policy and a shift in alignment with other nations. In the case of Odesa-Brody, the change of the executive decision regarding the pipeline was in part caused by a shift in the alignment with Russia, mainly due to the upcoming presidential elections in Ukraine. Thus, the decision to reverse Odesa-Brody was part of several other decisions made by the Ukrainian executive within the same period to signal closer relations with Moscow. These included a change in rhetoric towards Russia, the signing of the Single Economic Space agreement and the inflow of Russian capital into the Ukrainian economy, amongst others. It should be noted that concurrently, Ukrainian authorities, in contradiction to Moscow, supported the US war in Iraq, began negotiations over Action Plans with the EU, and pursued NATO membership by 2008. Thus, the re-orientation was a shift from a considerable anti-Russian position regarding all issues to a policy of economic cooperation with Moscow and security cooperation with the West.

Method of Research

While major debates persist in social sciences about the nature of reality and our possibilities of knowing it, this work is pragmatic in nature. Here I am not concerned so much with the status of the theories and approaches I use but instead with their utility in helping me to construct meaning, out of the behaviour of successive Ukrainian executives that helps to both explain observations and create what Jürgen Habermas refers to as ‘empirical-analytic’ knowledge.⁵⁹ This knowledge is instrumental in nature, and my observations, in the form of patterns and historical, empirical evidence, are subjective and culturally specific. In this work I attempt to explain the inconsistency of Ukraine’s

⁵⁹ Jürgen Habermas, “Appendix. Knowledge and Human Interest: a General Perspective,” in *Knowledge and Human Interest* (Cambridge: Polity Press, 1998) pp. 308-317.

foreign policy. The conventional understanding of foreign policy defines it as a “governmental activity, which is concerned with the relationship between the state and other actors, particularly other states, in the international system.”⁶⁰ The utility of this conceptualisation for my study lies in its emphasis on government being the agent of foreign policy-making and not the more abstract concept of the State or an independent actor. Thus, in analysing the sources of Ukraine’s foreign policy, I examined the behaviour of the Ukrainian executive, composed of the president, the cabinet, and at times the senior leadership of the parliament. In this study I use concepts of the ‘executive’, ‘leadership’, ‘government’ interchangeably to refer to this group of decision-makers. ‘Foreign policy’ can be understood as a plan and as a practice – as both governmental execution of a set of strategic security objectives and as day-to-day activities of various policy-makers.⁶¹ However, in the myriad of foreign policy actions undertaken by the Ukrainian executive since independence, it would have been next to impossible to analyse all of them. Thus, a qualitative, case-study method was used to make research both executable and theoretically-relevant, making broader generalisations possible through cross-case observations and comparisons.⁶² These cases are important decisions that represent foreign policy actions taken by the Ukrainian executive.

The case-study method was selected due to the nature of the question tackled in the research and the available data. Experimentation as an alternative method of social enquiry is more appropriate for research questions that test theories, which this study does not. Another possibility of observation is through the use of large-n or statistical

⁶⁰ Brian White, “Analysing Foreign Policy: Problems and Approaches,” in Michael Clarke and Brian White, eds., *Understanding Foreign Policy: The Foreign Policy Systems Approach* (Aldershot: Edward Elgar Publishing, 1989) p. 1.

⁶¹ Ibid, p. 6.

⁶² See Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge: MIT Press, 2005).

analysis, which again is more appropriate for theory testing relying on large numbers of cases and the availability of well-documented data for all of them. Data on Ukraine's foreign policy decisions is rather limited in scope and that which is only half-reliable since most useful sources such as government communiqués, notes and inter-governmental correspondence are not publicly available as of yet. In addition, although large-n methodology can provide a more causal and robust explanation, it does not reveal how particular variables come to affect outputs. Through case studies I was able to not only provide an explanation of policy inconsistency but also to reveal mechanisms and antecedent conditions that contributed to it.

I selected four cases for in-depth analysis and cross-case comparison. These cases were representative of different issue areas and historical periods relating to Ukraine's policy towards Russia for two reasons. Firstly, Kyiv's relations with Moscow have been most important in Ukraine's international conduct. Ukraine's relations with its northern neighbour have been a source of constant tension both domestically and internationally and thus analysing cases that dealt with Russia allowed me to draw conclusions not only about Ukraine's foreign policy making, but also in regards to Ukraine's policy towards Russia. Secondly, specifying towards which country the policy was directed created a certain degree of control in the backdrop conditions. During the selection process, cases had to fulfil three criteria: being critical, varying in historical representation and varying in issues they represented. Cases I analyse here include: the decision to renounce nuclear weapons (1991-1994), the division of the Black Sea Fleet in southern Ukraine (1991-1997), the decision to reverse the Odesa-Brody pipeline (2002-2004), and the gas disputes of 2006-2009. While historical and issue variance were important in order to establish explanations for the sources of policy inconsistency which occurred overtime -

it was also important to concentrate on key events that have occurred in Ukraine's foreign policy. The selected cases are generally acknowledged to be the most pivotal decisions in the relations between Ukraine and Russia.

Furthermore, process-tracing was used as an analytical tool to examine the case studies and establish the presence of different variables and the relationship between them.⁶³ In tracing the process of the cases, I attempted to reconstruct the events and the historical development of these cases in order to establish what happened. In doing so, I attempted to identify intervening causal processes between various factors that influenced the outputs of various executive decisions which helped me to determine why a particular decision was made in any given situation.

Limitations

The case-study methodology employed in this research has two major weaknesses: the lack of uniformity in background conditions and differences in the issue areas of the selected cases. Under ideal conditions, the background context of the cases (their domestic and international setting) would be controlled. This could have been accomplished by analysing several cases of Ukraine's policy towards Russia within the same year. The diversity of cases over time, with varying international and domestic conditions leaves more room for policy inputs to differ, thus providing a less coherent explanation. However, since the study aimed to examine domestic policy sources over a substantial historical period and I could only deal with a few cases, I gave precedence to an in-depth study of the cases chosen as opposed to a study within a shorter time-frame which might have offered more "ideal" conditions.

⁶³ Ibid, p.206.

It could be argued, that if cases were selected from the same issue area, say humanitarian questions, energy policy or military security, the problem of variation in the background conditions would have been somewhat ameliorated, providing for a more rigorous methodology. The different issue areas could have an effect on the consistency of the executive position since decisions regarding military security would arguably involve fewer vested interests than those of energy and economic policy. Thus, one would expect cases relating to economic issues (the Odesa-Brody pipeline and the gas disputes) to exhibit greater inconsistency than those relating to military and territorial security (nuclear weapons and the fleet). However, it should be mentioned that such a perception of the issue area distinction is also culturally specific to the West. In most of the republics of the former Soviet Union the state still owns and controls, through state monopolies, much of the economy of the country, especially in 'strategic' areas such as natural resources and infrastructure. Consequently, trade and economic relations are equally securitised. What makes my chosen cases interesting is that they all had both security and commercial dimensions to them, and it is when the Ukrainian executive had to make a choice that policy inconsistency within the executive emerged.

Data Sources

Addressing the issue of the sources used for the study, I relied on primary and secondary sources to arrive at the conclusion about what happened, the how and why of the particular event or decision. Thus, I used primary sources such as elite interviews, memoirs and documents, be it archival, legal or leaked through the mass media, and secondary sources such as scholarly books and articles. Primary sources for this study included archival materials, parliamentary stenograms of proceedings, memoirs of the

decision-makers involved, media reports (both from the former Soviet republics as well as the West) and elite interviews. The presidential archives at the Central State Archives of Supreme Bodies of Power and Government of Ukraine were examined for the cases on nuclear weapons and the status of the Black Sea Fleet (BSF). The materials consisted of the documentation of the President Leonid Kravchuk's Administration (1991-1994), and included materials from the Presidential Service on International Questions, the National Security Council of Ukraine, and the Secretariat of the President. In addition, the documents from Leonid Kuchma's Administration (1994-1997) were also examined, which included the paperwork submitted by the Editorial Sector of Regulations of Presidential Decrees, Secretariat of the President, Presidential Service on International Questions and Administration on the Questions of Foreign Policy.

It must be noted that the examined archives did not include all of the documentation from both administrations and materials from President Kuchma's first term consisted of a significantly smaller amount of records. This is indicative not only of the culture of record keeping, which remains rather sparse and secretive in nature, but also distinguishes degrees of transparency between Kravchuk's and Kuchma's presidency. Considering that the present analyses of the denuclearisation and the division of the BSF are primarily based on secondary accounts, elite interviews and mass media reports, the archival research gives stronger empirical evidence to the claims previously made elsewhere. Unfortunately, the archives for the examination of the more recent cases of the Odesa-Brody pipeline and gas disputes of 2006-2009 were not yet publicly available. However, parliamentary stenograms, most of which are publicly accessible, were extensively used during the research. Elite interviews are a major instrument of qualitative research and data collection, especially on more contemporary cases where

the archival records have not yet been released.⁶⁴ I made two research trips to Kyiv, one lasting nine months from February to October 2008 and the other during August-September 2009 during which elite interviews were held. I have also discussed the cases with several US officials who were involved in the events to both enrich my understanding of what happened and get their perspectives on developments in Ukraine at the time. In total I interviewed 17 senior participants in the events under consideration. In addition, working at the Ministry of Foreign Affairs during the summer of 2007 gave me an invaluable insight into Ukraine's foreign policy-making, while regular discussions of policy issues and the making of security and foreign policy with colleagues there have contributed to a deeper understanding of the subject.

The mass media reports (Ukrainian, Russian, and Western) were used extensively for the last two cases (the Odesa-Brody pipeline and the gas crisis). Both of the cases have not been widely written about, thus I used newspaper reports to construct a historical narrative. Two Ukrainian publications I would like to note in particular – *Ukrainska Pravda* (Ukrainian Truth) and *Zerkalo Nedeli* (Weekly Mirror). Both newspapers are independently owned and attempt to be objective in their coverage of events. Whereas *Zerkalo Nedeli* has a more analytical approach, *Ukrainska Pravda* is a great source of daily news and also primary documents, since its investigators frequently find ways to copy controversial government documents and make them public.

Lastly, to corroborate the information between the sources and thereby arrive at the most objective interpretation possible I used the triangulation technique, where various primary and secondary accounts about what happened were checked against

⁶⁴ David Richards, "Elite Interviewing: Approaches and Pitfalls," *Politics*, Vol. 16, No. 3, 1996: 199-204; Jeffrey M. Berry, "Validity and Reliability Issues in Elite Interviewing," *Political Science and Politics*, No.35, 2002: 679-682.

each other.⁶⁵ Triangulation was difficult for more recent cases where secondary accounts are few and one can access the information mainly through the mass media reports. Therefore I used interviews with individuals who participated in the events to corroborate the story that emerged from the media accounts of the events.

Structure of the Study

The chapters are ordered in historical progression, starting with the earliest executive decision to renounce nuclear weapons and ending with the latest case of the 2006-2009 gas disputes. Each case has a similar structure of firstly setting out the argument, the domestic and international context in which decisions were made, then providing a brief historical overview of the problem to allow a better understanding of the issue at hand, while the remaining sections of each chapter deal with the executive decisions and episodes of policy consistency/inconsistency. Chapter 2 and Chapter 3 explore the first hypothesis, while Chapter 4 and Chapter 5 emphasise the second hypothesis.

Chapter 2 deals with the decision by the Ukrainian executive to renounce nuclear weapons from 1991 to 1994. During this time the executive policy regarding nuclear weapons was relatively consistent, albeit three episodes signalled to the international community that Kyiv might be re-thinking its policy. First, when President Kravchuk halted the transfer of Tactical Nuclear Weapons (TNWs) to Russia on 12 March 1992. Second, when the parliament failed to fully ratify START I and de-linked the Non Proliferation Treaty (NPT) from the START treaty. Third, when it was difficult for Kyiv to ratify the NPT. The chapter argues that only the last event potentially offered a change in executive

⁶⁵ As adopted by author from Phil H.J. Davies, "Spies as Informants: Triangulation and the Interpretation of Elite Interview Data in the Study of the Intelligence and Security Services," *Politics*, Vol. 21, No. 1, 2001: 78.

policy, when the cooperation between the president and the parliament reached its nadir. Following extra-term parliamentary and presidential elections, the executive implementation of the Lisbon and Trilateral accords were back on track. The halt of TNWs transfer and partial ratification of START I, on the other hand, were acts of the executive in desperation, carried out to resist external pressure rather than to revise its commitment to denuclearisation. Thus, this case supports the first hypothesis more: that policy inconsistency is likely to occur under conditions of intra-executive, political competition while the absence of these conditions will lead to greater policy consistency.

Chapter 3 examines Ukraine's inconsistent position regarding negotiations with Russia over the status of the Black Sea Fleet in southern Ukraine during 1991-1997. While at first the executive outright denied the principle of the division of the fleet and the consequent exclusive basing of the Russian portion of it in Crimea, leadership preferences changed abruptly at the September 1993 Massandra summit between the Presidents of Ukraine and the Russian Federation, Leonid Kravchuk and Boris Yeltsin, respectively. The Ukrainian side agreed to pass into Russian ownership its 50% share of the vessels and infrastructure in return for a write-off of Ukraine's energy debts. The change in presidential preferences seemed to have been influenced primarily by the energy issue (Russian energy cut-offs for the energy arrears and recurring non-payment) and ran contrary to the advice of his aids and the Minister of Defence. Russian pressure in the form of energy cut-offs and aggravation of the separatist tendencies in Crimea played the most important role in the shifting of leadership preferences regarding the status of the Black Sea Fleet, while the domestic context of acute political instability and worsening economic indicators pushed the leadership to seek resolution of the most important issues preventing normalisation of relations between Ukraine and Russia. The change of

presidential preferences indicated that the policy was no longer viewed in terms of the sovereignty of Ukraine regarding its assets in Crimea but more as a commercial issue. Thus, with the Massandra protocol the policy goals of the executive shifted, echoing second hypothesis in which external, vested interests (here Russian President Yeltsin demanding the payment of gas arrears owed to the Russian Joint Stock Company (RAO) Gazprom) as seen to play a role in changing leadership preferences.

Chapter 4 analyses the decision of the executive to reverse its earlier decision- of transporting non-Russian oil to European customers- made on 4 February 2004 and instead to issue another decree four months later enabling the transit of Russian oil in the opposite direction through the Mediterranean. The high degree of inconsistency in this case is explained by the presence of both characteristics that generate policy inconsistency: a high degree of intra-executive conflict over policy options between President Leonid Kuchma and members of the cabinet and the influence of vested commercial and private interests on the highest political power holders in Ukraine. Thus, the preferences of President Kuchma changed regarding the pipeline due to domestic pressure from vested interests (possibly including his own private stake in the issue) and the Russian governmental and business pressure. Russian economic and political pressure was significant in providing a lucrative alternative to the regime – in other words to continue opaque practices in the energy trade while gaining significant financial and political benefits in the process.

Chapter 5 examines instances of policy inconsistency during the emergence of the gas disputes between Ukraine and Russia during 2006-2009. The inconsistency began with the attempts by the new Prime Minister Yulia Tymoshenko and President Yushchenko in 2005 and again in late 2007 to revise gas agreements with Gazprom. The

conflict emerged in March 2008 when Tymoshenko, independently of the President, attempted to remove Gazprom's intermediary from Ukraine's domestic market. Later the policy inconsistency re-emerged during the December 2008 negotiations, and once again during the Tymoshenko-Putin negotiations of 17-20 January 2009. This policy inconsistency was influenced by both – the intra-executive conflict between the President and the PM in the context of the unclear distribution of powers, divergent policy preferences and political competition between them, and, to a lesser extent, the close relationship of domestic and foreign energy companies to key decision-makers. The preference change by Tymoshenko was an indicator of a shift in policy framing, from viewing the gas issue in light of Ukraine's energy security vis-à-vis Russia, to viewing it in light of domestic political divisions, where conclusions of gas accords would help Tymoshenko to weaken her political rivals. The role of external actors, especially of the Russian government, was crucial in instigating and escalating the crisis and seemed to be motivated by both commercial and political interests.

Lastly, chapter 6 summarises findings from the case-studies and argues that domestic sources contributed the most to explaining the policy changes made by the Ukrainian executive since independence, while offering empirical and conceptual contributions to the research and policy implications of the study.

Nuclear Weapons TWO

Following the break-up of the Soviet Union, the leaders of the newly established Ukrainian state began to formulate not only the principles of their independence, but also how the country would relate to the wider world and especially to Russia. Initial cooperation between the Presidents of Ukraine and Russia (Leonid Kravchuk and Boris Yeltsin respectively) over the democratic future of the two states soon turned bitter, as Ukraine demanded its fair share of the Soviet assets and did not want to remain under the suzerainty of the Kremlin. Ideologically and perhaps naively Ukrainian leaders wanted to create an independent and sovereign Ukraine and establish their relations with Moscow on equal terms. Few of them fully appreciated the magnitude of the structural economic problems that the 'civilised divorce' between the republics of the former Soviet Union (FSU) would bring about in regards to the fall in economic production, living standards and deterioration of social relations with an increase in unemployment, crime, drug abuse and divorce rates among others. Equally, the authorities in Moscow failed to understand what drove the actions of the Ukrainian authorities nor did they know how to deal with them and instead they opted for a well-tried method of coercion through economic and especially energy dependence (as this chapter, regarding the status of nuclear weapons, as well as the following one, regarding the status of the Black Sea Fleet, will show) in order to maintain Moscow's control over political, economic and military developments in Ukraine.

In the wider geopolitical context, the failure of the United States and the European countries to initially support the aspirations of the Ukrainian leadership,

instead favouring Moscow's perspective politically and economically, further aggravated the situation. The West, in many ways victorious after the fall of the Berlin Wall and the dissolution of the Soviet Union, failed to take on the economic transition of the former Soviet Union (FSU) as a bloc and instead mainly provided economic support to Russia, whereas all of the republics needed financial assistance and know-how similar to that of the Marshall Plan in order to transition and maintain social cohesion within and between themselves. Instead, during this period (1991-1997) economic and political conflicts flared up between Ukraine and Russia and throughout the wider FSU. The first of such conflicts between Kyiv and Moscow erupted over the status of nuclear weapons, tactical and strategic, on the territory of Ukraine.⁶⁶ With the break-up of the Soviet Union, Ukraine inherited the world's third largest nuclear arsenal.⁶⁷ The West supported Russian claims to be the sole successor of the Soviet Union and thus its right to the military and financial assets. This principle although accepted in most of the FSU, was vehemently rejected by the Ukrainian leadership, which demanded on both economic and ideational grounds that it owed a share of what was once Soviet, especially in light of being a second republic after the Russian Soviet Federative Socialist Republic (RSFSR) in terms of contributing industrial, military, technological and human resources to the might of the Soviet Union.

⁶⁶ If *strategic nuclear weapons* are meant to damage the enemy's capacity to stage a war and in the case of utilisation would damage large territories and populations, *tactical nuclear weapons* are meant for limited nuclear wars, with lesser impact, but greater utility in a conventional battlefield. Tactical weapons stationed in Ukraine included: gravity bombs, sea-launched nuclear torpedoes, sea-launched tactical cruise missiles, nuclear anti-aircraft missile pods, and air-launched cruise missiles. As cited in Mark D. Skootsky, "An Annotated Chronology of Post-Soviet Nuclear Disarmament 1991-1994," *The Nonproliferation Review*, Vol.2, No. 3, 1995, 64-105: 69.

⁶⁷ At the time of collapse of the Soviet Union, there were 222 strategic delivery vehicles based on the territory of Ukraine. They included 130 SS-19(RS-18), 46 SS-24 (RS-22) Intercontinental Ballistic Missiles (ICBMs) with multiple independently-targetable nuclear warheads (MIRVs), and 46 heavy bombers equipped with long-range air-launched cruise missiles and 1,594 nuclear warheads assigned to them, according to the Strategic Arms Reduction Treaty (START I). See memoirs of Ukraine's first Minister of Foreign Affairs, Anatolii Zlenko, *Dyplomatiia i Polityka* (Kharkiv: Folio, 2003) p. 333. In addition to strategic weapons, Ukraine had on its territory some 2,883 tactical nuclear warheads (this amount was received by Russia by May 1992, however according to available official documentation Ukraine transported 2,633 TNWs to Russia). See report by the Temporary Investigative Committee of the Verkhovna Rada of Ukraine, *Zvit Tymchasovoi Slidchoi Komisii Verkhovnoi Rady Ukraïny po Perevertsi Faktiv Nezakonnoi Torhivli Zbroieiu i Viis'kovym Maïnom ta ikh Peredachi v Inshi Kraïny*, Verkhovna Rada, 2002.

Thus, this chapter examines the events surrounding the decision of the Ukrainian authorities to renounce its nuclear weapons and how domestic and international factors affected this process. This chapter mainly engages with the first hypothesis on how intra-executive, political competition is likely to contribute to policy inconsistency, while the absence of this factor facilitates greater policy consistency.

The decision by the Ukrainian leaders to remove the nuclear arsenal highlighted the issue of the security of the state; however, it also had a substantial financial dimension. In fact, as will be argued in the following sections, the Ukrainian leadership considered the issue regarding nuclear weapons in mainly economic and ideational terms, since the threats the country was facing (as conceptualised by the leaders) was not of military attack, especially not from Moscow, but social and economic upheavals. Ideationally, the leaders conceived of these weapons as a property of the Ukrainian people, which gave Kyiv legal opportunity to demand compensation for them. This Ukrainian position, which developed in late 1991- early 1992, was interpreted by the international community and especially by Moscow as one of harbouring nuclear ambitions, despite Ukraine proclaiming its commitment to renouncement during 1990-1991. This perception of Ukraine wavering on its nuclear commitments persisted throughout the following years when the terms of Ukraine's denuclearisation were being negotiated and mainly stemmed from three episodes: when on 12 March 1992 President Kravchuk halted the transfer of tactical nuclear weapons (TNWs) to Russia, when in November 1993 the Parliament of Ukraine failed to fully ratify the START I treaty and lastly when the executive had difficulties in convincing the parliament to ratify the Nuclear Non-Proliferation Treaty (NPT).

In the next sections I will explain international and domestic contexts within which the executive decision regarding the status of nuclear weapons took place and the implementation of this decision. I will further discuss how the decision regarding weapons renouncement was made. I argue that the unity within the executive and policy consensus regarding the need for and the conditions of the denuclearisation process contributed to policy consistency. The examination of the removal of tactical nuclear weapons will show that this brief inconsistency was a response to Russian pressure to divide the Black Sea Fleet (BSF) and not a result of the revision of the denuclearisation commitments made by the executive branch. Lastly, I will discuss the nature of the relationship between the executive and the president and how their cooperation at first led to the partial ratification of the START I accord and later its full ratification, while increasing differences between the president and the parliament led to the stalling of the parliament in ratifying NPT until a new parliament and a new President, Leonid Kuchma, were elected. This confirms the hypothesis that in the event of intra-executive competition and divergent political views, policy is likely to be more inconsistent (as we briefly observed in the inability of the executive to ratify the NPT treaty), while greater cooperation between the decision-makers across political and institutional divisions contributes to policy consistency (as we observed through the process of START I ratification).

International Context

The international environment of Ukrainian denuclearisation was influenced by two key bargaining processes: the disintegration of the Soviet Union and the desire of Russia to maintain its privileged role as successor of the Union and the desire by the

Ukrainian leadership to establish political, economic and military sovereignty separate from Moscow. Firstly, during the process of the disintegration of the Soviet Union, Ukrainian parliamentarians legally committed Kyiv to full denuclearisation. Secondly, the process of the disintegration of the USSR also set in motion the division of Soviet assets between the republics. Both of these processes, disintegration of the Soviet Union and the establishment of Ukrainian sovereignty, brought to the forefront two key issues: that of legal ownership of the weapons and control over them.

The ownership of the nuclear arsenal stationed on the territory of Ukraine posed a problem. The US and Russia did not at first recognise Ukrainian ownership; however authorities in Kyiv considered the Ukrainian state to be the rightful owner of these weapons in legal and economic terms. Similarly, although the Ukrainian authorities did not control either the tactical or strategic arsenal in the operational sense of the word by using it as weapons, the Ukrainian government did establish a post-factum political control over tactical weapons and administrative and political control over the strategic arsenal. This granted Ukraine the control over the non-use of these weapons and a means to demand financial compensation for the warheads, their components, missiles and delivery vehicles.

The Disintegration of the Soviet Union and Ukrainian Sovereignty

As the Soviet Union was experiencing a political transformation, following the fall of the Berlin Wall and more importantly the proclamation of independence by Lithuania on 11 March 1990, Ukrainian elites also began to debate greater sovereignty from Moscow. The Ukrainian leaders at the time were not united on the kind of political sovereignty they wanted, yet on 16 July 1990 the Ukrainian SSR proclaimed absolute

control over administrative and economic matters in the Declaration of State Sovereignty. During the writing of this declaration Kyiv included a pledge “in the future to uphold three non-nuclear principles: not to accept, produce or acquire nuclear weapons.”⁶⁸ The parliament included this passage for three reasons. Firstly, Ukraine had experienced the Chernobyl nuclear disaster and its consequences for the Ukrainian people and this obliged the closure of existing nuclear stations and the removal of nuclear weapons. Secondly, the need to distance Ukraine from the policies of the Soviet Union, including its military and nuclear posture, led a parliamentarian from Lviv, Ivan Drach, to suggest that Ukraine would be best served by becoming a neutral and non-nuclear state. Lastly, the general non-proliferation regime asserted by the superpowers at the time and especially the professed position of the Soviet Union President Mikhail Gorbachev influenced the thinking. Consequently, Drach translated the passage from the NPT treaty and inserted it into the Declaration on State Sovereignty.⁶⁹ Yet, this declaration had little effect on the actual policy of the Ukrainian SSR until the August 1991 coup, when an attempt was made by hardliners in Moscow to prevent the disintegration of the Soviet Union.

With the official disintegration of the USSR and Ukraine’s proclamation of its independence on 24 August 1991, the former Soviet republics began the process of formalising their relations. Aside from numerous Soviet assets, which the republics demanded should be divided, nuclear weapons were at first treated rather differently with the general agreement that matters should remain in the hands of the CIS Joint

⁶⁸ Parliamentary Stenogram, 13 July 1990, (translation mine). Before this passage in the declaration, deputy Borys Markov in June 1990 suggested that parliamentarians add to the draft of the Declaration of Sovereignty that Ukraine will comply with three non-nuclear principles. See Parliamentary Stenogram, 29 June 1990.

⁶⁹ See Parliamentary Stenograms from 12 June 1990, 29 June 1990, 9 July 1990, and 13 July 1990. The paragraph was voted in on 13 July with 238 deputies supporting the inclusion of the passage and 100 opposing it. However, the language was later slightly modified in the final version of the declaration.

Command of Armed Forces (Yevgenii Shaposhnikov as its head).⁷⁰ However, the recognition of Ukraine's legal ownership of these weapons would remain the key feature of the ensuing Russian and US efforts to remove these weapons from Ukrainian territory. The nuclear arsenal stationed on Ukrainian territory consisted of two types of weapons: tactical and strategic. However, the process of renunciation mainly dealt with strategic weapons since Moscow de-facto controlled the movement of TNWs. A couple of issues set the context for Ukraine's renunciation process of its nuclear arsenal: the dilemma of the legal ownership of the weapons and the command and control of the nuclear weapons.

Weapons ownership and the international community

Although the newly established Ukrainian state acquired tactical and strategic nuclear weapons on its territory, Kyiv's legal ownership of these weapons was at first not recognised by the international community. As the world and most notably the United States (under the auspices of the United Nations) came to recognise the Russian Federation as the sole legal successor of the Soviet Union with all of the rights and responsibilities of the latter, Ukraine and fourteen other former Soviet republics were not accorded similar rights. Even though in the eyes of the international community at the start of independence Ukraine did not legally own the nuclear weapons on its territory, to the authorities in Kyiv, "all companies, establishments and organisations of the Soviet subordination, located on the territory of Ukraine [were] state property of Ukraine."⁷¹

This legal distinction became the major source of friction in understanding Ukrainian,

⁷⁰ Upon the disintegration of the Soviet Union, Russia inherited some 69,4% of the Soviet nuclear weapons, Ukraine – 17% Kazakhstan – 13%, and Belarus – 0,6%, as cited by Hryhorii Perepelytsia, "Rozviazannia Problemy Iadernoi Zbroi ta Skorochnia Zvychaiynykh Ozbroyen'," v Volodymyr Lytvyn, red., *Ukraïna: Utverdzhennia Nezalezhnoi Derzhavy 1991-2001* (Kyiv: Al'ternatyvy, 2001).

⁷¹ *Zakon Ukraïny pro Pidpriemstva, Ustanovy ta Orhanizatsii Soiuznoho Pidporiadkuvaniia Roztashovani na Terytorii Ukraïny*, 1540-XII, Verkhovna Rada, 10 Veresnia 1992, (translation mine).

Russian and American behaviour during the renunciation process and differences in its interpretation explain a great deal about Moscow's and Washington's frustrations over Ukraine's consequent behaviour.

The legal dilemma was crucial for four reasons. Firstly, from the perspective of the US and Russia, if Ukraine was recognised as possessing the weapons it would be characterised as a nuclear state. Thus, the efforts of the US and the Soviet Union since the establishment of the NPT treaty to prevent the spread of nuclear weapons and reduce the surviving ones would be undermined. Secondly, again from the position of Moscow and Washington, recognising Ukraine and consequently also Belarus and Kazakhstan as successors of the USSR's nuclear stockpile, would make them de facto signatories to the START I treaty and thus require the ratification by their parliaments for the START I and possibly the START II treaties if they were to be implemented. In addition, the legal recognition of Ukraine, Belarus, and Kazakhstan as nuclear successors would also require them to become part of the NPT agreement as nuclear states in order for the treaty to maintain its international authority, something that the nuclear states refused to consider. Thirdly, for Russia, recognising Ukraine as a party to START I and NPT was to symbolically and financially recognise Ukrainian sovereignty over the assets in its territory (with the kind of international prestige that is allotted to those nations who possess the weapons) even if these weapons would eventually be dismantled, as well as making Russia liable for compensation. Lastly, recognising Ukraine as an owner of these weapons would also set a precedent for other issues between Russia and the new republics over the division of Soviet assets. However, for Ukraine, the legal recognition was crucial to establishing its status amongst the world of nations as well as recognising its might as a

key republic of the former Soviet Union, which did not only house the weapons on its territory but aided their development, financially and technically, and played a part in their technological maintenance. In addition to legal issues over ownership, the nature of Ukraine's actual control over these weapons must be understood as it provided the stage for the removal of TNWs and conditioned Ukraine's 'nationalisation' of the strategic arsenal.

Control over nuclear weapons

To explain the story behind the nuclear weapons stationed on the territories of the former Soviet republics one needs to understand the distinction (which emerged mainly due to the Ukrainian position on the issue) between operational, administrative, and political control of the weapons.⁷² Ukraine proclaimed political control over the weapons starting with its Declaration on State Sovereignty and following with other parliamentary proclamations in the fall of 1991. As the Soviet Union ceased to exist on 8 December 1991 with the signing of the CIS treaty in Belovezhskaya Pushcha,⁷³ the leaders

⁷² 'Operational control' means control over the launching of the weapons. 'Administrative control' means control over appointments, personnel issues and logistical support of servicemen. 'Political control' includes political proclamations by the leaders of the sovereign territory over the legal ownership of the weapons - a political proclamation might or might not be accepted by the international community as legally binding.

⁷³ Under the CIS agreement, signed by Ukraine's newly elected President Leonid Kravchuk, Ukraine committed itself to fulfilling international obligations undertaken by the Soviet Union. This could have been interpreted as legally committing Ukraine, Belarus and later Kazakhstan to become signatories to the START I agreement. However, Russia argued that although the republics must comply with the START obligations, they are not legal owners of the weapons, thus not signatories of the START. The inviolability of existing borders of the republics was also guaranteed within the framework of the CIS. In addition, in Article 6 of the Treaty, signatories stated their aim to eliminate all nuclear arms and pledged to support common military-strategic space under the joint command, including the control over the nuclear arms. See Appendix B, "Agreement on the Creation of the Commonwealth of Independent States," in Lubomyr A. Hajda, ed., *Ukraine in the World* (Cambridge, Massachusetts: Harvard University Press, 1998), pp. 297-301. Ukrainian Parliament ratified the agreement on 10 December 1991 with reservations where Article 6 was reformulated that "until full elimination of nuclear weapons the parties shall preserve and support a common military-strategic space and single control over nuclear weapons under joint command," however these provisions did not apply to the side on the territory of which these weapons should be eliminated under international agreement and international control. See *Postanova Vekkhovnoi Rady pro Ratyfikatsiiu Uhody pro Stvorennia Spivdruzhnosti Nezaleznykh Derzhav*, 1958-XII, Verkhovna Rada, 10 Hrudnia 1991. Also, on the 20 December 1991 the Parliament issued a clarification of the CIS treaty and how the ratification should be understood by Ukrainian as well as international authorities. In it the Parliament confirmed that Ukraine would attempt to acquire non-nuclear status by way of full elimination of nuclear arsenal under international control, while the stationing of the strategic forces (which included nuclear weapons) on the territory of Ukraine was temporary. The status of these weapons and the terms of their location in Ukraine would be determined

of the nuclear member-states came together to set some of the rules regarding the former Soviet military-defence complex in two CIS December summits in Alma-Ata on 21 December and Minsk on 30 December. Declarations from both of the summits were drafted by Moscow and deadlines set for the withdrawal of the tactical nuclear weapons (1 July 1992) and strategic weapons (the end of 1994) were dictated by the Russian military.⁷⁴

The Alma-Ata and Minsk agreements placed the control of the weapons, operational and administrative, under the Joint Strategic Command of the CIS, with ultimate control resting in the office of the President of the Russian Federation, Boris Yeltsin; meaning that it was he who had the right to launch nuclear weapons.⁷⁵ Although summit agreements resolved the issue over the control of the 'button', they failed to specify who controlled the servicemen of the Strategic Forces that controlled the weapons. Russia as well as the Joint Command argued that servicemen were part of the CIS Joint Strategic Forces Command, which didn't belong to the national structures or national armed forces and any other settlement would violate the NPT.⁷⁶ For Ukraine, on the other hand, this equalled the presence of foreign troops on its territory.⁷⁷ The troops who serviced the strategic nuclear arsenal were comprised of the 46th Air Army division

by the Law of Ukraine and a special international agreement, signed by the states on the territories where nuclear weapons of the former Soviet Union were stationed. See *Zaiava Vekkhovnoi Rady z Pryvodu Ukladennia Ukraïnoiuhody pro Spivdruzhnosti Nezalezhnykh Derzhav*, 2003-XII, Verkhovna Rada, 20 Hrudnia 1991.

⁷⁴ Although officially the Russian military was at the time still Soviet, its command was run out of Moscow and was perceived by the leadership in Ukraine to act in the interest of Russia. Mitchell Reiss, "The Former Soviet Union: Managing the Nuclear Inheritance," *Bridled Ambition: Why Countries Constrain Their Nuclear Capabilities* (Washington D.C.: Woodrow Wilson Center Press, 1995), p. 93.

⁷⁵ However, as argued by William Walker, the command and control of the nuclear system is highly complex and it is unlikely that it rested solely with the Russian President at the time. William Walker, "Nuclear Weapons and the Former Soviet Republics," *International Affairs*, Vol.68, No.2, 1992, pp. 263-64.

⁷⁶ From the Russian perspective, under the NPT agreement, the Soviet Union and its legal successor the Russian Federation resolved to not pass or transfer nuclear technologies to third parties. Allowing Ukraine and other republics (third parties) to operate the weapons, by such as having Ukrainian servicemen in charge of the weapons would be a legal breach of Russian obligations.

⁷⁷ Lesya Gak, "Denuclearisation and Ukraine: Lessons for the Future," *The Nonproliferation Review*, Spring 2004, p. 116.

that had 40 bombers able to carry some 600 warheads, and the 43rd Strategic Rocket Army which controlled the 176 ICBMs stationed in Ukraine.⁷⁸ The situation with the tactical nuclear weapons was more complex, as some of them were part of the strategic forces and others were deployed in various segments of the Soviet armed forces.⁷⁹

As the creation of the Ukrainian army became a top priority of the Ukrainian state-building project, the government began to take oaths of allegiance from troops stationed in Ukraine starting in February 1992, which at first did not apply to strategic forces. However, with the increasing realisation in Kyiv that the Joint Command of the CIS was really a Russian command, in April 1992 the Ukrainian President announced that Ukraine was taking 'administrative control' of the 46th Air Army division.

The administrative control, which equated to control over the appointments, personnel issues and logistical support of the servicemen, was necessary for two reasons. Firstly, it was an extension of Ukraine's sovereignty over its territory. By taking administrative control of the troops, Ukraine was asserting a 'negative' control over the nuclear weapons, that is these weapons would not be used from its soil without Kyiv's permission. This was different from asserting operational control, where one can initiate the use of nuclear weapons. Secondly, the assertion of administrative control, in the Ukrainian view, took care of social problems connected to the fate of these soldiers, of their housing, pensions, benefits, all of which in the past were part of the Soviet military apparatus.⁸⁰ It was argued that soldiers must be sure of their future and it is on their behalf that such decisions had to be made. Thirdly, administrative control reinforced the

⁷⁸ John Buntin, "The Decision to Denuclearize: How Ukraine Became Non-Nuclear-Weapons State," *Kennedy School of Government Case Program*, 1997, p.6.

⁷⁹ Walker, "Nuclear Weapons and the Former Soviet Republics," p. 265.

⁸⁰ Buntin, "The Decision to Denuclearize: How Ukraine Became Non-Nuclear-Weapons State," p. 6.

political control over the weapons that Ukraine had already established, making the legal case for ownership stronger. Consequently, should compensation be discussed, Ukraine could claim to indirectly, physically possess the weapons. It should be noted here that Russia interpreted these moves by Ukraine as steps towards establishing operational control over the weapons, something that Kyiv officially denied.⁸¹ Operationally, neither strategic nor tactical weapons were controlled by Ukraine.

In addition to the international context, which set out policy options for Ukrainian officials in relation to the nuclear weapons stationed in Ukraine, the domestic environment within the newly-established state created conditions that influenced the decision to renounce the weapons by joining the START I and the NPT treaties, and influenced the pace and circumstances of their ratification, thus the implementation of the decision.

Domestic Context

Following independence, the political system of Ukraine was in transition from a one-party state to a more pluralistic political arrangement. Two aspects of this transition were particularly pertinent to its success: the institutional division of powers and functions and the establishment of a political plurality. In regards to institutional arrangements and their effect on the denuclearisation of Ukraine, the lack of clearly delineated functions and powers between the legislative and executive branches of power created many problems regarding domestic policy-making. In relation to the

⁸¹ Several reports have suggested that Ukraine attempted to break the launch codes and achieve operational control over strategic weapons. On 28 December 1992, Russian military officers said that Ukraine could achieve this within six months. In spring 1993, US intelligence warned that Ukraine was trying to rewrite the computer codes for the SS-24 missiles, which according to some interpretations by Ukraine were not part of the START I treaty. On 9 June 1993, a senior US intelligence officer reportedly claimed that Ukraine was attempting to break the launch codes. See Skootsky, "An Annotated Chronology of Post-Soviet Nuclear Disarmament 1991-1994," pp. 72, 74, 75.

decision regarding nuclear weapons, the executive was united and initial cooperation with the parliament helped the executive to extract additional advantages for Ukraine from the international community. This conclusion was supported by the assessment of Borys Tarasiuk, one of the key members of the MFA and the government involved in the resolution of the nuclear issue:

“Until the first president was elected it was the Verkhovna Rada which had a leading role [in relation to the nuclear issue] and they did it together with the MFA and the military. Later, when the president was elected [1 December 1991] the center of gravity for making political decisions shifted to the President, the Cabinet, and the Verkhovna Rada...Partly, the political message formulated by the Verkhovna Rada through the ratification process helped us in negotiations to reach the final agreements on points of contention [meaning compensation, aid for dismantlement, and security assurances].”⁸²

However, the implementation of the denuclearisation commitments, especially NPT, became difficult with the increasing political discord between the president and the parliament in 1993 over policy preferences and policy-making powers.

Until 1990, the Ukrainian SSR operated within the framework of the 1978 Soviet constitution. In the spirit of Glasnost and Perestroika of the early 1990s, this constitution was amended to allow parliamentary elections. Under this amended constitution, practically all political power rested within the parliament, the Verkhovna Rada, but it was highly ineffective since the power to propose and implement legislation rested with the ministries and the communist apparatus that controlled them. Thus, throughout the 1990s, the parliament continued to amend the constitution to increase its administrative powers. Amendments to Article 115 and Article 116 made the prime minister and the heads of ministries subject to parliamentary confirmation.

⁸² Author’s interview with Borys Tarasiuk, Deputy Foreign Minister at the time, also Head of the National Committee on Disarmament, an inter-agency coordinating body, Kyiv, Ukraine, 25 August 2009.

In July 1991, the position of the president was incorporated into the constitution, thereby creating a presidential-parliamentary political system, where the prime minister depended on the confidence vote of the popularly elected parliament, and the popularly elected president had the power to appoint the prime minister, upon parliamentary approval, but not to dismiss him. Throughout the 1990s, until the 'power bill' introduced by President Kuchma in August 1994, this political system was set out in such a way that three political agencies were competing to achieve hegemony over the policy making process: the president, the prime minister, and the parliament.⁸³ Oftentimes however, the competition was between the president and the parliament, while the prime minister served as a buffer. The number of governmental turnovers in Ukraine at the time serves as a good illustration of this problem. Between 1991 and 1994, Ukraine had gone through four prime ministers.⁸⁴ By 1993, when the Ukrainian political system encountered major political deadlock and parliament was calling for the impeachment of the President Kravchuk, it was becoming clear that the existing institutional divisions of power could operate only on the basis of political consensus between the president and the majority in the parliament. Alternatively, one of the branches had to take over as the centre of political authority in the country, which is what eventually took place with the election of President Leonid Kuchma on 19 July 1994.

The institutional or formal divisions of power in the country would not become problematic for policy making, so long as political consensus between the branches of power existed. This consensus seemed to exist in the immediate months following the proclamation of independence, where the majority of the deputies and officials

⁸³ Charles R. Wise and Trevor L. Brown, "Laying the Foundation for Institutionalisation of Democratic Parliaments in the Newly Independent States: The Case of Ukraine," *The Journal of Legislative Studies*, Vol. 2, No.3, 1996, pp. 229-34.

⁸⁴ Vitol'd Fokin, 14 November 1990-2 October 1992; Valentyn Symonenko (acting), 2 October 1992- 13 October 1992; Leonid Kuchma, 13 October 1992- 22 September 1993; Yukhym Zviail's'kyi (acting) , 22 September 1993- 16 June 1994.

concentrated on solidifying Ukraine's independence from Moscow. This unifying agenda of independence kept the political consensus intact and helped during the making of the executive decision regarding nuclear weapons and the implementation of the START I accords. However starting in 1992, the political forces in the parliament began to re-group around newly-defined political priorities and the political process began to revolve around two major groups, that of national democrats and former communist socialists.

To understand the constellation of the political forces, it is useful to examine both the nature of Ukraine's parliament and the position of the president in relation to the views of the parliamentarians. The Verkhovna Rada was elected during the period from 4 to 18 March 1990, prior to the declaration of independence, and was composed of 442 deputies out of 450, elected for a 5 year term. Voter turn-out for these two rounds of single-district, majoritarian elections, was over 80%. While 128 of these deputies were from western and central regions of the country and were aligned with the pro-reformist Rukh party and the National Democratic Council, the rest were representatives of the former Communist Party apparatus and state enterprises. The national-democratic opposition received 113 seats in parliament. A majority of the seats was held by the former communists, who were known as Group 239.⁸⁵ Following the banning of the CPU with independence, most of the deputies from the Group (made up of mainly nomenclature, red directors, and regional administrators) became part of *boloto* (marsh), a group of about 200 deputies located between the right and left orientations in the parliament. This new *boloto*, like the old Group 239 became the centrist political power in the parliament and in that sense a 'party of power' since its votes were decisive in the

⁸⁵ Leonid Kravchuk, the second secretary of the Communist Party of the UkrSSR (CPU), was elected in July 1990 as a new parliamentary speaker by 239 votes, which became a symbol of the strength of the communist majority. Following this the communists referred to themselves as the Group of 239. See Sarah Whitmore, *State-building in Ukraine: The Ukrainian Parliament, 1990-2003* (London: RoutledgeCurzon, 2004), pp. 53-54.

passage of laws.⁸⁶ Although the parliamentary opposition had little opportunity to influence parliamentary proceedings, nevertheless due to their involvement in the legislative committees, the presidium and the council meetings, they were able to influence the content of the laws and to provide policy alternatives, especially in light of the status quo approach of the 'party of power'.

The position of President Kravchuk *vis-à-vis* these political groupings changed during his term in office. Thus, although the president himself was a former communist and initially ardently opposed by the national democrats, the lack of reform progress due to the policy preferences of Group 239 moved him towards the national democratic side of the political spectrum. Thus, by 1994, Kravchuk's political base shifted from the left to the right. In turn this affected the geography of politics, since 'party of power' held its majority in the industrial east and south of the country and the national democratic forces were concentrated in the western and central parts of Ukraine. Consequently, by 1994, President Kravchuk found himself in what Marta Dyczok has identified as a "Catch 22" situation, where the 'party of power' and his power base prevented him from implementing economic reforms, but because he was not improving the economy the President was losing the support of the public.⁸⁷

After early parliamentary and presidential elections were held in 1994, the political composition altered drastically. In parliament, the political spectrum changed considerably with only 56 out of 188 incumbents being re-elected. Out of 403 deputies elected, the far right was represented by 56 deputies from the Rukh and Statehood factions, center-right by 62 parliamentarians from the Centre and Reform party, centre-

⁸⁶ Ibid, pp. 59-61.

⁸⁷ Marta Dyczok, *Ukraine: Movement without Change and Change without Movement* (Amsterdam: Hardwood Academic Publishers, 2000), p. 57.

left by 119 deputies from the Interregional Group, Unity, Agrarian, and Agrarians for Reform parties, far-left by 114 representatives of the communists and the socialists, and, lastly, 54 deputies ran as independents. What this meant in practice is that the strength of the national democratic movement in the parliament was significantly reduced and a majority was established by the communist and socialist parties. The Ukrainian parliament shifted from a right-left deadlock to a socialist majority, with the newly elected President Kuchma as their representative. This consensus meant that the parliament was presented with fewer opportunities to oppose presidential initiatives, which coupled with presidential changes to the institutional set-up of the political system, concentrated political power in the hands of the president. It is mainly due to these political changes that the NPT treaty was finally ratified.

The drastic decline in economic productivity and the rise in economic and social problems that accompanied the break-up of the Soviet Union influenced both the executive decision to renounce nuclear weapons and the implementation of this decision domestically. At the onset of the economic transition Ukraine found itself endowed with significant material resources. Ukraine held an estimated 5 per cent of the world's mineral resources, had a well-developed industrial sector, had the most fertile and expansive agricultural land in Europe, had a sizable internal consumer market of 50 million, as well as a highly-educated workforce.⁸⁸ All of these factors promised high productivity in the context of a market economy. However, the problem of transition was not in the development of the economy, but in its mismanagement.⁸⁹ Institutions and

⁸⁸ Dyzcok, *Ukraine: Movement without Change and Change without Movement*, p. 68.

⁸⁹ Ibid.

practices which directed economic production under the command economy were wholly unsuited for the new market logic.

Although the economy of the Soviet Union began to falter before its collapse, the true economic repercussions of Ukraine's political secession from the union were not felt until the Russian Federation began to liberalise prices and introduce greater controls over its fiscal and stabilisation policies, forcing Ukraine to exit the rouble zone. However, it must be noted that the major problem was not Russian policies per se, but the fact that Ukrainian officials did not adhere to directives from Moscow and instead, due to the export of inflation through credits issued by the Ukrainian parliament, were able to harness capital through the quick resale of goods to the Russian market or abroad.⁹⁰ Many of these goods relied on subsidisation in the form of below-the-market prices for energy supplies and the liberalisation of prices in Russia resulted in higher energy prices for Ukrainian firms. Consequently, by the end of 1993 the Ukrainian government owed Russia some \$2bn in energy debts. These debts, or rather the possibility of their write-off by the Russian government, became prime bargaining chips during Ukraine's denuclearisation and, more crucially, during the division of the BSF.

These dire economic circumstances affected Ukrainian denuclearisation both at the level of decision-makers and of wider society. The executive policy preference to renounce nuclear weapons was conditioned by the lack of economic resources to maintain the weapons and to invest in technological capability to service and maintain a nuclear deterrent. During the implementation of the policy, falling economic production, rising inflation and unemployment influenced the political re-alignment of forces,

⁹⁰ The World Bank reported that Ukrainian inflation by 1993 reached 9000 percent, which was the highest amongst countries during peaceful time. See Wittkowsky, *Piatiletka bez Plana: Ukraina 1991-1996 Formirovanie Natsional'nogo Gosudarstva* (Kiev: Sfera, 1998), p. 101.

following the presidential and parliamentary elections in 1994. Thus, the nature of transitional economics in Ukraine acted as a constraint on the possibility of retaining nuclear weapons while, during the implementation of the executive policy, enduring economic hardship was used as a reason to cajole parliamentarians from the opposition into ratifying the START I and the NPT accords.

Executive Decision-Making on the Status of Nuclear Weapons

Making of the Decision

The Ukrainian executive decision to denuclearise by signing the Lisbon Protocol, which made Ukraine a signatory to START I, was conditioned by two key factors: technological and economic limitations. The latter in turn were facilitated by two external factors: growing international non-proliferation norms, which deemed nuclear weapons dangerous and those states attempting to develop them as 'rogue states' facing international alienation, and by bilateral economic and diplomatic pressures from the world's great powers, notably from the US and Russia, which limited the ability of the Ukrainian government to receive funding to support its nuclear weapons programme if the government opted to keep it. Evidence suggests that key decision-makers in the Ukrainian SSR began to debate the fate of nuclear weapons before the establishment of Ukraine as an independent state. During that time, Foreign Minister Anatolii Zlenko held expert meetings where the problem of nuclear weapons was discussed with nuclear technology specialists, scholars, rocket scientists and military personnel. Their conclusions at the time suggested that Ukraine's best option was to remove the weapons from Ukrainian territory for their dismantlement and elimination due to mainly technological

and economic reasons.⁹¹ In addition, international isolation and non-recognition of Ukraine's independence in the event of retention of the nuclear arsenal were also acting as a strong deterrent against a nuclear option.⁹²

In the first months of the declaration of independence and up until about the end of 1991 Ukraine's nuclear policy was in the purview of the Verkhovna Rada. Starting with the New Year and the establishment of the presidency and presidential elections decision-making in practice moved to include the president and the cabinet, with the formal introduction of the presidential office. As Borys Tarasiuk saw it -

"The decision making process involved the president, the cabinet (the MFA in particular), and major political forces in the parliament...There was a working group in the parliament under the leadership of the First Deputy Speaker of the parliament, Vasyl Durdynets. The working group included representatives of the Foreign Ministry, Defence Ministry, and we held discussions with the members of this group who were parliamentarians. This parliamentary committee met about twice a month."⁹³

In addition to the parliamentary committee that served as an inter-agency deliberation group, the National Committee on Disarmament was created in May 1992. The committee, headed by Borys Tarasiuk discussed technical issues relating to nuclear questions and was comprised of representatives of all relevant agencies. The National Committee held frequent consultations with scholars from the nuclear field and representatives from Pivdenmash (Southern Machine-building Plant), whose input was crucial for the crystallisation of the renouncement decision and clarification of alternative

⁹¹ Zlenko, p.339.

⁹² Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

⁹³ Ibid.

options.⁹⁴ Technological and economic limitations weighed heavily in this final policy decision.

Technological limitations

From the technological point of view Ukraine did not have a complete nuclear production and maintenance cycle. The nuclear weapons complex requires numerous technical capabilities to maintain these weapons, including: weapons design and testing, production of nuclear materials, fabrication of nuclear components, weapons assembly, storage and transfer of nuclear materials, fabrication of non-nuclear components, storage and transfer of weapons, and maintenance of weapons.⁹⁵ Most of the Soviet facilities for the design and production of nuclear warheads were located in southern Siberia.⁹⁶ The Soviet testing sites were also outside of Ukraine, located in the arctic Russia at Novaya Zemlya and at Semipalatinsk in Kazakhstan. Thus, Ukraine did not have the physical ability to test and thus maintain these weapons and no community in Ukraine at the time would have allowed the construction of a nuclear testing facility in their vicinity. For the production of nuclear weapons materials plutonium, enriched uranium, tritium, lithium-6 and/or deuterium are required. Of these, only uranium and deuterium were relatively accessible.⁹⁷ In regards to the storage and transfer of nuclear materials, it is not clear

⁹⁴ Pivdenmash was a key missile producer in the Soviet Union. Interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

⁹⁵ See Campbell, Carter, Miller and Zraket, *Soviet Nuclear Fission: Control of the Nuclear Arsenal in a Disintegrating Soviet Union*, p. 24.

⁹⁶ The Soviet nuclear weapon design and production facilities included: design centres (All-Union Scientific Research Institute of Experimental Physics near Gorky, All-Union Institute of Technical Physics at Kasli), warhead fabrication centres (at Nizhnyaya Tura, possibly Chelyabinsk and Novosibirsk), uranium enrichment facilities (at Verkhniy-Neyvinskiy, Krasnoyarsk, Angarsk, Tomsk) and plutonium separation facilities (at Chelyabinsk, Tomsk and Krasnoyarsk). See Walker, "Nuclear Weapons and the Former Soviet Republics," p. 260.

⁹⁷ The facilities involved in the production of weapons grade plutonium were in Russia. However, Ukraine possessed reactors that were of similar design to those needed for the production of plutonium and thus potentially could have been used for its fabrication. There were however two research reactors in Ukraine at the Institute for Nuclear Research in Kyiv and at the High Marines School of the Ukrainian Ministry of Defence in Sevastopol, which could have been used for further testing and improvement of enrichment technologies. In addition, Kharkiv Physical-Technical Institute still possesses some 12kg of uranium, enriched up to 90 percent. See Victor Zaborksy, "Export Control

whether it was Ukrainian army personnel who were completing these functions or whether they were Russian. Consequently, it is evident that in regards to the production and maintenance of nuclear weapons Ukraine had some limited capabilities, some natural resources and some technical know-how. However, Kyiv totally lacked the infrastructure that would be needed to create a closed nuclear weapons cycle.⁹⁸ In addition to technological limitations, Ukraine faced economic constraints in attempting to create a closed nuclear weapons cycle and thus maintain part of the strategic arsenal.

Economic limitations

Although there is no evidence to suggest that calculations were made early on in relation to how much it would cost to build these facilities so as to complete the nuclear weapons cycle, there was a general agreement that investments required were large and impossible to come up with under conditions of economic crisis and Western financial and diplomatic isolation. During a parliamentary ratification hearing on 3 June 1993

Developments in Ukraine,” in Gary Bertsch and William C. Potter, eds., *Dangerous Weapons, Desperate States* (London: Routledge, 1999), p. 45. Enriched uranium is used for the production of nuclear bombs, and Ukraine has uranium deposits and mines, located in Kirovohrad and Kryviy Rih regions. However, uranium processing and enrichment sites, needed to create the highly enriched uranium, were known to be located in Russia. See Thomas B. Cochran, William M. Arkin, Robert S. Norris and Milton M. Hoenig, *Nuclear Weapons Databook*, vol. II (Cambridge, Mass: Ballinger, 1987), p.94. Tritium that is used to boost the fission in the hydrogen bomb was reported to also be produced in the Russian republic. In addition, weapons that contain tritium require constant servicing and replacement due to its short half life. Scientists who serviced these warheads on the Ukrainian territory were brought over from the Russian republic. Although lithium deposits are found in Ukraine, it is not certain that Ukrainian scientists at the time had the technologies for the production of lithium-6. However, Ukraine seemed to have abundant production of deuterium, which is a by-product of the ammonia industry and is known to be present at the Prydniprovsky Chemical Factory in Dniprodzerzhynsk. Fabrication of nuclear components and their final assembly are also said to have taken place at the facilities in the Russian republic.

⁹⁸ However, despite the inability to build and maintain nuclear warheads which were close to the end of their life-cycle (deadline for SS-19 missiles was the year of 2000 and for SS-24 missiles -2008), Kyiv’s position in relation to missile production was strong. Ukraine had advanced missile-related technologies and manufactured SS-18, SS-20, SS-23 and SS-24 missiles. At the time of the break-up of the Soviet Union, Ukraine had some 100 enterprises that were connected to the design and production of missiles and missile parts. The key missile production facilities in Ukraine were: Kharkiv Production Association Monolit (guidance systems research), Khartron Scientific and Production Association in Kharkiv (development of missile guidance systems), Pivdenmash Machine-building Plant in Dnipropetrovsk (missile and rocket production, including Zenith and Cyclone rockets) and Pavlodrad Machine-building Plant (production of solid-fuel rocket engines). See Zaborksy, “Export Control Developments in Ukraine,” in Bertsch and Potter, eds., *Dangerous Weapons, Desperate States*, p. 94. There is also evidence to suggest that Ukraine had some technologies related to sensitive non-nuclear components for the weapons such as coded locks or PALs and possibly others like detonators, metal and plastic components, and so on.

Foreign Minister Zlenko stated that the government would need \$62-100bn in order to close the nuclear weapons cycle,⁹⁹ while during the final ratification of the NPT President Kuchma cited the sum of \$10-30bn to maintain the nuclear arsenal on Ukrainian territory and an additional \$160-200bn to provide a closed nuclear weapons cycle.¹⁰⁰ One option remained that would make the retention of the strategic weapons possible and that would be to have an agreement with the Russian Federation concerning the establishment of joint responsibility for the nuclear arsenal. However, whenever Ukrainian officials brought up this option before the Russian officials they were met with a categorical refusal.¹⁰¹

Although at the onset of the economic transition Ukraine found itself endowed with significant material resources, as stated earlier by 1993 the World Bank reported that Ukrainian inflation had reached 9000 per cent, which was the highest among countries during peaceful times.¹⁰² Reflecting on these economic realities and the possible international reaction to Kyiv going nuclear Zlenko noted:

“...if Ukraine exits its course of achieving a non-nuclear status in the future, the reaction of other countries would be immediately negative. We can predict with confidence the halt of economic and humanitarian aid from the West, application of all kinds of sanctions and limitations up to the point of a trading embargo and blockade...the supply of nuclear fuel for the Ukrainian nuclear power plants would be halted and all normal trading and financial preferences and benefits would be cancelled...”¹⁰³

Consequently, economic constraints were one of most significant factors on Ukraine’s executive decision to proceed with full denuclearisation. Ukraine had the technological

⁹⁹ Parliamentary Stenogram, 3 June 1993.

¹⁰⁰ Parliamentary Stenogram, 16 November 1994.

¹⁰¹ Zlenko, p. 328.

¹⁰² See Wittkowsky, p. 101.

¹⁰³ Parliamentary Stenogram, 3 June 1993, (translation mine).

know-how and with large financial investments it could have created, within several years, a closed production and maintenance cycle for the retention of at least a part of its inherited strategic arsenal. Ukraine also could have bargained with the Russians for the immediate maintenance of some of the nuclear weapons if its economy was in a stronger position, since Russia at the time relied on Ukrainian technical maintenance and production of the SS-24 missiles, which were built at Ukrainian Pivdenmash. However, economically weak and with no possibility of receiving financial support, but rather international isolation should Ukraine decide to stick to the nuclear cause, the executive made its decision to proceed with full weapons renunciation.

A compelling argument has been presented by Christopher A. Stevens that Ukraine decided to denuclearise not because of its technological limitations or economic constraints, but because Ukraine didn't sense enough of a 'threat' to justify a nuclear option or lacked a demand for such an option.¹⁰⁴ Should this threat have existed either in the form of Russia or another state, Ukraine would have found a way to keep these weapons, even if it meant becoming a pariah state. Although this is an important point to consider, evidence points to the fact that Ukrainian decision-makers and elites did perceive Russia as a threat, but not an immediate one. Tarasiuk stated that -

"Immediately after the proclamation of independence Yeltsin's spokesman for the first time said that if Ukraine decided to become independent it would mean that Russia no longer had to respect the inviolability of the Ukrainian borders, thus threatening Ukraine's territorial integrity. In 1993 it was the Russian Duma that claimed Sevastopol as a Russian city that should be transferred into Russian control. In 1992-1993 there were very serious developments around the BSF and some situations were close to an open military

¹⁰⁴ See Christopher A. Stevens, "Identity Politics and Nuclear Disarmament," *Nonproliferation Review*, Vol. 15, No.1, 2008.

confrontation...The threat was obvious because of the indications from Russia...but this threat was potential not actual.”¹⁰⁵

However, numerous proclamations from parliamentarians and the president during 1991-1993 suggest that at certain junctures the threat perception vis-a-vis Russia increased. Thus, during the parliamentary session of 28 January 1992, President Kravchuk noted:

“I must mention the imperial pressure under which Ukraine finds itself since the proclamation of independence. The most notable role is played by the central mass media [in Moscow] which competes on who will smear the republic with more dirt regarding our situation in domestic and foreign affairs. In short, all is done to prevent the building of an independent, democratic Ukrainian state.”¹⁰⁶

During these increased tensions between Ukraine and Russia deputies from the national democratic parties demanded a halt of nuclear weapons transfer to Russia and called for the withdrawal of Ukraine from the CIS. For example during 3 March 1992 session, Deputy Fedir Sviders'kyi demanded “to review the appropriateness of Ukraine’s membership of the CIS and nuclear weapons transfer to Russia.”¹⁰⁷ Another deputy during the increased tensions over the BSF proclaimed that “we cannot pass nuclear weapons into the hands of generals who threaten us. We have to make conclusions regarding the realities of the world we live in. In this world only the strong are respected and weak are disregarded. If we want to be a state we have to have a powerful defence system.”¹⁰⁸

This suggests that Ukrainian leadership could have attempted to keep at least some part of the strategic weapons as a ‘minimum deterrent’, not because it felt

¹⁰⁵ Author’s interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

¹⁰⁶ Parliamentary Stenogram, 28 January 1992, (translation mine).

¹⁰⁷ Parliamentary Stenogram, 3 March 1992, (translation mine).

¹⁰⁸ Stepan Khmara, Parliamentary Stenogram, 8 April 1992, (translation mine).

immediately threatened by some state, but because potential threat certainly existed. Moreover, the leadership recognised that as a new state in the world of great powers, all of whom possess such weapons, full renunciation was not the wisest of options. However, Ukrainian independence was achieved on popular calls for the improvement of economic and living conditions and policy-makers could not divert the much needed funding to construct nuclear production sites, although they understood the importance nuclear weapons play, especially for a new state in the “real world”. The arrival of the Ukrainian delegation in Lisbon was the conclusion of these principal deliberations.

Establishing a Way for Denuclearisation: Joining START and NPT

Having received the general strategy from the parliament’s earlier declarations on nuclear weapons, Ukraine’s executive began to formulate the way in which the strategic weapons would be removed.¹⁰⁹ It is not fully clear who initiated the option for the three former Soviet republics to join the START I treaty and consequently NPT, or the legal way in which the removal would be accomplished. Ukraine, Belarus and Kazakhstan would join START I by means of signing a special protocol, which would recognise these states alongside Russia as successors of the Soviet commitments outlined in START I. Such an understanding seemed to have crystallised both within Ukraine and from the US at approximately the same time. Ukraine’s Foreign Minister at the time, mentions in his memoirs that Leonid Kravchuk, during his first visit to the US as the head of the Ukrainian parliament,¹¹⁰ encountered calls from the US and other European states to ratify the

¹⁰⁹ Ukraine’s strategic arsenal at the time was composed of 176 ICBS with some 1,240 warheads assigned to them (base in Khmelnytsk had 90 SS-19 with 540 warheads, base in Pervomaysk had 46 SS-24 with 460 warheads and 40 SS-19 with 240 warheads) and 42 heavy bombers (22 Tu-95H Bear Bombers at Uzin with 352 estimated warheads and 20 Tu-160 Blackjack Bombers with estimated 240 warheads at Priluky). See Bernauer and Ruloff, eds., *The Politics of Positive Incentives in Arms Control*, p.145.

¹¹⁰ Leonid Kravchuk was the Chairman of the Ukrainian Parliament (SSR) during 1990-1991 until he was elected as the first President of Ukraine on 5 December 1991.

START I treaty and join the NPT treaty in order for Ukraine to receive international recognition of its independence.¹¹¹ Also in 1991, a number of US nuclear proliferation scholars suggested this course of action through a policy briefing, which became the basis for the ensuing US position.¹¹²

In Ukraine, the inclusion of the NPT passage into the Ukrainian Declaration on State Sovereignty and later parliamentary statements confirmed that Ukraine, as a legal successor of the USSR, would abide by the latter's international commitments made in the START I treaty and would also join the NPT. Russia and the US at first opposed the inclusion of Ukraine in the START I agreement as it would make Ukraine into an official 'nuclear weapons state'. The US Secretary of State James Baker attempted to reconcile these positions by proposing that Ukraine join and ratify START I and accede to the NPT agreement as a non-nuclear weapons state simultaneously. For Ukraine, it was advantageous to become party to START I, which actually obligated Kyiv only to a partial removal of strategic weapons¹¹³ and confirmed Ukraine's ownership of weapons that could serve as a legal basis for demanding compensation for them.

Initial negotiations on the way for the three former Soviet republics to become party to the START I agreement occurred in March-April 1992. On 11 April 1992 a

¹¹¹ Zlenko, p. 334.

¹¹² See Campbell, Carter, Miller and Zraket, *Soviet Nuclear Fission: Control of the Nuclear Arsenal in a Disintegrating Soviet Union*. John Buntin suggests that this publication served as a basis for the US policy-makers.

¹¹³ Starting 1960s, the Soviet Union and the US, negotiated a number of bilateral agreements in the field of nuclear arms control, including Anti-Ballistic Missile (ABM) agreement signed in 1972, and the Strategic Arms Limitation Talks (SALT) which eventually resulted in the Strategic Arms Reduction Treaty signed on 31 July 1991. According to the agreement the Soviet Union was obligated to cut its strategic warheads by 25-35 percent, reduce SS-18 ballistic missiles by 50 percent and its aggregate ballistic missile throw-weight by 46 percent. The agreement allowed for each party to decide what kind of weapon systems to cut. Ukraine interpreted the Treaty as proportional percentage reductions for all four nuclear successor states. Thus, according to the Treaty Ukraine had to reduce 36 percent of the launchers and 42 percent of the warheads. The START I Treaty did not demand the removal of the SS-24 missiles, but the US pushed for the primacy to be given to the deactivation and elimination of these newer missiles, which were targeted at the US and posed the greatest danger. Ukrainian elites on the other hand preferred for the more dangerous SS-19 to be eliminated first, in compliance with the START I commitments and considering that they were becoming an environmental hazard due to the end of their life-cycle.

ministerial meeting took place in Moscow where Russia, Ukraine, Belarus and Kazakhstan discussed the procedure of joining START I. Ukraine's position included three conditions under which Kyiv would join the agreement: the provision of security guarantees from the nuclear weapons states, financial aid for the dismantlement of these weapons and financial compensation for the nuclear warheads and for the ecological problems the removal of these weapons would entail.¹¹⁴ Washington was not officially involved in the Russo-Ukrainian dialogue; however, soon Ukraine and the US began consultations on nuclear disarmament and before that they kept daily consultations on the issue. During these consultations it was agreed that Ukraine, together with Belarus and Kazakhstan would join the START I treaty by means of an additional Protocol that would be signed in Lisbon in May 1992, during the international conference on technical assistance to newly independent states.

Before the conference an important event took place, which later figured prominently as evidence to the changing course of Ukraine in regards to the strategic arsenal. From 5 May to 10 May 1992 the Ukrainian President Leonid Kravchuk visited the US for the first time. On 7 May Kravchuk and the US President George H.W. Bush exchanged letters, which were to serve as the basis for the finalisation of the text of the Lisbon Protocol. In the Ukrainian letter, President Kravchuk confirmed Kyiv's commitments to join the START I agreement, but it specified not only the elimination of weapons as required by the Treaty, but the elimination of all nuclear weapons in the territory of Ukraine within the seven year period as dictated by the Treaty.¹¹⁵ The US and Russia considered this letter as an integral part of the Lisbon Protocol, whereas Ukraine

¹¹⁴ Zlenko, p. 344.

¹¹⁵ *Protocol to the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms*. Lisbon, 23 May 1992.

did not consider letters as legally binding. Consequently, later when Ukrainian deputies ratified START I and the Lisbon Protocol, they did not consider this letter during the procedure. Ukrainian parliamentarians looked at reductions of the strategic arsenal and the possible full elimination in the future, not their immediate full elimination during the seven year period which the US and Russia had pushed for. Thus, before Lisbon the two parties had conflicting interpretations on what the Lisbon Protocol committed Ukraine to do. If the US and Russia pushed for an interpretation that the Protocol would commit Ukraine to full weapons renunciation within a seven year period, Kyiv continued to follow the course set by the parliament and by the executive that Ukraine would reduce its strategic stockpile according to the international commitments made by the Soviet Union. In the future, at the pace it considered necessary, Ukraine would fully remove the weapons, but not before certain conditions were met. However, key to understanding these conditions is that during their negotiations there was never a question of Ukraine actually retaining the strategic arsenal. The executive decision to move Ukraine in the non-nuclear direction crystallised around 1991- early 1992. By coming to Lisbon, the Ukrainian executive made its final decision on the fate of the nuclear arsenal.¹¹⁶

Lisbon Protocol and Ukrainian Commitment

Although negotiations at Lisbon were not smooth, especially over Ukrainian insistence on including the clause that the elimination of the weapons would be 'equal and gradual on the territory of all four former Soviet States,' the Lisbon Protocol was signed on the evening of 23 May 1992 by Russia, Ukraine, Belarus and Kazakhstan. What the Lisbon Protocol achieved for Ukraine was the legal recognition of Ukraine as an equal

¹¹⁶ Zlenko, p. 345.

partner to the START I treaty, under which certain weapons reductions would be made and its commitment to accede to the NPT treaty as a non-nuclear state “in the shortest possible time” and “take all necessary actions to this end in accordance with their constitutional practices.”¹¹⁷ The legal recognition became a firm ground on the basis of which Ukraine could demand compensation for the materials and dismantlement of the weapons.

However, a major weakness of the Protocol was that it set no concrete timelines under which these obligations would be carried out, especially the ratification of both agreements, and it did not provide any recognition of the conditions which Ukraine had argued for, such as, compensation for the weapons, dismantlement aid and security guarantees. Some observers have claimed that Kyiv did not have a firm position on this matter and it was not until after a conditional ratification by the parliament that the US and Russia learned of the definite circumstances under which Ukraine would denuclearise. This argument certainly requires re-examination, since the Ministry of Foreign Affairs had made both the US and Russia aware of all three conditions prior to the Lisbon meeting.¹¹⁸ If the signing of the Lisbon Protocol had been accompanied by a side agreement resolving these matters, the ratification process would have been much quicker as it would have removed the ground for the executive to stall the implementation. It is true that Ukrainians could not provide the exact figures they wanted for fair compensation for materials and funds for weapons dismantlement, but this was partially due to the fact that Russia refused to release figures to Ukraine on the costs

¹¹⁷ *Protocol to the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms.*

¹¹⁸ For example Deputy Foreign Minister Borys Tarasiuk discussed conditions with the US Ambassador to Ukraine, Roman Popadiuk in 1992. See *Sprava 12, No. 31: Dopovidni Zapysky MZS Ukrainy pro Obhovorennia Pytannia Zustrichi z Poslom SShA z Pytan' Nadannia Ukraïni Harantiï ii Natsional'noi Bezpeky z Boku Iadernykh Derzhav.* 17 Lystopada 1992; 10 Hrudnia 1992.

involved and Ukrainians went on making their own estimations. The US and Russia's narrow, legal approach to the matter of denuclearisation is much to blame for the lack of a swift resolution of the issue. Prior to the Lisbon accord a trilateral round of talks, with experts involved from all three sides, on funds needed to dismantle the weapons and leave the nuclear bases as environmentally safe zones as well as compensation for materials these weapons contained would have resolved many of the disagreements that were to emerge later. Instead, Russia and the US pressed for paper commitments from the Ukrainian side with promises of some future aid, leaving a financially impoverished, newly-established state with the bill.

Transfer of Tactical Nuclear Weapons

The process of the removal of TNWs from Ukrainian territory by Russian forces created the first ambiguity in relation to Ukrainian denuclearisation commitments, when on 12 March 1992 Kravchuk issued a decree to halt tactical weapons transfer to Russia. This halt was mainly necessitated by the Russian political pressure in relation to the division of the BSF; however officially the Ukrainian authorities were citing perceived lack of Russian accountability in regards to the dismantlement of TNWs weapons and fear for their physical security. The TNWs transfer was thus resumed when the Russian side agreed to allow international monitoring over the dismantlement process and to halt the encouragement of the sailors in the Black Sea Fleet to raise Russian national naval flags. In addition, the financial and diplomatic pressures by the US also facilitated the resumption of the tactical weapons transfer.

Russian Removal of TNWs

The removal of tactical nuclear weapons from the territory of Ukraine was agreed upon in the Alma-Ata treaty. Through the treaty Ukraine obligated itself to move these weapons from its territory by 1 July 1992 to central bases in Russia for dismantlement under a joint control.¹¹⁹ Ukraine once again confirmed this pledge by signing the Minsk agreement during the summit on 30 December 1991.¹²⁰ The withdrawal of TNWs from the territories of the former Soviet satellites and Soviet republics began before the dissolution of the Soviet Union. In fact, tactical or non-strategic nuclear weapons were deployed in every Soviet republic except Kirghizia, and also throughout Eastern Europe. However, by the end of 1990, it appeared that all TNWs were removed from Germany, Hungary, Poland, Czechoslovakia, Latvia, Lithuania, Estonia, Armenia and Azerbaijan.¹²¹ The motivations for this were general security fears and the Presidential Nuclear Initiatives of September and October 1991.¹²² Tactical nuclear weapons also posed a more serious threat to the disintegrating Warsaw Pact and to international nuclear proliferation as they could be easily sold and reach the hands of rogue states or terrorist groups, precisely the reason for which the NPT treaty was designed. Although the withdrawal was being quickly implemented by the Soviet military, bases in Russia to which they could be moved for storage or dismantlement were insufficient. Thus, many of the TNWs from Eastern Europe ended up in bases on Ukrainian soil.

¹¹⁹ Article 4, Appendix C, *Alma-Ata Declaration*, 21 December 1991, Library of Congress.

¹²⁰ Article 4, *Minsk Agreement on Strategic Forces*, 30 December 1991, Library of Congress.

¹²¹ Kurt M. Campbell, Ashton B. Carter, Steven E. Miller and Charles A. Zraket, *Soviet Nuclear Fission: Control of the Nuclear Arsenal in a Disintegrating Soviet Union* (Cambridge: Center for Science and International Affairs, November 1991), p.22.

¹²² In September and October 1991, the US President George H.W. Bush and the outgoing Soviet leader Mikhail Gorbachev (later also Russian President Boris Yeltsin) announced reciprocal unilateral commitments to reduce tactical nuclear weapons. For detailed analysis see Eli Corin, "Presidential Nuclear Initiatives: An Alternative Paradigm for Arms Control," *Issue Brief*, 2004, <http://www.nti.org/e_research/e3_41a.html>.

The removal of TNWs from Ukraine began in August 1991 and by 6 February 1992 about half of the 2,200 tactical weapons were transferred to Russia.¹²³ On 12 March 1992, however, President Kravchuk announced his decision to suspend the withdrawal of the weapons.¹²⁴ This decision in turn, fuelled suspicions both in the West and in Russia of Ukraine's attempts to keep the nuclear arsenal. The evidence suggests that perceived rising political pressure from the Russian authorities to renounce Ukrainian claims to the BSF seemed to have played a part in Kyiv's decision to halt the weapons transfer. During this time Ukrainian-Russian frictions over the division of Soviet assets, including the BSF began to emerge. In fact these tensions were rising to the point of near-open conflicts between officers supporting Russian or Ukrainian jurisdiction, which could have prompted an inter-state war. The incidents in Sevastopol¹²⁵ culminated with the presidential decrees by Kravchuk and Yeltsin on 5 and 7 April 1992 respectively claiming the BSF as belonging to their particular states. On 9 April 1992 as the Ukrainian parliament passed the resolution supporting Kravchuk's decree on the halt of tactical weapons transfer,¹²⁶ the Presidents of Russia and Ukraine held two telephone conversations during which they agreed to withdraw their decrees and attempt to solve the BSF issue by political means rather than allowing the sailors and military on the ground to decide for them.

In addition, the Ukrainian government was receiving information that Russia was not dismantling tactical weapons as agreed and joint monitoring, which was part of the

¹²³ Skootsky, p.69.

¹²⁴ Bohdan Nahaylo, *The Ukrainian Resurgence* (Toronto: University of Toronto Press, 1999), p. 441.

¹²⁵ On 5 April 1992 President Kravchuk issued a decree on measures to create Ukrainian Armed Forces which proposed a navy based on the Black Sea Fleet without firstly resolving the issue of the fleet, its division and basing with Yeltsin. Yeltsin issued his own decree making Russia the owner of the BSF.

¹²⁶ The parliament issued a resolution on additional measures regarding the realisation of Ukraine's non-nuclear status, supporting the position of the president. Parliamentary Stenogram, 9 April 1992.

December agreements, now required enforcement. This information also suggested that Russian storage bases were overwhelmed with the number of TNWs withdrawn from all over the former Warsaw Pact and this was viewed in Ukraine as irresponsible and dangerous for Europe as a whole.¹²⁷ Following the halt, the Ukrainian preference was to continue the removal process, but only with a monitoring mechanism over the demolition in place. Thus, the parliamentary resolution stated: "We must consider the continuing removal of tactical nuclear weapons as unsatisfactory until the development and enablement of the mechanism of international control over their dismantlement with the participation of Ukraine."¹²⁸ The Ukrainian authorities thus, began to pressure Moscow to agree to the monitoring - which it did by signing an agreement on 11 April 1992.¹²⁹ The protocol of this agreement stipulated that the demolition of tactical weapons at bases in the Russian Federation would be monitored by no more than three observers from Ukraine at each plant, although other republics such as Belarus and Kazakhstan could also send their observers.¹³⁰

It appears that US pressure also played some part in Kyiv's political decision to restart the TNW transfer. On 8 April 1992 Ukraine became eligible for the Nunn-Lugar US assistance program.¹³¹ Thus, Secretary of State James Baker threatened to reduce the

¹²⁷ Zlenko, p. 340.

¹²⁸ *Postanova Verkhovnoi Rady Ukraïny pro Dodatkovy Zakhody Shchodo Zabezpechennia Nabuttia Ukraïnoi Beziadernoho Statusu*, 2264-XII, Verkhovna Rada, 9 Kvitnia 1992, (translation mine).

¹²⁹ *Uhoda mizh Ukraïnoi i Rosiïskoiu Federatsiieiu pro Poriadok Peremishchennia ladernykh Boieprypasiv z Terytorii Ukraïny na Tsentral'ni Peredzavods'ki Bazy Rosiïskoï Federatsii z Metoiu ikh Rozkomplektuvannia ta Znyshchennia*, Prezydent Ukraïny, 11 Kvitnia 1992.

¹³⁰ From the perspective of international non-proliferation, this step was unprecedented. Up until that point the US and the Soviet Union had refused to make tactical weapons a subject of the START treaties, consequently their demolition was not subject to monitoring. See Lars van Dassen, "Tactical Game About Nuclear Non-Proliferation in Ukraine," *Nucleus*, 3, 1996 p. 26. Thus, Ukraine's subjection of Russia into agreement on a supervised weapons demolition, especially considering that the supervision was foreseen over tactical and strategic weapons, certainly retrospectively suggests that the West's hasty policy to remove the weapons from Ukraine's territory was premature. Given the right support, Ukraine could have leveraged Russia into more strict demolition controls.

¹³¹ The program was initiated by two US senators during the last years of the Soviet Union's existence. The *Nunn-Lugar Soviet Nuclear Threat Reduction Act* (or as later it was called 'The Cooperative Threat Reduction Program') became a law on 12 December 1991. This allowed for the Department of Defence to use \$400m from its budget during 1992 to

planned \$90m assistance for Ukraine and also threatened to cancel the scheduled meeting between Kravchuk and US President George H.W. Bush.¹³² Although the conclusion of the 11 April agreement between Ukraine and Russia politically restarted the removal of tactical nuclear weapons, evidence suggests that from an operational point of view, the removal of these weapons was never suspended.

Russian Operational Control over TNWs

When in May 1992, Kravchuk arrived in Washington he still believed that the scheduled date for the TNWs removal was 1 July 1992. However, on 6 May, the head of the CIS Joint Armed Forces Yevgenii Shaposhnikov, announced that the last tactical nuclear weapon had left Ukraine. Reiss argues that this was done to embarrass Ukraine in front of the US, as Kravchuk did not find out about this until after Moscow's announcement, due to failure of the Ukrainian Ministry of Defence to inform the Ministry of Foreign Affairs of the final removal.¹³³ More importantly the incident brought up the question of how Russia was able to remove the rest of the TNWs in three weeks, from 11 April to 6 May, when it took it two months to remove the first half of the TNWs. Reiss argues that Russia ignored Kravchuk's political statement regarding halting the transfer of the tactical weapons on 12 March and continued to ship them out of the country. The Ukrainian military only confirmed this fact after it went to examine the stocks following Shaposhnikov's announcement.¹³⁴ Reflecting on this incident, Borys Tarasiuk equated it to

fulfil the obligations of the Act, where the money would be used to assist the dismantlement and storage of nuclear weapons and materials in the former Soviet Union. Depending on the transfer of the weapons by Ukraine, the latter would receive part of this compensation. See Bernauer and Ruloff, eds., *The Politics of Positive Incentives in Arms Control*, p. 116; Reiss, "The Former Soviet Union: Managing the Nuclear Inheritance," p.103.

¹³² Bernauer and Ruloff, eds., *The Politics of Positive Incentives in Arms Control*, p. 116; Reiss, "The Former Soviet Union: Managing the Nuclear Inheritance," p. 96.

¹³³ Reiss, "The Former Soviet Union: Managing the Nuclear Inheritance," pp.96-97. Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

¹³⁴ Reiss, "The Former Soviet Union: Managing the Nuclear Inheritance," p.97.

a clandestine operation by the Russian forces on the Ukrainian territory and argues that it infuriated those political forces in Ukraine who opposed denuclearisation and made the process difficult.¹³⁵ It must be noted however, that the Ukrainian authorities could have stopped the uncontrolled transfer of tactical weapons by blocking the railway system through which these weapons were transported. Indeed, evidence suggests that such an option was presented to President Kravchuk in the winter of 1992 by Ukrainian intelligence; however, the President refused an option which would have inevitably led to a direct confrontation and possibly open conflict with Russian forces.¹³⁶ However, neither the Ukrainian president nor the Ukrainian Minister of Defence knew about the speedy removal of the remaining TNWs during April and May 1992.¹³⁷

The timing of the TNWs transfer cessation seems to have been heavily affected by the developments in the Crimea, when Russian and Ukraine-supporting sailors and officers began the de-facto nationalisation of assets of the disintegrating Soviet Union without waiting for the political agreements to be reached first on the level of decision-makers and by the reports that Ukrainian officials were receiving about the physical insecurity of the weapons transferred to Russia and their alleged non-demolition. Thus, the halt of the TNWs transfer by Kravchuk was not an indication of the inconsistency of the policy to denuclearise, but rather it was designed to withstand Russian pressure regarding the BSF.

¹³⁵ Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

¹³⁶ See Buntin, "The Decision to Denuclearize: How Ukraine Became Non-Nuclear-Weapons State," p. 5.

¹³⁷ Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

Implementation of the Lisbon Commitments

Following the conclusion of the executive agreement, the Ukrainian parliament was meant to ratify it, and thus implement the denuclearisation commitments that were signed in Lisbon. However, when the START I treaty together with the Lisbon Protocol were presented to the parliament, it was ratified with a number of conditions attached that had to be met before the treaty could be fully implemented. This partial ratification created a perception in the West and Russia that the Ukrainian government was 'wavering' on its decision to denuclearise. However, evidence indicates that the reason why the ratification was conditional was because Washington and Moscow were reluctant to meet the demands made by the Ukrainian executive, especially in relation to the security guarantees. In this situation the executive cooperated with the parliament to create an impression of a reluctant parliament, which in the face of increased Russian political and economic pressure refused to implement the protocol and START I without Ukraine's conditions being met. Once these conditions were satisfied, the parliament removed its earlier conditions and ratified START I on 3 February 1994. It should be noted that this political manoeuvring took place against the background of genuine worsening of the relations between Ukraine and Russia, which fuelled the anti-Russian sentiments of the national democratic forces in Ukraine. In addition, the relations within the Ukrainian government between the president and the parliament also were getting worse, especially over economic reforms. Following the ratification of the START I treaty which was submitted together with the possibility of ratifying the NPT, the parliament refused to ratify the NPT and instead decided to wait for the fulfilment of international obligations regarding Ukraine's denuclearisation. The president also did not push to ratify

the NPT treaty in consideration of the deterioration of relations between the president and the parliament. Instead, the executive decided to wait for a more cooperative parliament in order to ratify the NPT.

Conditional Parliamentary Ratification of START I

The ratification of the START I agreement was not submitted to the parliament following the signing of the Lisbon protocol for two main reasons. Firstly, looming presidential elections in the US gave hope to the executive that a new administration might be more willing to accommodate Ukrainian conditions regarding denuclearisation.¹³⁸ Secondly, the president did not want to submit the treaty for ratification in the climate of rising tensions between the president and the parliament over the cabinet, its reform agenda, and corruption allegations. Thus, on 7 July 1992 the parliament issued a resolution on the non-confidence vote for the Cabinet of Ministers and proposed that the president changed the composition of the cabinet. In the resolution the parliament ruled:

“...to condemn the actions of the Government regarding the demarche of 3 July of this year during the parliamentary session as demonstrating private ambitions, and unwillingness to conduct a constructive dialogue with the Verkhovna Rada...According to the Constitution of Ukraine parliament asks President Kravchuk to revisit the composition of the Cabinet and submit to the parliament proposals regarding the new members of the Cabinet.”¹³⁹

¹³⁸ It seems that this decision to hold off the ratification was pursued by the Ministry of Foreign Affairs, which was hoping that elections in the US would bring about a less Russia-centric administration in Washington. An analytical report submitted by the retired army colonel Stephen D. Oliynyk seemed to have influenced this decision. In the report, the author argued that Ukraine should not ratify START I Treaty before 20 January 1993, when Bill Clinton's administration was set to take office, since Ukraine had not yet achieved its main objectives of security guarantees, technical assistance for the dismantlement and some sort of compensation. He argued that waiting well into Clinton's administration carried minimal risks for Ukraine and instead increased Ukraine's bargaining power and provided time for a more 'understanding' approach towards Ukraine's concerns to emerge from the new administration. This report was received by the Ministry of Foreign Affairs, and passed by Minister Zlenko to the President of Ukraine. See *Sprava* 179, No. 7: *Lyst MZS Ukrainy z Analitychnoiu Dovidkoiu Vplyvu Stratehichnoi Iadernoi Zbroi na Terytorii Ukrainy na ii Natsional'nu Bezpeky*. 15 Liutoho 1993.

¹³⁹ Parliamentary Stenogram, 7 July 1992, (translation mine).

President Kravchuk defended Vitold Fokin before the parliament, but allowed him to resign. The new Prime Minister, Leonid Kuchma, soon encountered similar problems in his attempts to reform the Ukrainian economy and by spring 1993 he was in conflict with both the majority in the parliament and the president. By summer 1993 the Ukrainian branches of power were in political gridlock and at the heart of it, argues Nahaylo, “was the lack of precise division of powers, the struggle over which had delayed the adoption of a new constitution.”¹⁴⁰ This political dispute was also fuelled by the strikes of miners and railways workers during summer and September 1993, which finally forced the political forces to compromise and hold early parliamentary and presidential elections in 1994. Following this temporary political truce in September 1993, Kravchuk submitted the START I treaty for ratification on 18 November 1993, and in closed session the parliament voted to ratify the START I treaty. However, the ratification was conditional and contained thirteen reservations, six conditions of which had to be met before the agreement could be implemented. Although it has been noted that through this ratification the parliament for the first time clearly stated its conditions under which Ukraine would denuclearise, these conditions were not new, instead they reflected the conditions which the executive had tried to attain from its negotiations with Russia but failed. Archival evidence shows that negotiations over the security guarantees that were to be given to Ukraine in the case of its weapons renouncement were being negotiated following the Lisbon Protocol, and by 3 June 1993 this idea that originated in the Ministry of Foreign Affairs was finding its supporters amongst the parliamentarians. On their visit to the US, members of the Presidium of the Ukrainian parliament, Vasyl Durdynets and

¹⁴⁰ Nahaylo, p. 451.

Dmytro Pavlychko, raised this issue in their discussions with the US officials.¹⁴¹ Following this the Head of the Presidential Service on International Affairs, Anton Buteiko, suggested on 10 June 1993 linking the provision of the security guarantees to Ukraine not with the NPT ratification but with the ratification of START I. This probably served as a reason why the parliament in its ratification from 18 November 1993 de-linked the two treaties, requiring the security guarantees to be given prior to ratification of START I and NPT.¹⁴² Discussions over the language and content of security guarantees provided by nuclear states took place in the talks of the Deputy Minister of Foreign Affairs, Borys Tarasiuk, with the US Ambassador in Ukraine, Roman Popadiuk in 1992.¹⁴³

Notably, an important outcome of this ratification was that the parliament de-linked START I ratification from the simultaneous vote on acceding to the NPT, when in the conditions parliamentarians stated that Ukraine was not bound by Article Five of the Lisbon Protocol that committed Ukraine to joining the NPT treaty as a non-nuclear state. Other conditions specified that Ukraine only committed to a 36 per cent reduction of its strategic forces, which it interpreted as the removal of SS-19 missiles and not the newer SS-24, but the parliament did not exclude further reductions of launchers and warheads. Parliamentarians indicated that they wanted to implement the Lisbon accords, but only when Ukrainian conditions were met. Amongst key demands by the parliament were calls for more funds from the US (at that point in time Ukraine had not received any financial support) both in compensation and technical assistance for the dismantlement to be provided before START I could be implemented. This key issue on timing arose not out of

¹⁴¹ See *Sprava* 280, No. 12: *Lyst Ministra Zakordonnykh Sprav z Proektom pro Harantii Natsional'noi Bezpeky Ukraïny u Zviazku z ii Pryiednanniam do Dohovoru pro Nerospovsiudzhennia Iadernoi Zbroi*. 3 Chervnia 1993.

¹⁴² See *Sprava* 280, No. 12: *Lyst Prezydentovi Ukraïny vid Kerivnyka Sluzhby Prezydenta z Mizhnarodnykh Pytan'*. 10 Chervnia 1993.

¹⁴³ See *Sprava* 12, No. 31: *Dopovidni Zapysky MZS Ukraïny pro Obhovorennia Pytannia Zustrichi z Poslom SShA z Pytan' Nadannia Ukraïni Harantiï ii Natsional'noi Bezpeky z Boku Iadernykh Derzhav*. 17 Lystopada 1992; 10 Hrudnia 1992.

parliament's ambition to keep nuclear weapons as a deterrent, but to prevent a repeat of the situation with tactical nuclear weapons, which were taken out of Ukraine without fair compensation. In addition, security guarantees by the US and Russia had to be provided before the Treaty would enter into force. Neither the US nor Russia accepted this ratification and instead accused Ukraine of backtracking on its earlier commitments, here citing Kravchuk's letter to Bush from 7 April 1992 as a legally binding commitment to the elimination of all weapons, and of undermining the global non-proliferation regime. Thus, with the conditional ratification of START I, the dialogue between Ukraine and Russia came to a standstill.

The question emerging out of the failed ratification was why did the parliament make such demands? Was it because the parliament wanted to change Ukraine's policy regarding nuclear weapons? The evidence echoes the conclusions of several scholars that in this instance the Ukrainian executive used the parliament in order to bargain for a 'better deal' on conditions regarding Ukraine's denuclearisation. One of these conditions was the provision of the legally-binding security assurances from Russia and the US, which the Ukrainian diplomats called for but which were constantly refused. Only after this condition was met and on the insistence of the Ukrainian side made public did the parliament remove its reservations.

Additional evidence that the parliament in this initial ratification procedure was being a party to the executive's bargaining tactics rather than playing its independent role can be seen from the nature of the executive-parliamentary relations during that time regarding the nuclear issue. The parliamentary committee dealing with the weapons renouncement and its head, Vasyl Durdynets, (who was also the First Deputy of the

Chairman of the Verkhovna Rada) were to a large extent part of the executive in relation to the renouncement process. During the parliamentary hearing on 3 June 1993 Durdynets reporting on the conclusions and recommendations of the parliamentary committee noted:

“We were preparing for the examination of this question [of ratification of START I and NPT] in Verkhovna Rada being in close contact with the executive bodies...members of the parliamentary working group included authorised representatives of the ministries and agencies and numerous experts...”¹⁴⁴

This close cooperation seemed to have led to a unity of vision between the executive and this key expert parliamentary committee regarding the problem Ukraine was facing and how it could be resolved. Even the language used by Durdynets on 3 June 1993 on the conditions under which the parliament should ratify the START I treaty and NPT echoed the exact language used by the Ministry of Foreign Affairs (MFA) in its negotiations with the US and Russia, which later appeared in the conditions of the 18 November 1993 ratification. For example the excerpt from the draft of the security guarantees discussed between the MFA and the US Department of State reads:

“The US and the Russian Federation...will refrain from the use of force or threaten the territorial integrity and political independence of Ukraine and also from the use of economic pressure...[the US and Russia] will not use weapons against Ukraine...”¹⁴⁵

While the language used by Durdynets to outline the position of the parliament on the conditions of ratification reads:

¹⁴⁴ Parliamentary Stenogram, 3 June 1993, (translation mine).

¹⁴⁵ *Sprava 12, No. 31: Dopovidni Zapysky MZS Ukrainy pro Obhovorennia Pytannia Zustrichi z Poslom SShA z Pytan' Nadannia Ukraini Harantiï ii Natsional'noi Bezpeky z Boku Iadernykh Derzhav. 17 Lystopada 1992; 10 Hrudnia 1992, (translation mine).*

“...that these states [the US and Russia] will not use nuclear weapons against Ukraine, will not use force or threat, will refrain from economic pressure...and respect territorial unity and the inviolability of its borders...”¹⁴⁶

During these public discussions of the ratification on 3 June 1993 it should also be noted that both the head of the parliamentary committee Durdynets and Zlenko encouraged parliamentarians to use their “parliamentary instruments” to get tangible benefits from the negotiations over the renouncement. Thus, Zlenko during his talk noted:

“I think that you, in the parliament, have your instrument, your mechanism, so as to help determine and give us [the MFA] a certain mandate if you think that we need to continue certain work [implying continued negotiation over security guarantees, economic aid, and compensation], we are even ready to tell you what that mechanism is.”¹⁴⁷

The relative control of the parliament by the executive regarding the nuclear issue is also suggested by the way in which President Kravchuk could ban certain discussions in the parliament. For example, following the note from Deputy PM Valeriy Shmarov to Kravchuk about the damaging effects that the parliamentary deliberations regarding a temporary halt of strategic nuclear weapons transfer to Russia might have on Ukraine’s foreign relations, the issue was promptly taken off the parliamentary hearings agenda.¹⁴⁸ These examples suggest that it is erroneous to view the parliament as an independent veto player during Ukraine’s denuclearisation process during this time. Rather it played a role in helping the executive to achieve conditions of denuclearisation that were set by the executive (which included the presidium of the parliament) preceding the Lisbon Protocol.

¹⁴⁶ Parliamentary Stenogram, 3 June 1993, (translation mine).

¹⁴⁷ Ibid.

¹⁴⁸ Case 388, No. 16: *Lyst Pershoho Zastupnyka Holovy Verkhovnoi Rady Ukraïny O. Tkachenka pro Vkluchennia do Poriadku Dennoho Sesii Pytannia pro Tymchasove Prypynennia Vyvozu Iadernoi Zbroï z Ukraïny*. 20 Chervnia 1994.

The Trilateral Accord and the Ratification of START I

Following the conditional ratification by the Ukrainian parliament the international diplomatic pressure on Ukraine and Russian economic pressure began to mount, especially when Moscow halted the delivery of nuclear fuel to Ukrainian power stations. The US Ambassador-at-Large Strobe Talbott seemed to have been the driving force behind the American decision to attempt to reinvigorate the denuclearisation process by getting the US directly involved with nuclear negotiations between Moscow and Kyiv, a move which was greeted favourably by both.¹⁴⁹ Having the Ukrainian parliament's START I conditions as points that needed to be negotiated and satisfied, trilateral talks began with the arrival of the Russo-American delegation to Kyiv, consisting of US Deputy Secretary of Defence William Perry, Ambassador-at-Large Strobe Talbott, and Russian Deputy Foreign Minister Georgii Mamedov.

Two key issues had to be resolved for the denuclearisation process to continue: financial compensation, including compensation for the tactical nuclear weapons that were taken out of Ukraine earlier, and security guarantees from the US and Russia. Two of these points were negotiated over the coming month with another meeting on 4 January in Washington D.C. and then a short stopover by President Clinton in Kyiv on his way to Moscow, where the Trilateral Statement would be signed. Thus, on 14 January 1994, Ukraine's President Leonid Kravchuk flew to Moscow to sign an executive accord which committed Ukraine to full denuclearisation, including the removal of strategic launchers which could be used to fire non-nuclear missiles. Under the agreement, Ukraine pledged to deactivate SS-24s within a ten month period, but no clear deadline on

¹⁴⁹ Strobe Talbott, *The Russia Hand* (New York: Random House), p. 108.

complete denuclearisation was established, although in side letters a date was apparently set as June 1996.¹⁵⁰

In the accord, two of the most important conditions set by Rada's ratification were partially met, including the issue of compensation and security guarantees. In relation to compensation, the Trilateral Statement provided compensation and technical support funds for Ukraine and the promise of further aid from the US and the West. Thus, Russia agreed to compensate Ukraine for the materials in tactical and strategic weapons in the form of energy supplies. The first of such in-kind compensations came in the form of Russian debt forgiveness to Ukraine and a supply of Russian low-enriched uranium fuel rods for Ukrainian nuclear power stations. The total of such an exchange would equal some \$1bn and the compensation-for-fuel was connected to the Highly Enriched Uranium (HEU) deal between the US and Russia.¹⁵¹ This was the compensation for the HEU in the warheads and the US played a broker in this deal by agreeing to pay \$60m to cover the costs of the first shipment to Ukraine. From the US side, Washington committed to provide Ukraine with \$175m under the Nunn-Lugar program and also opened the possibility of an additional \$155m in aid to be received by Kyiv if it went ahead with the trilateral commitments.

In relation to security guarantees, the situation was more complicated since the Ukrainian side wanted to receive international, legally binding security guarantees, which would explicitly state that Russia and the US would not attack or economically pressure Ukraine and would guarantee Ukraine's territorial integrity. For Ukraine this point was important not because Kyiv necessarily faced an immediate threat from Russia or any

¹⁵⁰ Buntin, "The Decision to Denuclearise: How Ukraine Became A Non-Nuclear-Weapons State," p. 25.

¹⁵¹ Thomas Bernauer, Stefan Brem and Roy Suter, "The Denuclearization of Ukraine," in Bernauer and Ruloff, eds., *The Politics of Positive Incentives in Arms Control*, pp. 123-24.

other state but because Russia had failed to recognise Ukraine's borders outside of the CIS framework. However, the call for nuclear guarantees was unprecedented, since no country has been given such guarantees by the US, aside from its military commitments in NATO. What the US and, later Russia were prepared to give were the kind of international security guarantees that are received when a country accedes to the NPT treaty and in accordance with the Conference on Security and Cooperation in Europe (CSCE) Final Act of 1975.¹⁵² Thus, in the final statement, which fell short of providing guarantees, but instead gave assurances, the US, United Kingdom and Russia were obligated to respect Ukraine's independence, sovereignty and existing borders, to refrain from threat of the use of force or economic pressure and to not use any kind of weapons against Ukraine. Although such a statement was a political one, in the sense that it was not ratified by the legislatures of either of the signatories, it provided a sufficient amount of normative commitment at the time for those signing it to believe in them. Crucially, these agreements were made public, whereas both Russia and the US at first insisted for them to be secret.¹⁵³ In addition, Ukraine received the assurances which came to it through its CSCE membership and later through NPT ratification.

Parliament removes conditions: full ratification of START I

As the economic situation in Ukraine was deteriorating and Russian economic isolation increased, including halting the delivery of fuel rods to run Ukraine's nuclear powers stations, the Trilateral Accord came as a relief. The Ukrainian parliament was increasingly in opposition to actions of the president and the deputies from the national democratic forces frequently expressed their displeasure. For example, Viacheslav

¹⁵² According to the Act the US and Russia agreed to recognise the independence of existing borders of the CSCE members. See Buntin, "The Decision to Denuclearize: How Ukraine Became A Non-Nuclear-Weapons State," p. 26.

¹⁵³ Zlenko, p. 368-372.

Chornovil, deputy from Lviv region, argued that the actions of the President in relation to the Trilateral Accord were unconstitutional.¹⁵⁴ Similar sentiments were heard from deputies Iaroslav Kendz'or and Mykhaïlo Kosiv.¹⁵⁵ On 25 January 1994 President Kravchuk asked the parliament to consider removing its conditions from the START I ratification, which was accomplished during the parliamentary hearing on 3 February 1994. During this hearing President Kravchuk, Defense Minister Vitaly Radetsky and Foreign Minister Anatoliy Zlenko argued for the need to denuclearise and linked the successful ratification of START I with a possible improvement in the economic situation in the country - a difficult situation which was being perceived as the outcome of Russian economic isolation and Moscow's unfriendly policies. With the ratification of START I, Ukraine could expect an improvement in relations with Russia, the US, and crucially the dispatch of international economic aid. As these hearings were public and parliamentary elections were looming in March, very few deputies wanted to become a party to the continued economic isolation of Ukraine and conditions were removed during this session.¹⁵⁶

Deputy Durdynets summed up the position of the majority in the parliament:

"In total, evaluating presidential accords we have to begin with the assessment that this is an international compromise, which satisfies the interests of Ukraine since it enables us to receive the necessary economic and financial aid, reliable international assurances¹⁵⁷, and also appropriate just and timely compensation for the fissile materials and necessary financial and technical support for the realisation of Ukrainian obligations."¹⁵⁸

Although the president also included a paragraph about the ratification of the NPT together with the completion of the START I ratification, parliamentarians wanted to consider NPT separately on the grounds of avoiding hastiness in such an important

¹⁵⁴ Parliamentary Stenogram, 20 January 1994.

¹⁵⁵ Ibid.

¹⁵⁶ Parliamentary Stenogram, 3 February 1994.

¹⁵⁷ In the Ukrainian language there is no distinction between 'guarantees' and 'assurances', which could have played a part in satisfying the position of those deputies that opposed denuclearisation.

¹⁵⁸ Parliamentary Stenogram, 3 February 1994, (translation mine).

decision. In addition, they argued that the conditions articulated by the officials in Kyiv were not met by Russia and the US (up until that point Kyiv had not been paid any compensation or given aid for dismantlement).

The resubmission of the NPT treaty to the parliament for ratification had to wait for a more accommodating domestic climate, where the institutional gridlock between the parliament and the president was removed and more consensual relations emerged within the parliament. These domestic changes were made possible by the emergence of the left-leaning majority in the parliament and a new president who had similar political agendas. Crucially, following the presidential elections, the locus of authority moved from the dual-executive structure of 1992-1994 which fostered institutional competition, to the office of the President when in August 1994, newly-elected President Kuchma by decree subordinated the Cabinet of Ministers to the President and as such began to strengthen the vertical nature of power in Ukraine (i.e. power flowing from and up to the office of president).

The Decision to Join the NPT Treaty

As argued above, the parliamentary de-linking of START I and NPT ratification contributed to the international perception of Ukraine's nuclear policy ambiguity and led some experts to conclude that Ukraine was contemplating retaining some of its strategic nuclear arsenal. However, as the analysis of this parliamentary decision revealed, the de-linking was largely the result of failure by the US and Russia to satisfy Ukrainian demands ahead of the ratification and also a product of domestic political and institutional competition. The government fell short of submitting the NPT for ratification - following the successful removal of the parliamentary conditionality on START - largely due to

looming presidential and parliamentary elections. In this political climate, not only would it be difficult to pass any such legislation that had an emotional dimension for Ukrainians since it forever committed Ukraine to non-proliferation, it also threatened to become an electoral cleavage between President Kravchuk who ran for re-elections and his main rival and former Prime Minister, Leonid Kuchma. Indeed for a period it did become an electoral issue when following his resignation as Prime Minister, Kuchma, in his electoral campaign, argued for the retention of Ukraine's nuclear arsenal.¹⁵⁹ Thus, the NPT was only submitted for ratification when the composition of the parliament changed and became conducive to the executive position and a new president was elected, whose political agenda and immediate decrees neutralised prior disputes over functions and authority with the parliament that could have arisen to stall ratification.

Presidential elections that were held in June 1994 could have potentially offered an opportunity for policy change. Yet, considering that Kravchuk faced as his main contestant his former prime-minister (who was running on a pro-Russian campaign of restarting economic links with Moscow) it was unlikely that he would have then reversed the commitments made in relation to nuclear weapons. Consequently, with the election of Leonid Kuchma as Ukraine's second president, it soon became obvious that he intended to keep the same denuclearisation course and submit the NPT treaty for parliamentary ratification. Successful ratification of the NPT treaty was secured by two key domestic developments: the removal of institutional infighting between the president and the parliament, and the re-establishment of the political consensus within the parliament and between the parliament and the president.

¹⁵⁹ Authors' interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

The institutional and political competition, which prevented the earlier submission of the NPT treaty for ratification throughout Kravchuk's presidency, was neutralised following the election of Leonid Kuchma for two reasons. Firstly, upon coming to office, Kuchma knew that in order to begin reforming the Ukrainian economy and the state, he had to centralise political authority. Under the existing constitutional dual-executive arrangement, the president and the cabinet, controlled by the parliament, could not effectively govern, which was clearly evident during Kuchma's premiership and led to his resignation. Thus, following his election as President in June 1994, he passed a decree on 6 August 1994 whereby the executive power in Ukraine was streamlined: the cabinet became subordinate to the president, thus eliminating the problem of Ukrainian ministers, who at times had to implement orders from all three: the president, the premier and the parliament. The decree was passed when the parliament was on a summer break; thus even if immediate opposition would have arisen in the parliament, it was successfully neutralised. When parliamentarians returned to their fall session, they did not challenge Kuchma's decree; in part due to the popular support for the president and the negative image of the parliament (the population at the time viewed the parliament as a key hindrance to Ukraine's economic development).

In addition, the political consensus between the president and the majority of parliamentarians became the second reason why Kuchma's centralisation of executive power was largely unopposed by the parliament. Ukraine's parliamentary elections of March and April 1994 were about the economy and relations with Russia and the CIS and both issues were tightly knit together in the minds of elites and voters. Socialist and communist parliamentary candidates and parties standing for elections argued that to improve Ukraine's economic well-being, it was necessary to re-establish some of the links

that were cut-off with Russia and it was these left-leaning factions which consequently gained control of the parliament.¹⁶⁰ Because of the perceived link between the improvement of the Ukraine-Russia relationship, Ukraine's economic well-being and the final ratification of NPT, the left-leaning political consensus in the parliament made the ratification of the treaty possible. Thus, when NPT ratification was presented to the parliament on 16 November 1994, in a public session, the newly elected president made a convincing speech together with Deputy Foreign Minister Borys Tarasiuk, and Borys Oliynyk, head of the parliamentary commission in foreign affairs and CIS. In his speech President Kuchma argued that:

“...Today Ukraine does not have a choice to be or not to be a nuclear power. The option was chosen long ago by the actions of the Verkhovna Rada of the previous and present convocation, and by international commitments of Ukraine, and in fact by the real situation...as a professional rocket scientist I will allow myself to add that we do not have technical the capabilities and there are many aspects to this, but I will just pick one – a nuclear testing site. We do not have it and no country will provide it. I ask for those parliamentarians to rise who will be able to convince their voters to provide territory for the testing site. Please! No one? No one... Further procrastination on this issue, in my view, is unacceptable and goes against national interests, prestige and the security of our state.”¹⁶¹

Alternatively, the maintenance of nuclear weapons would cost Kyiv some \$10-30bn, which the government did not have and no one was willing to provide.¹⁶² The speech, coming from a nuclear engineer who once was in charge of the world's biggest missile production facility at Pivdenmash was the ultimate conviction mechanism. Thus, parliamentary elections and the Presidential decree on executive power were instrumental in bringing about a new elite consensus on the denuclearisation issue and in

¹⁶⁰ Sarah Birch, "The Ukrainian Parliamentary and Presidential Elections of 1994," *Electoral Studies*, Vol. 14, No. 1, 1995: 95-96; Robert S. Kravchuk and Victor Chudowsky, "Ukraine's 1994 Elections as an Economic Event," *Communist and Post-Communist Studies*, No. 38, 2005: 156-58.

¹⁶¹ Parliamentary Stenogram, 16 November 1994, (translation mine).

¹⁶² Parliamentary Stenogram, 16 November 1994.

the removal of the institutional tensions between the President and the legislature, both of which made ratification of the NPT accord politically feasible.

Conclusion

In this chapter I have argued that Ukraine's executive policy regarding the renouncement of nuclear weapons was consistent while two episodes that signalled a change in policy (political cessation of the transfer of TNWs to Russia and conditional ratification of START I) were the results of the executive attempting to withstand external pressure regarding the division of the BSF and the conditions associated with denuclearisation. Executive difficulties in implementing the last phase of its denuclearisation commitments (ratification of the NPT treaty) were a result of the competition between the president and the parliament over policy preferences and policy-making powers. Consequently, policy regarding the decision to denuclearise was consistent due to the unity of the executive and the parliament, while during policy implementation inconsistency emerged when a conflict between the president and the parliament erupted, making ratification of the NPT accords difficult. Only after the election of Leonid Kuchma as the second president of Ukraine, did the ratification of the NPT take place.

The unity of the executive regarding the decision to renounce nuclear weapons can be explained by institutional and political factors. Institutionally, the decision took place in a political setting when the powers of the president, legislature and the cabinet were not clearly distinguished and instead the presidium of the parliament (its leadership) together with the cabinet and later the president (when the position was introduced in 1991) served as a single executive branch. Executive deliberations regarding

the fate of Ukraine's nuclear arsenal began before the referendum on independence of 1 December 1991 and already at that point decision-makers together with scientists and the military-industrial complex leaned towards weapons renouncement. Their final decision was made in Lisbon on 23 May 1992 when the executive committed to a full denuclearisation. The executive motivations were mainly driven by the immediate technological and economic limitations in maintaining even a part of the nuclear arsenal. Western and Russian opposition to Ukraine going nuclear made the alternative choice even more difficult from the financial and political perspective. Crucially, Ukraine at the time did not face a security threat that could be deterred by the weapons Ukraine administratively controlled – Intercontinental Ballistic Missiles (ICBMs). Instead threats that Ukraine as a state was facing were domestic in nature: economic stagnation and territorial and social cohesion. Russia, even when conceived as a potential threat could not be deterred by the ICBMs, instead Ukraine's pro-nuclear choice would have likely resulted in further economic destitution and international isolation.

Politically, unity within the executive over policy preferences was very important. Should the composition of the executive have represented different political interests or have been permeated with vested interests, we would have seen less cohesion over the executive decision to denuclearise and possibly even stalemate over what policy option should be pursued. Similarly, should there have been a greater divergence of preferences within the parliament, the executive decision could have been significantly challenged or even overturned, especially if the composition of the executive reflected the political plurality of the parliament. Instead, the parliamentary leadership and the majority parliamentary 'party of power' worked together in aiding the international negotiations process over the conditions of Ukraine's denuclearisation. Through this cooperation they

were able to halt the implementation of the renouncement when it was advantageous in order to extract greater benefits from the international community. Consequently, the institutional and political consensus over the nuclear policy proved crucial for the executive decision of renouncement and the implementation of START I. The breakdown of the political consensus between the president and the parliament, which turned into a political crisis, is what derailed the timely ratification of the NPT accords and contributed to the inconsistency in the implementation of this executive commitment.

External factors, in this case pressure from the US and Russia to denuclearise, acted as a constraint regarding the nuclear choices of the Ukrainian decision-makers but also contributed to policy inconsistency by failing to address the financial and political conditions under which Kyiv proposed to complete the weapons renouncement commitments made in Lisbon. As the executive was not achieving its aims through the international negotiations, making START I ratification conditional on meeting the executive demands further united Ukrainian policy-makers on the issue of nuclear weapons. This unity helped the executive to secure a provision of security assurances (that were made public) from the world's nuclear powers in addition to the guarantees provided in the NPT accords and most importantly secured Russian recognition of the Ukrainian borders outside of the CIS framework. The issue of the division of the BSF was linked to denuclearisation when Moscow attempted to divide the fleet independently of the political solution negotiated between Ukraine and Russia and questioned Kyiv's sovereignty over Sevastopol and Crimea. In response to Russian actions President Kravchuk halted the transfer of TNWs to signal to Moscow that should Ukraine's

sovereignty over the BSF, Crimea and Sevastopol be questioned, Kyiv would be prepared to revise its denuclearisation commitments.

The examination of the nuclear weapons case shows that policy consistency was greatly facilitated by several domestic factors, including institutional unity between the president and the leadership of the parliament during the making of the executive decision to denuclearise. Political consensus between the elites regarding the conditions under which Ukraine was ready to give up its nuclear arsenal occurred in the environment where vested interests (i.e. the military-industrial complex) played a very limited part in the process. In this way evidence in the case of denuclearisation confirms the hypothesis that, in the absence of sharp intra-executive and political divisions within the executive and a limited role for vested domestic and international interests there will be a greater degree of policy consistency.

The Status of the Black Sea Fleet **THREE**

With the achievement of Ukrainian sovereignty and later on, independence, nuclear weapons stationed on Ukrainian territory became a priority from an international point of view. The problem of the Black Sea Fleet (BSF), stationed in the Crimea, and its resolution was a priority from the standpoint of the Ukrainian government, since it was directly tied to the creation of the Ukrainian independent armed forces, particularly the navy, and the state's monopoly over the use of force, which, in a traditional understanding of sovereignty, is needed to guarantee the survival of the state. What made this fleet a problem and a subject of acute conflict in the Russo-Ukrainian relations between 1991 and 1997 was that the authorities in Moscow and most of the Russian population did not recognise the BSF, the city and the peninsular where it is stationed, Sevastopol and the Crimea, as separate from Russia. By not doing so they effectively questioned the territorial integrity and sovereignty of Ukraine. As I have shown in the previous chapter, the commitment of the Ukrainian leadership at the time to the idea of a Ukraine as independent from Moscow, with clearly delineated borders and ownership rights over everything that stood on its territory, was the most important factor in understanding why disagreement between Ukraine, Russia and the US emerged. Amongst the cases analysed in this work, the status of the BSF and its division occasioned perhaps the most dramatic events between Kyiv and Moscow with numerous episodes between the naval personnel loyal to either Ukraine or Russia close to dragging the political leadership of the two states to war. This chapter engages with both hypotheses posed by the study: the role of intra-executive conflict and the role of vested interests in policy making. The ill-defined division of powers within the executive and between the

president and the parliament was the most important factor contributing to the episode of policy inconsistency during this case.

The fate of the fleet was deliberated during the period from 1991-1997. The numerous presidential and governmental negotiations were marked by the inability of the Russian leadership at first to accept that Ukraine was an independent state outside of the Commonwealth of Independent States (CIS) borders. Moscow's attachment to the BSF, Sevastopol and the Crimea (both symbolic and practical since the BSF had valuable hardware and infrastructure along the Ukrainian southern coast) made talks intractable since every move Russia made, it was viewed by the Ukrainian leadership as attempting to question the sovereignty of Ukraine over Sevastopol and the Crimea. Sometimes negotiations were bogged down because of the wording of a phrase in the proposed settlement agreement like: "Sevastopol is the main base for the Russian Black Sea Fleet" (maintained by Russia), and "the main base of the Russian Black Sea Fleet is in the city of Sevastopol" (as argued by the Ukrainian side).¹⁶³ Russia's preferences regarding the fleet was for it to remain in the Crimea while the entire BSF passed into Russian ownership (as Russia claimed to be the sole legal successor of the Soviet Union), to conclude a land-lease agreement with Kyiv for 99 years, to be the sole fleet in the Crimea (meaning that Ukrainian naval forces would have to relocate), to use Sevastopol as its main base with all adjacent infrastructure and free water movement around the coast and lastly to keep the ground armed forces of the BSF in the Crimea.¹⁶⁴ Ukraine's optimal position was at first to claim the entire ownership of the fleet and demand that soldiers and not willing to serve the Ukrainian people would relocate to Russia. However, this option was difficult and practically impossible since the Ukrainian officers did not control all of the ships and

¹⁶³ Yuri Dubinin, *Diplomaticheskii Marafon* (Moskva: Kolos, 2009), p. 178.

¹⁶⁴ Ibid, pp. 150-223.

bases on the ground. Ukraine's negotiating position could be summed up as following: division of the fleet 50/50, Ukraine leases the land and the infrastructure to Russia for an interim period of time (5-20 years)¹⁶⁵ until the remaining BSF relocates to its own base in the Black Sea, removal of Russian ground forces from the Ukrainian territory, and removal of the Russian BSF from its base in Sevastopol to another location/s in the Crimea.¹⁶⁶

During the period of the negotiations both sides had to accommodate and it was not until Moscow stopped questioning Ukraine's sovereignty over the BSF, Sevastopol, and the Crimea that negotiations truly began. Thus, numerous executive commitments failed to be implemented due to the inability to agree on what should be dealt with first – the legal status of the BSF or its division, with Russia insisting on the former and Ukraine on the latter.¹⁶⁷ Executive positions of both states, however, were slowly moving towards a resolution. Small changes in the preferences of the Ukrainian leadership were present throughout the period. However, one episode marked a stark departure in the position held by the Ukrainian executive, when during the meeting between the presidents of Ukraine and Russia on 3 September 1993, President Kravchuk signed a protocol, giving up the entire Black Sea Fleet and all infrastructure in the Crimea for Russia to use in return for payment in kind. This signalled a shift in the presidential conception of the policy away from viewing the Russian presence in the Crimea as a security threat towards a more commercial understanding of the problem. This protocol agreement was not implemented due to opposition from the parliament and public outcry as well as some voices within the cabinet about these concessions, some of those concessions were later

¹⁶⁵ Taras Kuzio, *Ukraine under Kuchma: Political Reforms, Economic Transformation and Security Policy in Independent Ukraine* (New York: St. Martin's Press, 1997), p. 215.

¹⁶⁶ Zlenko, pp. 402-449.

¹⁶⁷ Kyiv wanted to divide the fleet first and then following these commitments negotiate from a position of strength on the terms of the Russian temporary base in southern Ukraine. Moscow linked the two together and refused to divide before concessions from the Ukrainian side were made regarding its stationing in the Crimea.

reversed. Thus, this chapter analyses the executive policy inconsistencies during the division of the BSF.

This chapter is divided into seven main sections. The first two sections deal with the international and domestic contexts of the case where I note how in the international arena Russian policies in the 'near abroad' contributed to the hardening of the position of the Ukrainian leadership regarding the stationing of the Russian forces in Ukraine. In the domestic context I show how political divisions, economic stagnation and secessionist tendencies in the Crimea constrained the Ukrainian leadership in resolving the issue of the fleet and pushed Kyiv towards the accommodation of Moscow. Following this I explain the background context for the division of BSF by highlighting why differences between Ukraine and Russia over the ownership of the fleet emerged. In the fourth section I will note several presidential agreements that were made between Kyiv and Moscow and how they failed to be implemented due to continued Russian efforts to undermine Kyiv's claims over its territorial sovereignty regarding Sevastopol and the Crimea. The mounting energy debts to Russian energy companies and reductions in energy deliveries, coupled with political instability in the Crimea were pushing President Kravchuk towards a greater accommodation with Moscow and during the Massandra talks on 3 September 1993 the preferences of the Ukrainian president changed due to external pressure from the Russian president (discussed in section 5). Sections 6 and 7 examine how the division was finally accomplished and argue that President Kuchma's desire to settle all outstanding issues with Moscow and Russia's final acceptance of Ukrainian borders made the division of the BSF and the resolution of this conflict possible. Both hypotheses are supported by this case. In relation to the first hypothesis on the distribution of powers within the executive in the context of divergent policy preferences,

the outcome of the Massandra talks and the inter-governmental agreements of 1997 were challenged by the parliament and in the case of the former also by the members of the cabinet. Following Massandra the parliament was able to significantly intervene into executive policy-making but during the 1997 negotiations parliament was successfully marginalised by the president and the cabinet. Thus, lack of clarity on the distribution of functions in the climate of diverging preferences contributed to policy inconsistency. Similarly, domestic and foreign vested interests played a role in policy change regarding this issue. The Ukrainian leadership was persuaded to take over the responsibility for debts owed by Ukrainian corporate entities to Russian companies in exchange for selling BSF assets to Moscow. In this instance the Russian government was also acting on behalf of the state gas and oil company, Gazprom.

International Context

In the previous chapter, the events which took place during the same time period as the BSF division, I have explained how the dissolution of the Soviet Union and the establishment of an independent Ukraine created problems for the international community and Russia. Ukraine did not want to just become independent and renounce all of the property to the Russian Federation (the legal successor of the Soviet Union) like the Baltic states. Instead the authorities in Kyiv even before the vote on independence established its ownership rights over Soviet assets on the Ukrainian territory, both through domestic legal instruments and through international law, were ready to defend these rights in international institutions and, if necessary, with the use of force. In addition to the establishment of the ownership rights, Ukraine, unlike other republics of the FSU, adopted a firm position on the demarcation and the delimitation of an actual

border between Ukraine and Russia, and Moscow on the other hand was rejecting the validity of the Ukrainian border outside of the CIS framework.¹⁶⁸ Thus, within days following Kyiv's proclamation of its independence, Yeltsin's press secretary, Pavel Voshchanov, noted that Russia reserved its right to revisit the borders of the republics that did not partake in the negotiation over the new union treaty.¹⁶⁹ These developments necessitated the establishment of Ukraine's armed forces, while Moscow's foreign policy shift regarding the 'near abroad' only reinforced Kyiv's course.

If during 1990-1991 the official Russian foreign policy was mainly focused on the establishment of cooperation with the West, the Russian military stationed all over the FSU was demanding a harder stance from Moscow in defending the Russian presence in these territories, in many instances taking its own initiative without political approval. However, military pleas were increasingly finding their supporters in the Russian Ministry of Foreign Affairs and starting mid-1992, when the draft of the new Russian military doctrine appeared, the positions of the military and the civilian leadership of Russia were beginning to narrow.¹⁷⁰ One of the key elements discussed during the debate over this document within Russia was a commitment to protect Russians in the near abroad (the term to connote the republics of the FSU emerged during this period). However, it was not clear who would be considered as 'Russian'. In the earlier versions of the draft, Russia deemed it necessary to go war to defend "the rights of citizens of Russia and people ethnically and culturally identifying themselves with Russia in the former republics of the

¹⁶⁸ Roman Solchanyk, *Ukraine and Russia: The Post-Soviet Transition* (Oxford; Lowman and Littlefield, 2001), pp.162-163.

¹⁶⁹ Gwendolyn Sasse, *The Crimea Question: Identity, Transition, and Conflict* (Cambridge, Mass.: Harvard Ukrainian Research Institute, 2007), p. 222.

¹⁷⁰ John W.R. Lepingwell, "The Russian Military and Security Policy in the 'Near Abroad'," *Survival*, Vol.36, No. 3, 1994, 70-92: 72-73.

USSR.”¹⁷¹ Although these provisions were significantly watered down as defending “possible provocations and encroachments on the security of [Russian] citizens” by the time the doctrine was adopted in November 1993, it caused uproar in many republics of the FSU including Ukraine.¹⁷² Mainly because of this Ukraine rejected Russian calls to allow Ukrainian citizens double citizenship, a security-driven anti-Russian policy by Kyiv which persists till today. It is worthwhile to note here that during the most heated tensions on the ground in southern Ukraine between Russian and Ukrainian forces (1992-1994), Moscow was issuing passports to Ukrainian citizens who worked for the fleet as a way to take over vessels and infrastructure on Ukrainian territory.¹⁷³ The adoption of the military doctrine however, signified a new era of cooperation between the military and the civilian leadership in Russia and their new goals regarding Russian foreign policy was to maintain Russian presence in “regions which have been in the sphere of Russian interests for centuries.”¹⁷⁴ Russia’s assertive stand to defend its interests in the near abroad by encouraging separatism in Moldova, Georgia, Azerbaijan and including Ukraine’s Crimea,¹⁷⁵ confirmed this new Russian policy resolve (for some of these interventions in the near abroad Moscow in secret deployed its marines from the Black Sea Fleet).¹⁷⁶ This meant that despite the reductions in its capabilities and global superpower ambitions, Moscow was ready to use force to protect its interests outside its borders, even if such actions went against its recent commitments to democratic practices and respect for self-determination of the republics that Yeltsin claimed during the dissolution of the Soviet Union:

¹⁷¹ Ibid, p.73.

¹⁷² As cited in Lepingwell, p. 74.

¹⁷³ Iaroslav Mezentsev, “Kholodna Vīina za Krym. Iak Dilyly Flot,” *Istorychna Pravda*, 4 September 2011.

¹⁷⁴ Andrei Kozyrev, Russian Minister of Foreign Affairs as cited in Lepingwell, p. 74.

¹⁷⁵ Kuzio, p. 203-206,

¹⁷⁶ Sasse, p. 231.

“Russia does not aspire to become the centre of some sort of new empire, to obtain advantages in comparison with the other republics. Russia understands better than others the harmfulness of that role, inasmuch as it was Russia which for a long time performed precisely that role. What did it gain from this? Did Russians become free as a result? Wealthy? Happy? You yourselves know the truth, [for] history has taught us: a people that rules over others cannot be fortunate...”¹⁷⁷

The reaction of the Ukrainian leadership to these developments was to harden its position regarding the long-term stationing of the fleet in Sevastopol, the Crimea and Ukraine more generally. The example of Transnistria, where the Russian 14th army division together with separatist movements in Moldova helped Transnistria in its quest for greater autonomy during the early 1990s, served as a powerful reminder that Russian “boots on the ground” in combination with pro-Russian separatist movements can lead to a dangerous mixture, resulting in a threat to the territorial integrity of countries like Ukraine.¹⁷⁸ Consequently, Ukraine’s early position on the presence of Russian military forces in Ukrainian ‘hot spots’ like Sevastopol and the Crimea was non-accommodative towards Moscow’s demands.

Domestic Context

Although in the previous chapter I have already discussed political and economic developments in Ukraine during the early 1990s, it would be worthwhile to highlight how they related to the events of 1991-1997, and more specifically to the status and the division of the fleet. As mentioned in my earlier discussion, upon independence the political system established in Ukraine was parliamentary-presidential with significant powers given to both the president and the parliament over domestic and even foreign policy. Although immediately this separation of powers was not acted upon by the

¹⁷⁷ As cited in Bohdan Nahaylo, *The Ukrainian Resurgence* (London: Hurst and Company, 1999), p. 328.

¹⁷⁸ John W.R. Lepingwell, pp. 80-81.

parliament due to the general political alignment between the executive and the leadership of the parliament (as became evident during the nuclear debate), conflicts soon emerged, which prevented the president from implementing his policy preferences in domestic and foreign areas. Regarding foreign policy, all international agreements signed by the Ukrainian executive have to be ratified by the parliament. Thus, without parliamentary cooperation the implementation of the policy cannot take place, which is in part why the president was unable to stick to his commitments made in Massandra following which the parliamentarians called for Kravchuk's impeachment. Thus, politically, the worsening of the relations between the president and the parliament during 1993 and 1994, and continuing parliamentary opposition to the newly elected President Kuchma during 1995-1997 made Kuchma seek arrangements that could finalise the division of the fleet without immediate parliamentary ratification,¹⁷⁹ as was accomplished in 1997.

However, amongst the domestic problems faced by the Ukrainian leadership at the time, economic issues stood at the forefront, especially since political disagreements within the parliament, social instability in the forms of strikes of workers in Donbas and consequent calls for greater autonomy from such regions as Donetsk, Luhansk, and the Crimea could have been ameliorated if not resolved by timely payment of wages and full employment. Instead, closure of factories due to lack of fuel and energy which Russia refused to supply (in part due to Ukraine's non-payments and in part due to reductions in production) led to the period of "energy war" during 1993-1994, when Moscow linked Kyiv's political concessions to the normalisation of energy supplies and the extension of

¹⁷⁹ Dubinin, p. 185.

credit for them.¹⁸⁰ Ukraine was annually consuming about 65m tons of petroleum of which it domestically produced only 10m, while the remaining had to be imported from Russia.¹⁸¹ By early 1994 the Ukrainian government assumed an estimated \$2bn in energy arrears owed to Gazprom by Ukrainian companies. Although in 1992 Gazprom was transformed into a commercial entity, with a majority ownership held by the Russian government, at that time its actions were directed by the Russian political leadership.¹⁸² During this period authorities in Kyiv began to realise just what full sovereignty from Russia meant for Ukraine and with domestic economic reforms stalled and minimal funds from international institutions, the leadership felt it had little choice but to capitulate to Russian economic pressure. It is against the background of this acute shortage of both fuel and money that President Kravchuk made his concessions in Massandra as will be discussed further.

In addition to the economic and political situation in Ukraine during the period from 1991-1997, the division of the fleet was significantly complicated by the political economy of the Crimea, the presence of the Crimean separatist movement and Russia's claims to the peninsula. Although a slight majority of the citizens in the Crimea voted for independence from the Soviet Union in 1991 (54 %),¹⁸³ this by and large meant economic sovereignty, which could potentially reverse economic decline in the Crimea. By 1992 it became clear to the population and elites in the Crimea that the situation was not improving, especially given the confrontation between Kyiv's and Moscow's military sympathisers regarding the Black Sea Fleet. The resolution of BSF basing and ownership

¹⁸⁰ Paul D'Anieri, *Economic Interdependence in Ukrainian-Russian Relations* (Albany: SUNY Press, 1999), p.69.

¹⁸¹ Nahaylo, p. 435.

¹⁸² Ibid, pp. 74-77.

¹⁸³ Victor Zaborovsky, "Crimea and the Black Sea Fleet in Russian-Ukrainian Relations," *CSIA Discussion Paper 95-11*, Kennedy School of Government, Harvard University, September 1995, p. 12.

was crucial, since most of the Crimean economy depended on its military-industrial complex. Thus, according to 1989 estimates, some 60% of the Crimean gross production came from the complex.¹⁸⁴ With the dissolution of the Soviet Union and the breakdown of the industrial links in the military, chemical, machine, shipbuilding and light manufacturing industries, the economy of the Crimea was in rapid decline.¹⁸⁵ Thus, the failures of the central authorities in Kyiv to address the economic problems of military personnel and civilians in the Crimea fed into popular hopes of a better economic future through unity with Russia and/or a continued Russian presence in the Crimea and contributed to the rise in popularity of the separatist movement in the region. Having received popular support for the Russian fleet to remain in the Crimea from its population and with no economic alternative in sight, the Ukrainian policy option of allowing the Russian Black Sea Fleet to remain in the Crimea materialised, despite its predicted negative effects on Ukrainian sovereignty and the support Russia-loyal marines were giving to the Russian separatist movement in the Crimea.

The separatist movement in the Crimea was nascent following Ukrainian independence, when some sort of autonomy was being negotiated between the authorities in Kyiv and Simferopol. However, serious calls for greater autonomy did not emerge until late 1992 through 1994, when the movement began to gather force vis-à-vis the population of the Crimea and vis-à-vis the centre, with the establishment of the post of President of Crimea. The movement achieved its apogee preceding and following the presidential and parliamentary elections in the Crimea in 1994. Campaigning on a platform of closer ties with Russia and for Russian ownership of the fleet, these elections ushered in Yurii Meshkov to head the Crimea with some 70% of the electoral support. His

¹⁸⁴ Sasse, p. 167.

¹⁸⁵ Ibid.

party, Russia Bloc, gained 67% of the popular vote in the regional parliamentary elections in March-April 1994.¹⁸⁶ Meshkov's support of Crimean ties with the Russian Federation and the appointment of some Russian citizens to his cabinet, such as Evgenii Sabukov, as the deputy minister, reinforced the desire of the authorities in Kyiv to settle the issue of the fleet and its basing rights before the situation in the Crimea got out of hand. Reports of Moscow-controlled military units in Crimea providing support to Meshkov and his party created a situation where the central authorities in Kyiv and in Moscow used the Crimean card to legitimise their claims to the fleet, Sevastopol, and the peninsula.

Russia's claims to the Crimea precede Ukrainian independence. Although Crimea has been a contested territory of the Black Sea littoral rulers for centuries preceding the Russian claim, it became part of the Russian Empire during the territorial expansion of the 18th century. In 1784 Catherine the Great ordered the construction of a fortress on the Black Sea coast and called it Sevastopol. The city became a base for the Russian Imperial fleet and following the Crimean War of 1853-1856 during which Russian forces resisted the British and Turkish invaders, among others, Sevastopol became a symbol of national resistance and the "holy-of-holies of Russian imperialism."¹⁸⁷ Crimea, being part of Russia's southern border, later also became part of Soviet-era myth – a story about imperialism which was kept alive by Moscow politicians and intellectuals.¹⁸⁸ In 1954 Nikita Krushchev transferred Crimea into an administrative jurisdiction of the UkrSSR as a symbol and proof of the Ukrainian-Russian Unity.¹⁸⁹ Thus, when the Russo-Ukrainian inter-republic treaty (which recognised the republics within their existing borders) was being ratified in November 1990, some of the deputies of RSFSR, including Sergei Baburin,

¹⁸⁶ For a detailed account of separatism in Crimea, see Sasse, pp. 155-73.

¹⁸⁷ Orest Subtelny, *Ukraine: A History* (Toronto: University of Toronto Press, 1994), p. 585.

¹⁸⁸ Sasse, pp. 73-74.

¹⁸⁹ *Ibid*, p. 120.

argued for the postponement of the ratification until the issue of the Crimean status was resolved.¹⁹⁰ Although the treaty was ratified, the issue of the Crimean status was rejuvenated in February 1992, when the deputy head of the Committee on Foreign Affairs and External Economic Ties, Evgenii Ambartsumov, questioned the legality of the transfer of the Crimea by Nikita Khrushchev to the Ukrainian SSR. The dispute over the ownership of the Crimea was strongest during the greatest tensions over the BSF between the authorities in Moscow and Kyiv and their military supporters on the ground during 1992-1994. Throughout this period, Russian officials, either on Yeltsin's command or acting on their own initiative, wanted to create a choice for Ukrainian officials between Crimean separatism and ownership of the fleet.¹⁹¹ In addition to the Russian parliamentary resolution on the revision of the Crimean transfer of 23 January 1992 and the parliamentary resolution of 9 July 1993 proclaiming Sevastopol a Russian city, various visits by Russian officials such as parliamentary deputy Vladimir Lukin, Vice-President Aleksandr Rutskoi, Presidential Advisor Nikolai Stankevich, commander of the CIS ground forces General Boris Gromov, parliamentarians Vladimir Zhirinovskii and Oleg Rumiantsev, among others, reinforced the link between the political resolution of the Black Sea Fleet issue and the territorial sovereignty of Ukraine.¹⁹² Russian political and financial support for the Russian separatist movements in the Crimea directly and indirectly, through the Moscow-loyalist military officers,¹⁹³ pushed the authorities in Kyiv to resolve the issue of the fleet by dividing it and by allowing the Russian fleet to remain in the Crimea, so as to prevent Moscow's support of Crimean separatism.

¹⁹⁰ Solchanyk, p. 162.

¹⁹¹ See letter by Vladimir Lukin to Ruslan Khasbulatov, speaker of the Russian parliament, as cited in Solchanyk, p. 167-68.

¹⁹² For a detailed overview of these visits see, Solchanyk, pp. 166-79, Dubinin, pp.74-223.

¹⁹³ See an excellent account by Savchenko of how official Moscow supported Russian military-sympathisers on the ground in Crimea and how the latter helped Russian separatist movements in the region, Nikolai Savchenko, *Anatomiia Neob"iavlennoi Voïny: Krym, Sevastopol', Flot* (Kiev: Taki Spravy, 1997).

Consequently, in addition to the political, economic and institutional problems in Kyiv and Ukraine, regional issues in the Crimea were affecting the possibility of a swift resolution of the issue of the fleet. The political economy of the Crimea, which centered on the Soviet, that is Russian and Ukrainian, joint industrial-military complex, called for immediate retention of the Russian military presence on the ground. Growing Russian political separatism in the Crimea, resulting from the frustration at the lack of economic progress, reanimated fears in Kyiv of Crimean secession and the viability of Ukrainian statehood. This factor in turn conditioned Ukrainian compliance vis-à-vis Russian claims to the fleet, as Moscow supported separatists in the Crimea in hopes of achieving a greater bargain in relation to the division of the fleet.

Background on the Division of the Black Sea Fleet

In analysing the case of the division of Black Sea Fleet it is important to first understand why the BSF was so important to both sides and, thus, what was at stake in the resolution of the issue. The division of the Black Sea Fleet, stationed mostly in and around Sevastopol in the Crimea, was the issue of not only the physical hardware and personnel or the fleet itself, but the issue of bases used by the fleet, and the infrastructure that services and supports the fleet. Control over the bases and the infrastructure meant substantial physical presence in Sevastopol, the Crimea and the control of economic life in the region. Thus, the establishment of property rights over the actual fleet, the personnel servicing it, the base itself, the infrastructure, the land and by extension control over the Crimea were at the heart of the division debate. For the Ukrainian side the presence of the Russian military on Ukrainian territory constituted a

security threat and it was viewed as a threat mainly due to Russian actions related to the fleet and Crimea in the first years of Ukrainian independence.¹⁹⁴

Ownership of the Fleet

Legal ownership of the fleet could have been established via three general paths, depending on what definition one uses to identify the status of the BSF. Should the fleet be categorised as 'strategic' it would initially fall under the joint command of the CIS and could then be split along the lines of the amount of Soviet debt assumed by each republic, given that all or some were recognised as the co-successors of the Soviet Union (Baltic republics did not claim successor status). However, this approach was quickly rejected by the Russian government, as it claimed the Russian Federation to be the sole legal successor of the Soviet Union. A second path that could have been considered would involve the full transfer of the fleet to Russian jurisdiction, since the fleet was strategic and thus was similar to nuclear weapons that due to their strategic nature were given sole Russian ownership rights. The third path, used by the Ukrainian authorities, would use the definition of the fleet as non-strategic, thus belonging to Ukraine by means of international law and in accordance with the Vienna Convention "On Succession of States in Respect of State Property" from 7 April 1983.

All three approaches were used at different points in time during the division. At first Ukraine agreed to treat BSF as strategic, placing it under the joint CIS Strategic Command, then after the removal of tactical nuclear weapons from the fleet and following increased signs that CIS command was actually Russian command, Ukraine began to speak of its sole ownership over the assets and territory where the fleet was

¹⁹⁴ Author's interview with Borys Tarasiuk, Deputy Foreign Minister of Ukraine and head of the negotiating team over the BSF (1992-1995), Kyiv, Ukraine, 25 August 2009.

based. In the end, it is evident that the Ukrainian interpretation of its ownership over the fleet and its bases took precedence, to a degree aided by Russian attempts to question Ukrainian sovereignty over the Crimea and Sevastopol. The questioning of Kyiv's sovereignty by the Russian parliament led to the direct involvement by several European states with the issue and the consideration of the case in the United Nations Security Council (UNSC). Following this the UNSC issued a declaration in which Russian parliamentarians were asked to be more careful in their statements, which were able to ignite ethnic warfare and the declaration confirmed the territorial integrity of Ukraine.¹⁹⁵ Interestingly, the case remains on the agenda and the control of the UNSC until the Ukrainian delegation at the UN officially recalls it, which it has not done. Consequently, the increased involvement of international actors in the issue of BSF division led to the international recognition of Ukrainian legitimacy over the fleet, Sevastopol and the Crimea.

At the time of the dissolution of the Soviet Union, the Soviet Black Sea Fleet was too large and too old to play any significant role. Sherman Garnett suggested that the fleet:

Ha[d] been a waning force...the real military tasks it must perform in small-scale conflicts and coastal defence do not warrant maintenance of the current fleet and support facilities.¹⁹⁶

What the fleet consisted of still remains unclear, since Russia resisted efforts to carry out the inventory from the start.¹⁹⁷ According to Russian estimates, the number of ships totalled some 350 warships and submarines. However, during negotiations, the Ukrainian

¹⁹⁵ Zlenko, pp. 412-416; N. Baranovska, et al. *Ukraïna: Utverdzhennia Nezalezhnoi Derzhavy* (Kyiv: Al'ternatyvy, 2001), p. 554.

¹⁹⁶ Sherman W. Garnett, *Keystone in the Arch: Ukraine in the Emerging Security Environment of Central and Eastern Europe* (Washington D.C.: Carnegie Endowment for International Peace, 1997), p. 74.

¹⁹⁷ Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

side had insisted that the number totalled 833.¹⁹⁸ Considering that Ukraine was allocated 164 ships or some 18 % of the total, it seems that it was Ukrainian government's estimate that was used as the base for the calculation of the division.

Although this chapter discusses the political decision to divide the fleet and establish the bases for both national fleets, actions on the ground significantly determined both the pace and, at times, the outcomes of negotiations. This specifically deals with sailors and naval officers in the Crimea making political decisions to declare certain ships as either Ukrainian or Russian by taking oaths of allegiances and raising national flags. It must be noted that if the officers' corps and sailors of the BSF at the time of the collapse were left to decide the fate of the split, the majority of the ships would have been in the Ukrainian jurisdiction. However, with increased pressure from the CIS Joint Strategic Command and later the Russian Ministry of Defence, sailors and officers who would declare their allegiance to Kyiv were either dismissed from service under a fabricated violation or simply physically removed outside of the base or ships sometimes even without their belongings.¹⁹⁹ These efforts by naval forces to resolve the issue on their own point out how the lack of a political decision early on aggravated the situation even further, creating unnecessary tensions between two newly-emerging navies; tensions and mistrust that to a large extent still remain today. Consequently, with the break-up of the Soviet Union, the question of the Black Sea Fleet and its division was not so much about the military and strategic value that the fleet had, although even its ailing ships were estimated at \$80bn,²⁰⁰ but about the infrastructure, the territory, the symbolic

¹⁹⁸ Zlenko, p. 425.

¹⁹⁹ For a detailed account of this side of the division process see the account by a retired naval officer, who at the time of the division was in charge of the Press Office of the Fleet, Nikolai Savchenko, *Anatomiia Neob"iavlennoi Voïny: Krym, Sevastopol', Flot* (Kiev: Taki Spravy, 1997).

²⁰⁰ Savchenko, p. 13.

significance for Russian and Ukrainian sovereignty, and in many ways the livelihoods of a large part of the Crimean population.

Ownership of Bases and Infrastructure

To many Russian political elites at the time, the question of the Black Sea Fleet was tied to the Russian identity and one could argue remains so to this day. This is primarily due to the historical 'great power' discourse, emanating from the times of Imperial Russia, when Catherine the Great in 1784 ordered Grigorii Potemkin to build Sevastopol as a Russian fortress. Russian military presence in Sevastopol consequently equated to Russian Imperial greatness as the fort was designed to keep invaders at bay and played a crucial role during the Crimean War. Technically, Sevastopol stopped being classified as strategic by the Soviet Union with Turkey's entry into NATO in 1952, which placed the Bosphorus straits under Western control, consequently confining the fleet to the Black Sea. However, considering the ideational value placed by Russian elites on a military presence in Sevastopol, they continued to define the BSF as strategic, an interpretation that was challenged by the Ukrainian government. In addition to the military presence, the number of ethnic Russians in Sevastopol and the Crimea (over 50 % of the population) allowed Moscow to continue making claims about the ownership rights not only over the fleet, but over the city of Sevastopol and the Crimean peninsula. Thus, the issue of the division of the fleet or its possible removal reflected the general Russian belief that the Crimea and Sevastopol were in essence part of greater Russia.

Following the dissolution of the Soviet Union, the 26 harbours and naval bases that it had in the Black Sea littoral were divided as follows: 19 came under Ukrainian jurisdiction, 4 under Russian jurisdiction and 3 under Georgian de-facto control.

Regarding the bases in Ukraine, the most important ones were located in and around Sevastopol. Three questions dominated the division process of these bases once in principle the division of the fleet was agreed: which of the bases would be Ukrainian and which would become Russian, how long would Russian basing last (Ukrainian estimates suggested that 5-7, maximum 20 years, would suffice for Russia to relocate its part of the fleet) and how these facilities would be used by the Russian military.

Early Tensions and Agreements regarding the Black Sea Fleet

Early Ownership Claims and Negotiations

The position of the Ukrainian authorities in relation to the command of the Black Sea Fleet in the early 1990s evolved, and by and large, changed due to the claims and positions of the Russian authorities. During the 1991 founding CIS summit, it was agreed that the BSF would come under CIS Joint Strategic Command but this management structure quickly became irrelevant due to Russian attempts, as perceived by Ukrainian officials, to take over the control of the fleet. Following increased realisation by Ukrainian central authorities of Russia's attempt to nationalise the fleet, Ukrainians responded with their own legal, financial and military efforts to bring the fleet under Ukrainian jurisdiction. More often than not these efforts were not centrally coordinated, but instead initiated by various Ukrainian-sympathetic ministries, officers and sailors.

Similarly to the nuclear weapons located on Ukrainian soil, the Ukrainian authorities deemed the Black Sea Fleet, its infrastructure and land, to be the property of the Ukrainian people. What this meant in practice was that at the start of the negotiations, the dominant view within the Ukrainian executive was that Ukraine was entitled to full ownership of the fleet, since it was on Ukrainian soil, and according to the

Vienna Convention the Ukrainian state had legal grounds to full ownership of the Soviet Black Sea Fleet.²⁰¹ In addition, authorities in Ukraine argued that since Ukraine assumed some 16% of the USSR's debt, Ukraine was entitled to 16% of the Soviet navy, which would be more than the whole of the Soviet Black Sea Fleet.²⁰² This was the position of the Ukrainian executive until President Kravchuk made an independent, political decision to divide the fleet, following his talks with President Yeltsin.²⁰³ According to Russian interpretations, the fleet was to be considered strategic as it housed tactical nuclear weapons, thus it should be transferred to direct CIS and Russian control as Russia was the sole legal successor to the Soviet Union's strategic assets. At the end Ukrainians claimed ownership only over the non-strategic part of the fleet, which was about 70% of the total fleet.

The Ukrainian decision-making group on this issue included the president and his administration, the Ministries of Defence and Foreign Affairs where the former was responsible for military aspects and the latter for matters of status and international law, the Ministry of Finance for matters of accounting and the Ministry of Defence and the Sevastopol authorities for carrying out an inventory of assets.²⁰⁴ The general responsibility for the negotiations process and coordination was entrusted to the head of the delegation and Deputy Minister of Foreign Affairs, Borys Tarasiuk, starting 1992 and until September 1995. The negotiations process consisted of general preparation being undertaken by the respective ministries, following which a policy position would be discussed and formulated at the convocation of the delegation and later passed on for

²⁰¹ Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

²⁰² Ruth Deyermond, "The Black Sea Fleet: Russia, Ukraine, and Georgia," in *Security and Sovereignty in the Former Soviet Union* (London: Lynne Rienner Publishers, 2008), pp.114-55; also Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

²⁰³ Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009.

²⁰⁴ Ibid.

the approval of the president.²⁰⁵ Procedurally, it was expected that before making any changes to the Ukrainian position on the issue, the president had to consult with the respective ministries, such as the Ministries of Defence or Finance and get their approval.²⁰⁶

Actions on the Ground

Throughout January, February and March of 1992 the situation intensified as during this period the Ukrainian government established its independent armed forces, whereby sailors and officers of the BSF could now legally pledge their allegiance to serve Ukraine. The situation reached an apogee on 3 April 1992, when President Yeltsin threatened that if sailors should continue taking oaths, Russia would have to take the BSF under its jurisdiction.²⁰⁷ At the same time, Russian Vice-President Aleksandr Rutskoi arrived in Sevastopol and agitated that the Russian government would never give up either the Crimea or Sevastopol. Following this, the Presidium of the Ukrainian Parliament and the Ministry of Foreign Affairs, issued an official protest to the Russian parliament against such actions by Russian policy-makers. On 5 April 1992 Ukrainian President Kravchuk issued a decree on the establishment of the naval forces of Ukraine on the basis of the BSF located on Ukrainian territory. What followed was Boris Yeltsin's special decree of 7 April 1992 which transferred the BSF to Russian jurisdiction.²⁰⁸ The officers and the sailors began to raise Russian and Ukrainian flags. The possibility of an armed conflict erupting between the two sides became apparent.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Savchenko, p. 44.

²⁰⁸ Nahaylo, p. 443.

Throughout 8-10 April, the Ukrainian parliament debated the actions of Russian officials which they felt encroached onto Ukrainian sovereignty. For example, Deputy Andrii Bondarchuk noted on 8 April, that provocations by Rutskoi and Yeltsin's decree on subordination of the Black Sea Fleet under Russian jurisdiction were unethical and they "showed to the whole world the true and eternal motives of the imperialist policy [of Russia]".²⁰⁹ On 9 April 1992 Presidents Kravchuk and Yeltsin held several telephone conversations on the situation and decided to withdraw their decrees and an inter-parliamentary group was set up to resolve the BSF issue. What followed were a number of negotiations on 29-30 April 1992 in Odesa, on 23 June in Dagomys, 17 July 1992 in Sevastopol, with a final compromise made during talks in Yalta on 3 August 1992. In Dagomys an important point of agreement was to begin preparations of a new basic political agreement between Russia and Ukraine, whereby the two states would recognise each other's borders. During the meeting in Muhalatka, Yalta, three main points were agreed upon:

- 1) The BSF was removed from the CIS Joint Command and placed under the joint control of Russia and Ukraine with equal control over the appointment and dismissal of personnel;
- 2) The joint control of the fleet would last for three years, following which an agreement would be concluded on the division of the fleet;
- 3) The Ukrainian government voided the oaths of allegiances taken by Russian BSF sailors.²¹⁰

The Yalta agreement for the first time introduced the principle of the division of the fleet, lifted the immediate tension between the sailors and between the defence ministries of Ukraine and Russia and between various political forces in the Crimea. The agreements signed in Yalta could potentially have resolved the BSF problem. However,

²⁰⁹ Parliamentary Stenogram, 8 April 1992.

²¹⁰ As cited in Tyler Felgenhauer, "Ukraine, Russia, and the Black Sea Fleet Accords," *Case Study 2/99, Woodrow Wilson School of Public and International Affairs*, 1999, p. 7.

since neither the Russian nor the Ukrainian governments could agree on the interpretation of the documents signed and no concrete mechanism for the division was established, the Yalta negotiations failed to produce a resolution. The main point of departure was that if Ukrainian authorities insisted on beginning to negotiate the division of the BSF and offering the Russians the lease of Ukrainian bases, the Russian government instead insisted on making the fleet operational during the transitional period of three years through which it hoped to legalise its long-term presence in the Crimea. It is likely that the Russian government resisted pursuing the final division of the fleet due to the issue being tied so closely with the domestic political situation in Russia, where politicians refused to consider Russian surrender of the Crimea and Sevastopol to Ukraine. The Russian government's position regarding withdrawal of its ownership claims over Sevastopol and the Crimea would equate with giving up Russian national interests, and thereby infringing upon Russia's historical great power status. Consequently, negotiations stalled.

The 50/50 Division and the Massandra Agreement

The situation in the BSF bases and on board vessels continued to cause incidents and confrontations between Russian and Ukrainian supporters throughout 1992 and 1993. From the Ukrainian standpoint, when Russian flags were raised on board of the BSF ships, Russian officers were breaking agreements made in Yalta, where the fleet was agreed to be managed jointly until divided at a later date. Thus, the conclusion of the agreement on the ultimate division of the fleet was crucial.

Zavidovo Agreement

On 4 June 1993 negotiations took place between the Russian Minister of Foreign Affairs, Andrei Kozyrev and his Ukrainian counterpart Anatolii Zlenko, first in Kyiv and then in Sevastopol. The meeting produced an agreement on the methodology of the division. Thus, the fleet itself would be divided 50/50 between Russia and Ukraine and Ukraine would swap part of its fleet for the gas debts it owed to the Russian government and Gazprom. This suggestion seemed to have originated with the Russian side. Regarding the infrastructure, Kozyrev insisted that it was also to be divided 50/50 with the subsequent Russian lease of the land. Thus, the term of the lease and its conditions became the next hurdles in the negotiations. These negotiations were turned into agreements on 17 June 1993 when Presidents Kravchuk and Yeltsin met at Zavidovo, near Moscow, to sign an agreement which officially started the process of the division of the fleet on the basis of the 50/50 principle.²¹¹ During the negotiation it was agreed that the fleet was to be divided within three years and in this interim period it would be jointly based in the Crimea.²¹² Following these accords, the relations between the executive branches of Russia and Ukraine improved, albeit not for long. A number of other agreements relating to trade, joint production of AN-70 planes, the restructuring of Russian loans to Ukraine and energy supplies were signed during June 1993. However, progress was further stalled by developments in Russia.

The “Third Defence of Sevastopol”

This phrase was coined by a Russian parliamentarian Sergei Baburin to describe the actions of the Russian parliament during 1993, when on 9 July it issued a resolution

²¹¹ Roman Woronowycz, “Ukrainian, Russian PMs sign pact on Black Sea Fleet, “ *The Ukrainian Weekly*, 1 June 1997, No. 22, Vol. LXV; Dubinin, pp. 146-150 and Zlenko, pp. 410-411 provide details of these negotiations from the Russian and the Ukrainian sides.

²¹² Zlenko, p. 410-411.

“On the Status of Sevastopol.”²¹³ In this resolution by a unanimous vote of 166 to zero, Russian parliamentarians declared Sevastopol to be a part of the Russian Federation.²¹⁴ The Ukrainian executive and parliamentarians have for a long time tolerated various calls within Russia to question Ukraine’s sovereignty over the Crimea and Sevastopol but this resolution was not expected. Since the Yalta and Zavidovo agreements required parliamentary ratification, after the actions of the Russian parliament such ratification by the Ukrainian parliament could not take place.²¹⁵ It is important to understand the power dynamics that were happening in Russia, which led the parliament to such drastic measures of reasserting its control vis-à-vis the Russian president. At the time Yeltsin and his team of reformers were facing a parliament composed of hard-line nationalist forces, whose position on Sevastopol was supported by some 51% of the Russian population.²¹⁶ The competition between the Russian president and the parliament spilled into the arena of foreign policy, with the policy regarding Sevastopol and the Crimea as one of the issues in their political opposition. It was this competition in Russia which later led to the October 1993 anti-presidential putsch in Russia, with Yeltsin suppressing the parliament with the use of force and re-establishing the dominance of the president in domestic and foreign policy-making.

Following the resolution by the Russian parliament on Sevastopol, the Russian Ministry of Foreign Affairs and the President denounced the parliamentary action²¹⁷ (but never officially asked for the parliament to recall the resolution). However, this direct challenge of Ukrainian sovereignty forced the authorities in Kyiv to seek international

²¹³ *Postanovlenie 'O Statuse Goroda Sevastopolia,' Verkhovnyi Sovet Rossiiskoi Federatsii*, N- 5359-I, 9 liulia 1993.

²¹⁴ As cited in Felgenhauer, p. 9

²¹⁵ N. Baranovska, et al., p. 554.

²¹⁶ Zlenko, p. 414.

²¹⁷ Solchanyk, pp. 174.

mediation, as this was the first time that Ukraine experienced an official challenge from Russian politicians regarding Kyiv's sovereignty over Sevastopol and territorial integrity of the state. The issue was referred to the United Nations Security Council (UNSC), which in turn issued a resolution asking parliamentarians in Moscow to refrain from challenging Ukraine's ownership over Sevastopol and stirring ethnic tensions. A number of European states, including the United Kingdom, France and Italy, also issued their protests, especially in light of ethnic conflicts taking place in the Balkans at the time. The international community strongly denounced the actions by the Russian parliament and perhaps for the first time stirred and one can argue moulded Western public opinion about Ukraine's right to Sevastopol and the Crimea. This international legitimisation of the Ukrainian position virtually closed any opportunities for the Russian government to negotiate a better settlement on the BSF and its basing. Should the international community have recognised the interpretation of the ownership rights over Sevastopol, as propounded by the Russian parliament and some officials in the government, it is likely that Sevastopol could have become a Russian enclave, much like Transnistria is today. It is also worthy to note that, at the time, Ukraine still housed strategic nuclear weapons. Thus, attempts by the Ukrainian parliament to pace the conditions and timing of the denuclearisation, which was perceived by authorities in Russia as an attempt to maintain nuclear weapons, might also have played a part in a greater international involvement on the Sevastopol issue.

Russian Pressure and Massandra Protocol Agreement

Throughout 1992-1993 the economic crisis in Russia and in Ukraine worsened and the key item on the agenda of the Ukrainian government was Russian energy supplies. Russian disruption of energy supplies to Ukraine had been routine up to that point. As the

Head of the Presidential Service on International Affairs, Anton Buteiko, later noted in his speech before the parliament:

“...our neighbouring country [Russia] always, before negotiations with Ukraine over important matters, would use certain methods like halting the supply of oil and gas to Ukraine or a rapid increase in price for these resources...”²¹⁸

However, no explicit link was made by the Russian leadership regarding Kyiv’s energy debts and political issues between the two countries.²¹⁹ By 1993 such links were made by the Russian Ambassador to Ukraine, Leonid Smoliakov, Russian Deputy PM Aleksandr Shokhin and most blatantly during the presidential summit in Massandra, Crimea on 3 September 1993.²²⁰ At the time, Ukrainian companies received some \$2.5m in energy supplies from Russia, but failed to pay for them.²²¹ Thus, the talks between Ukraine’s Prime Minister Leonid Kuchma and the Russian government held in Moscow on 9 August 1993 produced a compromise from the Russian side. The Russian government agreed to keep the price of energy supplies below the market price and Ukraine would pay for these deliveries with extended Russian credit. It was thus expected that Ukraine would make a similar gesture of compromise in other areas especially in regards to the Black Sea Fleet.²²² During this period Moscow had a number of outstanding issues with Ukraine both in relation to the realisation of the previously agreed accords regarding the division and also Kyiv’s delays in implementing the Lisbon Protocol regarding nuclear weapons, thus on the initiative of the Russian side, the presidents of both states had to meet in

²¹⁸ Parliamentary Stenogram, 1 June 1994, (translation mine).

²¹⁹ D’Anieri, p. 78.

²²⁰ Ibid.

²²¹ Ibid, p. 417.

²²² Dubinin, p. 151-152.

order to resolve these outstanding issues.²²³ A week before this meeting, Gazprom reduced its supplies of gas to Ukraine by 25%, citing non-payment.²²⁴

On 3 September 1993 presidential negotiations were held at Massandra, Crimea. Members of the delegation from the Ukrainian side (aside from President Kravchuk) included: Prime Minister Leonid Kuchma, Deputy Chairman of Verkhovna Vasyly Durdynets, Foreign Minister Anatolii Zlenko, Defence Minister Konstantyn Morozov, Interior Minister Andrii Vasylyshyn, secretary of president's administration Mykola Khomenko among others.²²⁵ During these talks, after a long, private walk by President Kravchuk and Yeltsin, the two agreed to settle the issue of the fleet by passing into Russian ownership the entire fleet and its infrastructure and signed a protocol to this end:

"Instruct government delegations of the Russian Federation and Ukraine, in a month time, to work out all of the issues relating to the development of the agreement by which all of the Black Sea Fleet with all of the infrastructure in Crimea will be used by Russia and will receive Russian symbols, with an understanding that the Russian side will be carrying out appropriate payments for that half of the fleet, including infrastructure, which was supposed to pass to Ukraine."²²⁶

Under the terms of this new protocol Ukraine agreed to sell or exchange its ownership of the part of the fleet and the infrastructure in the Crimea to Russia in exchange for cancelation of the energy debts. Russian economic pressure was considerable as it emerged that Moscow threatened that if Kyiv did not agree gas supplies would be cut.²²⁷ It was consequently reported that according to the figures presented by the Ukrainian Cabinet of Ministers, "the debt owed by enterprises in the republic's state petroleum and gas committee to the Russian Gazprom exceeds 706bn roubles" and if the enterprises would not settle their debts the supply of fuel would be

²²³ Ibid, p. 152.

²²⁴ D'Anieri, p. 79.

²²⁵ "Accord on Black Sea Fleet," *Ukrainske Radio, First Program Network*, 3 September 1993, in *FBIS-SOV-93-171*, 7 September 1993.

²²⁶ Dubinin, p. 153, (translation mine).

²²⁷ D'Anieri, p. 79; Zlenko, p. 418.

discontinued starting 14 September 1993.²²⁸ President Kravchuk, reflecting later about this meeting said:

“In the Crimea, it was said in no uncertain terms...that if Ukraine did not find the means to settle its debt and make payments for energy arrears that are due now, Russia would be forced to suspend oil and gas deliveries to Ukraine entirely. This was said in no uncertain terms, rather than hinted at...This was the situation the delegation had to work with.”²²⁹

With this protocol the President completely changed his preferences, considering that this agreement allowed the stationing of the Russian Black Sea Fleet in Sevastopol and the Crimea, whereas beforehand the Ukrainian side did not even want to hear about Russian basing on these territories. However, following the meeting in Crimea which raised a scandal in the Ukrainian parliament, President Kravchuk defended himself by saying that he did not conclude any agreements, but merely signed protocols that were:

“...instructions to a government commission...to study the proposal tabled by Russia...no other decision was taken...that is why any talk of selling something to someone, or somebody betraying someone, follows, I think, from Ukraine’s internal political situation and different forces watching for the president to trip...”²³⁰

Consequently, it seemed like the Ukrainian and Russian sides had conflicting interpretations about what was decided at Massandra.²³¹

The right-leaning and opposition forces in the Ukrainian parliament protested these arrangements, calling the President a traitor regarding these Ukrainian interests and reproaching him for failing to withstand Russian economic pressure.²³² Some, like Deputy Stepan Khmara, were calling for the President’s impeachment:

²²⁸ Pavel Shynkarenko, “Na linii ognia,” *Rossiiskie Vesti*, 10 September 1993, p. 2.

²²⁹ “Kravchuk Grants News Conference on Yeltsin Talks,” *Radio Ukraine World Service*, 6 September 1993, in *FBIS-SOV-93-171*, 7 September 1993.

²³⁰ Ibid.

²³¹ Zaborsky, “Crimea and the Black Sea Fleet in Russian-Ukrainian Relations,” p. 28.

²³² Nahaylo, p. 454; Shynkarenko, *Rossiiskie Vesti*, 14 September 1993.

“Today, in addition to discussing question in relation to the cabinet, we also have to raise a question about the responsibility of the President, begin his impeachment, and note all of the instances where he broke the constitution [by signing these protocols], appoint an investigative committee for all senior officials, President, and members of the cabinet...”²³³

Ukrainian parliamentarians were displeased that while the Russian government had long ago made it clear that the debts of its firms are not state debts in the BSF case the debts of the Ukrainian enterprises were counted as state debts.²³⁴ Some deputies also called for the Ukrainian authorities to revise their nuclear disarmament course and begin negotiating full withdrawal of the Russian military from Ukraine.²³⁵

President Kravchuk was criticised by the members of the Ukrainian delegation in Massandra, most notably by the Minister of Defence, Konstantyn Morozov, who issued a statement on 6 September the he disagreed with President Kravchuk and that if these accords would be carried out he would “disclaim all responsibility for Ukraine’s defence in the south.”²³⁶ Morozov opposed not so much the sale of the Ukrainian portion of the fleet, but the stationing of Russian forces in Sevastopol and Crimea without discussing when they will be withdrawn and he claimed this was unacceptable. He emphasised that any agreements should be discussed at the meeting of Ukraine’s Security Council and submitted for parliament for ratification.²³⁷ Morozov’s position was also supported by the Officer’s Union of Ukraine who issued their statement on 16 September regarding the Massandra agreements where they noted that:

“the signing of protocols at the 3 September meeting...shattered Ukrainian people’s hopes that Russia will leave Ukraine alone and renounce its imperial claims as well as that

²³³ Parliamentary Stenogram, 21 September 1993, (translation mine).

²³⁴ Parliamentary Stenogram, 21 September 1993.

²³⁵ Parliamentary Stenogram, 22 September 1993.

²³⁶ “Disagrees with Kravchuk,” *UNIAN*, 10 September 1993, in FBIS-SOV-93-175, 13 September 1993.

²³⁷ “Morozov Replies to Grachev’s Statement on Fleet,” *Radio Ukraine World Service*, 5 September 1993, in FBIS-SOV-93-171, 7 September 1993.

the Ukrainian leadership will become a guarantor of security and constitutional order in our state...”²³⁸

They demanded that the Ukrainian parliament “be summoned and denounce the signed protocols of the Crimean agreement on either reselling or transferring the Ukrainian Black Sea Fleet and its onshore facilities to Russia,” while giving their support to General Morozov.²³⁹

Following Morozov’s opposition he submitted his resignation to the president and was dismissed on 4 October 1993. Although President Kravchuk maintained that the minister did it out of his own volition,²⁴⁰ Morozov’s policy preferences on the BSF and regarding nuclear weapons differed from that of the President, leading many to conclude that the resignation was politically motivated.²⁴¹ General Morozov resigned from his post together with the Deputy PM Valery Shmarov.²⁴² Later on, reminiscing about these agreements, President Kuchma (who was the prime minister at the time) said that Leonid Kravchuk during his time “went too far to accommodate Russia” and in this way limited the actions of Kuchma once he was in charge of the presidential negotiations.²⁴³ It seems that two factors motivated President Kravchuk to change his preference regarding BSF: Ukraine’s mounting energy debts by Ukrainian enterprises and the threat of energy cut-off, and growing Russian separatism in the Crimea.

The problem of Ukraine’s energy debts to Russian energy firms is a complex one, since the Ukrainian state assumed much of the energy debts of the Ukrainian firms, which

²³⁸ Oleksandr Skypal’s’kii, “Zaiava Spilky Ofitseriv Ukrainy,” *Khreshchatyk*, 16 Veresnia 1993, No. 167, p. 2.

²³⁹ “SOU Denounces Protocols,” *UNIAN*, 14 September, in FBIS-SOV-93-177, 15 September 1993.

²⁴⁰ “Kravchuk on Morozov Resignation,” *Radio Ukraine World Service*, 5 October 1993, in FBIS-SOV-93-192, 6 October 1993.

²⁴¹ Mykola Bilovil, “Zmina Okhorony,” *Ukrainska Hazeta*, No. 17, 34, 21 Zhovtnia-1 Lystopada 1993, p.8; Oleg Medvedev, “Ukrainskii parlament pochtill pamiat’ pogibshikh v Moskve,” *Kommersant*, 6 Oktiabria 1993, p. 4; Volodymyr Prytula, “Chomu pishov Admiral Kozhyn?” *Molod’ Ukrayiny*, 29 Zhovtnia 1993, p. 2; Zaborsky, “Crimea and the Black Sea Fleet in Russian-Ukrainian Relations,” p. 28.

²⁴² Nahaylo, p. 454.

²⁴³ As cited in Dubinin, p. 217.

operated in a less than transparent manner. That is to say that although indeed many of the state companies continued to rely on the oil and gas supply from Russia, much of this fuel was re-sold abroad instead of being used for domestic consumption. The resale, however, was not conducted by the state, whereby the funds would be transferred into state coffers, but by gas traders and other intermediary companies, which were frequently connected to the highest echelons of political power in Ukraine. Thus, formally the state did not financially benefit from the resale, but assumed the political responsibility for the accrued debts. However, even when the debts were assumed for the first time, so to speak, the decision-makers did not see or seek alternative policy options in trying to eliminate this pattern of energy dependency that would have removed the need for the continuation of the below-the-market energy supplies to Ukraine or the extension of Russian credit for payment of energy supplies (this issue will be discussed in greater detail in chapter 5).

The increasing strength of the Russian political movement in the Crimea, amongst the Moscow-loyalist forces on the ground and the support it was gaining from the Crimean voters and elites, as well as the worsening economic situation in the Crimea seemed to have more broadly influenced the presidential resolve to finalise this issue of the fleet event at the expense of its previous claims to complete sovereignty over the Crimea and the removal of the Russian presence from the peninsula. Anatolii Zlenko, Ukraine's foreign minister at the time, rationalised these compromises made by Kravchuk in Massandra as a necessary temporary solution to Russian pressure, since the protocol enabled Kyiv to pay-off some of its debts and normalise the delivery of energy supplies to

Ukraine.²⁴⁴ Throughout all of the ensuing negotiations Kyiv was able to correct some of the positions lost through the concessions made in Massandra, in part due to the good will of Russia and the realisation that should Moscow refuse to budge, it would become impossible for the Ukrainian parliament to ratify this presidential agreement.

Control Over Sevastopol Ports and Sochi Agreement

Although the confrontation in relation to the division of the actual fleet subsided after the signing of the Massandra protocol, the dispute continued regarding the status of the coastal infrastructure in the Crimea and the division of the bases. During this period, the Russian authorities categorically refused the possibility of the Ukrainian navy being based in the Crimea and especially in Sevastopol together with the Russian forces. The Ukrainian side, on the other hand, insisted that a compromise needed to be found, as they would not allow a Russian monopoly influence of such magnitude on the Ukrainian territory and would not base the Ukrainian fleet anywhere else. Over the course of the resolution of these issues, ministerial-level negotiations were held on 15 April 1994 between Yeltsin and Kravchuk and on 21-22 April in Sevastopol. However, the progress on the resolution of these issues was stalled by the rising competition between the central elites in Kyiv and the newly-elected pro-Russian President in the Crimea, Yuri Meshkov who commanded a majority in the Crimean parliament in 1994. Meshkov's position was stated in February 1994 thus:

“Independence alone will allow us [Crimea] to solve our economic problems. The results of the presidential elections confirmed the population's orientation to economic, cultural and other links with Russia, and to reunion with Russia...the Black Sea Fleet must be indivisible, belong to Russia and be based in Sevastopol which is an inalienable part of the Republic of Crimea.”²⁴⁵

²⁴⁴ Zlenko, p. 418.

²⁴⁵ “Meshkov Claims Independence as Crimea's Goal,” *INTERFAX*, 10 February 1994.

Thus, negotiations only moved forward when the political landscape became more accommodating both in the Crimea and in Ukraine. The election of the Ukrainian President with a more favourable view of Russia, Leonid Kuchma, changed the situation by addressing the ethnic cleavage in Crimean politics. In addition, the President moved to establish stronger control over policy making in relation to public policy and the BSF division, strengthening executive control over the process and over the dissemination of information.

Thus, the preferences of the Ukrainian decision-makers to move ahead with the signing of the Sochi Agreement of 1995, according to which the basing of both fleets in Sevastopol was agreed in principle, were facilitated by three key factors: the change of government in Ukraine, which helped to remove the Crimean secessionist link from the division of the fleet; the desire by the Ukrainian decision-makers to finalise inter-state relations and solidify Ukrainian territorial sovereignty, conditioned by Russian refusal to do so prior to BSF resolution; and decision-makers' perceptions that no alternative policy options existed in relation to the supply of Russian energy, financial credits and markets for Ukrainian goods. Kyiv had to re-establish the economic links with Russia that were severed resulting in financial and economic decline of both Ukraine and Russia.

The Crimean Politics and BSF

In spring 1994 the relations between the government of Ukraine and Russia were once again becoming tense over the separatist movements in the Crimean parliament and the support these forces, especially those of Crimean President Yuriy Meshkov, were getting from various Russian politicians and governmental officials. Thus, competition between the regional authorities in the Crimea and the central authorities in Kyiv began

to influence the division of the fleet. When, in May 1994, Meshkov resolved to replace the existing constitution of the Crimea with the draft constitution from 6 May 1992, which questioned Ukraine's sovereignty over the peninsula, the Ukrainian government reacted by notifying the Russian government that if it supported Meshkov's actions, Russo-Ukrainian relations would become severely strained.²⁴⁶ The Ministry of Foreign Affairs once again called on the Western community to mediate in the crisis. Although the German Minister of Foreign Affairs, Klaus Kinkel, was the first one to react by condemning the actions of the Crimean authorities, similar statements from other European governments, supporting the sovereignty of the Ukrainian government over the Crimea, quickly followed.²⁴⁷ Thus, once again, international legitimisation of Ukrainian sovereignty over the Crimea played a part in limiting the possibilities of the Russian government maintaining its military presence in Sevastopol, and supporting separatist politicians in the Crimea. As Meshkov specifically argued for Crimean reunification with the Russian Federation, by not condemning the actions of Meshkov the Russian government only strengthened the resolve of the Ukrainian authorities to limit the terms of the basing of Russian Black Sea Fleet and its activities on the peninsula. As observed by Borys Tarasiuk, "the inter-governmental negotiations over the BSF were influenced by the worsening situation in Crimea, with the growing momentum of the separatists in Crimea and with President Meshkov...these feelings were intensified and supported by Moscow."²⁴⁸

Following the ministerial talks on 24 May 1994, the Ukrainian and Russian governments agreed to stop playing the Crimean card during the attempt to resolve the

²⁴⁶ Zlenko, p. 426.

²⁴⁷ Ibid, p. 427.

²⁴⁸ Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009, (translation mine).

division and stationing of their respective fleets.²⁴⁹ These negotiations produced a number of compromises on the BSF issue. It was agreed that in terms of the size of its naval forces, the Ukrainian BSF would use between 15 and 20% of total vessels received from the division. However, Russia insisted on keeping exclusive ownership rights to some of the 285 best equipped naval installations on Sevastopol and to 133 of such objects in the Crimea.²⁵⁰ The Ukrainian government found these demands unacceptable, since it could not allow such an overwhelming Russian military presence in the Crimea and the resulting de-facto domination of southern Ukraine. To reach compromises on this issue, the Russian government began to tie the resolution of the BSF issue to the conclusion of the basic political agreement between Ukraine and Russia. This agreement was of utmost importance for the Ukrainian government since Russia refused to confirm the actual border between the two states. Consequently, for Ukraine settling borders came first and everything else second. As Tarasiuk noted: “our priority was to close the subject of Ukrainian territorial integrity and the inviolability of borders.”²⁵¹

Until 1997, the relations between Ukraine and Russia were based on the Agreement from 19 November 1990, which regulated their relations.²⁵² Signed before the independence of both states, the agreement did not reflect new realities and especially did not recognise the inviolability of borders between Russia and Ukraine. At the time of signing, Ukrainian authorities believed that to remove any possibility of the Russian government questioning Ukrainian sovereignty over the Crimea, Sevastopol or even Kharkiv and Donetsk (regions in Ukraine with large Russian ethnic minorities and Russia-sympathisers), they would have to conclude the inter-state agreement, which would

²⁴⁹ Zlenko, p. 427.

²⁵⁰ Ibid, p. 428.

²⁵¹ Author's interview with Borys Tarasiuk, Kyiv, Ukraine, 25 August 2009, (translation mine).

²⁵² James Sherr, “Russia-Ukraine Rapprochement? The Black Sea Fleet Accords,” *Survival*, Vol. 39, No. 3, 1997, p.35.

legally bind the two states to respect their respective borders and sovereignty within them. The emphasis on legal norms in international relations, which could serve as a way to protect Ukraine's state sovereignty by gaining international support during a possible conflict with Russia certainly underpinned the thinking of Ukrainian decision-makers. This linkage, between the resolution of the BSF question and the conclusion of an inter-state agreement with Russia, was consistently made by the Russian senior negotiator, Yuriy Dubinin, who throughout this period held senior posts in the Russian foreign ministry and the government. Dubinin's refusal to budge on this issue linkage and his refusal to accept Ukraine's sovereignty over the Crimea and Sevastopol earned him a reputation of a hard-liner in relation to Ukraine and soon Ukrainian governmental officials and later President Kuchma were asking Yeltsin to remove him from the negotiations. In November 1994 Dubinin was replaced, as a head of the Russian negotiating delegation, with the Deputy Prime Minister of Russia, Oleg Soskovets.²⁵³ Thus, by 1995 three issues were linked by Moscow to Russian final agreement to divide the fleet: the signing of the basic political agreement, Russian gas supplies to Ukraine and, after the election of Leonid Kuchma as Ukraine's new president, – the official visit of Yeltsin to Ukraine.²⁵⁴

In June 1994 Ukrainian presidential elections brought Leonid Kuchma to the head of the Ukrainian executive. Kuchma's electoral campaign ran on the improvement of relations with Russia, thus, no major agreements were signed until 1995, since the Russian government was expecting a more cooperative position on BSF issues from the newly-elected president. Indeed, the negotiating position taken by Kuchma and his new government was more cooperative, but perhaps more in style rather than in substance

²⁵³ Dubinin, p. 194.

²⁵⁴ Ibid, p. 184.

and Russian negotiators soon realised that it was easier for them to negotiate during the times of President Kravchuk, than under the leadership of President Kuchma.²⁵⁵

Sochi Agreement

On 9 June 1995, an agreement was signed by Kuchma and Yeltsin, according to which Russia received the right to base the majority of its fleet in Sevastopol and received the right to use the infrastructure in Sevastopol and the Crimea. According to the deal the fleet would be divided, but the Russian government would buy out most of the Ukrainian share, leaving Ukraine with 18.3% of the total fleet while 81.7% would go to Russia. It was agreed that the Russian fleet would continue to use the base in Sevastopol by renting facilities from Ukraine and paying for them in kind with energy supplies and debt forgiveness. The deal stipulated that the newly formed Ukrainian navy would also be based in Sevastopol, a concession by the Russian side who previously refused to consider basing both fleets in the city. Lastly, Ukraine for the first time agreed to Russia's exclusive use of the term 'Black Sea Fleet' for its naval forces, while the Ukrainian navy was simply called 'Ukrainian Naval Forces.'²⁵⁶

Although in principle the deal was a breakthrough, once again a number of factors began to impede the conclusion of side agreements that would regulate the basing of the two fleets and that would set the amount of funds that Ukraine would receive from the sale of its hardware and from the Russian leasing arrangements. Attempts to negotiate these side agreements were made with varying success over the course of 1995 and 1996, but the political situation in Russia and more specifically the nationalist position taken by the Russian Duma and by the Mayor of Moscow Yuri Luzhkov in relation to the

²⁵⁵ Ibid, p. 212.

²⁵⁶ Ibid, p. 213.

status of Sevastopol, prevented any significant breakthrough, since on 6 April 1996 the Russian Duma prohibited the division of the Black Sea Fleet.²⁵⁷ Thus negotiations halted.

Resolution: Black Sea Fleet Accords of 1997

Beginning at the end of 1996 and into 1997 the number of contacts between the parliaments of Ukraine and Russia as well as the executive increased significantly in an attempt to improve their relationships which had dipped to their lowest since 1992. The position of the Russian government to tie the conclusion of a political agreement to the resolution of the BSF produced a stalemate, since the Ukrainian executive refused to sacrifice Ukrainian sovereignty and control over the bases in Sevastopol in exchange for political recognition. Thus, the decision by President Yeltsin to meet with Leonid Kuchma in March 1997 in Moscow, where they agreed to decouple the two issues for the time being, allowed for the dialogue to restart. Consequently, the political inter-state Treaty of Friendship, Cooperation and Partnership was negotiated separately from the final accords on the Black Sea Fleet, but signed simultaneously.

The signing of the final accords was made possible through compromise from both the Ukrainian and the Russian governments. Ukrainian concessions were conditioned by domestic factors, such as the accumulation of the energy debts to Russia and the need for future subsidised fuel supplies which the Russian government did not want to provide without political concessions from the Ukrainian government. The inability of the Ukrainian decision-makers to pursue alternative policies in relation to this energy and trade dependency necessitated a compromise. Additionally, the desire by the Ukrainian executive to sign a political agreement between Ukraine and Russia and to normalise

²⁵⁷ Solchanyk, p. 177-179; N. Baranovska, et al., p. 555; Parliamentary Stenogram, 6 December 1996.

relations once again forced them to make compromises. The factors which facilitated a compromise from the Russian side also included the intensification of the Ukraine-NATO dialogue, where Ukraine was seen as adopting alternative security structures and the fact that the Russian government seemed to have exhausted its ability and need to undermine Ukrainian sovereignty by questioning the status of Sevastopol and the Crimea, ownership of which was legitimised by the international community in favour of Ukraine.²⁵⁸

During 27-28 May 1997, practically the entire Cabinet of Ministers of the Russian Federation arrived in Kyiv to negotiate what would become the final three inter-governmental agreements on the BSF. Politically, the agreements stipulated that Russia recognised Ukraine's sovereignty over Sevastopol and the Crimea, accepting that it would have to lease not just the land, but also the facilities from the Ukrainian government.²⁵⁹ In addition, as argued by Sherr, the agreements allowed for the resumption of normal fuel supplies to Ukraine, which were halted or reduced in the past as Moscow used them as a means of political pressure.²⁶⁰ Thus, Moscow agreed to normalise energy and trade relations in exchange for Ukraine's concessions in regards to the fleet. The Ukrainian side compromised primarily in relation to the infrastructure that would be used by the Russian Black Sea Fleet in and around Sevastopol. Concessions made by the Ukrainian executive related to a reduction in the asking price for the lease, the quality and number of bays allocated to both fleets in Sevastopol and a reappraisal of the hardware inventories of both fleets. The Ukrainian government agreed to lease the facilities, the land and the water in the coastal vicinity of the Sevastopol bays to Russia. In relation to the price, the

²⁵⁸ Sherr, p. 46.

²⁵⁹ Zlenko, p. 448.

²⁶⁰ Sherr, pp. 42-43.

Ukrainian side asked for \$424.7m as yearly compensation; the Russian side offered \$72m.²⁶¹ The final price that was agreed upon was \$99.65m. This would be paid to Ukraine over the next twenty years for the use of 18,500 hectares of land, of which 15,000 are outside Sevastopol. In addition, the Russian government agreed to pay \$536.5m for the share of the hardware that the Ukrainian government sold to Russia according to the Massandra agreement. However, Russian payments for vessel sales, leasing and compensation for tactical nuclear weapons (issues which Ukraine successfully attached to these negotiations) would be made in kind, by Russia forgiving the debt the Ukrainian companies had accumulated over the years to Russia, primarily over energy supplies. The agreed amount of debt that Ukraine owed totalled \$3.074bn. Thus, over twenty years Ukraine would pay back \$2.5bn of these debts, with the remaining \$550m to be paid separately.²⁶²

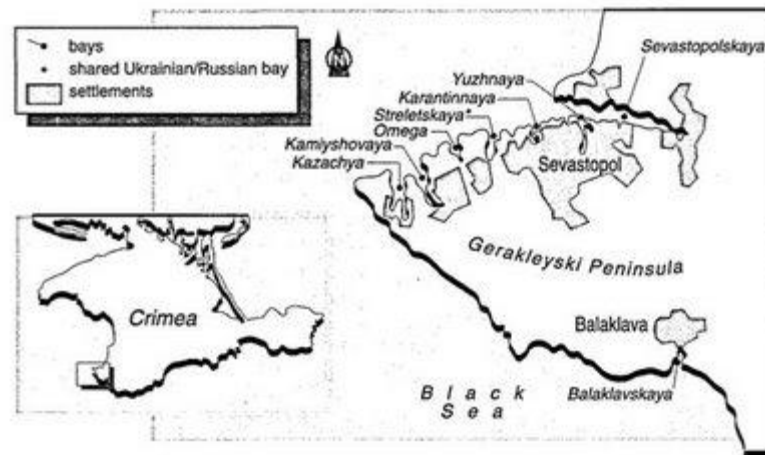
In relation to the bays in Sevastopol, Russia agreed to share the city with the Ukrainian navy as the main headquarters for both fleets and their key bases. The BSF received exclusive use of Sevastopol and Pivdenna bays, Ukrainian BSF would use Striletska bay while Karantynna bay was agreed to be demilitarised (see Fig. 3.1). Considering that the Sevastopol and Pivdenna bays are the deepest with the port of Sevastopol at 20m (as opposed to 8m in the Striletska bay) the Ukrainian government certainly made compromises in regards to the quality and the number of facilities that would be used by the Russian BSF, and in relation to the inventory of the fleet.²⁶³

²⁶¹ Zlenko, p. 449.

²⁶² Sherr, p. 43.

²⁶³ Ibid, pp. 40-42.

Fig. 3.1: The Division of the Bases in Sevastopol²⁶⁴



The Accords stipulated that Russia would be allowed to have no more than 132 armoured vehicles in the Crimea, 24 artillery vehicles with no more than 100mm calibre, 22 surface-based jets and no more than 25,000 personnel. Although these caps prevented the Russian BSF from increasing its size, they did not stipulate any limits on replacements, thus the old hardware could be replaced with new materials. It also stipulated that Russia would deploy 20 warships in the Sevastopol bay, 10 in Pivdenna and 20 submarines in Pivdenna.²⁶⁵ Consequently, it is evident that in respect to the military aspects of these accords, the Ukrainian government made significant concessions, allowing for almost exclusive use of Sevastopol and its best bays by the Russian BSF.

The motivations for these concessions by the Ukrainian government were primarily economic and political. From an economic perspective, Russian trade and energy pressure in imposing quotas on Ukrainian products and frequent halts or reductions in energy supplies made the resolution of the issue imminent, considering that Moscow tied these two aspects of its policy with the resolution of the BSF on its terms. In

²⁶⁴ Ibid, p. 41.

²⁶⁵ Zlenko, p. 449.

addition, the accumulation of debt by various Ukrainian firms, which were assumed as state debts by the Ukrainian government, gave reasons for Russia to halt fuel supplies and further loans. Tying the compensation for the fleet with these accrued debts was seen by the Ukrainian government as a way to at least partially resolve the energy issue.

From the political perspective, Russia had tied the conclusion of the basic political treaty between the two states, which would recognise the inviolability of borders and Ukraine's territorial integrity, to the favourable resolution of the BSF issue. Since for the Ukrainian government the basic treaty became a priority, it also served as means of political pressure on the Ukrainian authorities at the time. Connected to the issue of the inter-state treaty was the first official visit of President Yeltsin to Ukraine. Yeltsin refused to visit Kyiv on official terms unless the political treaty between the two was concluded. Since President Kuchma ran his campaign on improving his ties with the northern neighbour, Yeltsin's visit would symbolise the normalisation of the ties and improvement in relations, thereby satisfying Kuchma's electoral promises.

Lastly, the Russian government agreed to compromise for two key reasons. Firstly, keeping the BSF issue unresolved was not furthering its agenda of keeping Ukraine in its sphere of influence. Instead, on-going conflicts with Ukraine, as realised by Russian decision-makers at the time were creating a negative reputation for Russia abroad and pushing the Ukrainian government to seek alternatives in its security policy, namely in its moves towards building greater cooperation with NATO. Secondly, since international legitimisation of the Ukrainian state in its present borders had already occurred, there were reduced opportunities for the Russian government to challenge Ukrainian sovereignty over Sevastopol or the Crimea. The consequences of undermining these legitimate borders were too high for the Russian Federation at the time, both from the

economic perspective, since Moscow depended on trade and financial support from the West and from a Western normative perspective, to which Russia prescribed at the time as a democratic European state.

Ratification of the BSF Accords

If, in the case of denuclearisation, parliamentary ratification provided an avenue for the Kyiv elites to influence foreign policy-making, the ratification process of the BSF Accords was a highly controlled process by the executive and did not provide such an opportunity for the parliament to challenge executive policy. Ukrainian parliamentary ratification of the BSF agreements was set in such a way as to minimise the possibility of the accords becoming subjects of domestic political competition. As Deputy Stepan Khmara later complained “the preparation and the signing of these accords was held in absolute secrecy and information was not provided to either the public or the members of parliament.”²⁶⁶ Although national democratic parliamentarians protested, with the 1994 convocation of the parliament they were in the minority. For example deputy Khmara noted during his comments in the parliament:

“Several articles of the Ukrainian constitution were violated with the signing of this agreement. According to Article 106 the President of Ukraine did not have the authority to pass on his powers to conclude international agreements to the prime minister. In this way, the Prime Minister [Lazarenko] exceeded his powers, since the signing of such agreements is in the competency of the head of the state.”²⁶⁷

Thus, ratification was done after the fact and the actual implementation of the policy, that is the BSF division and payment, had already taken place. This was done on

²⁶⁶ Parliamentary Stenogram, 3 June 1997, (translation mine).

²⁶⁷ Ibid.

the insistence of Ukraine's President Kuchma who asked for such measures to resolve the conflict since coming to office in 1994.²⁶⁸

The final three accords on the BSF were concluded in 1997 as executive, rather than international, agreements, which did not immediately require parliamentary ratification. Consequently, the formula which was adopted politically marginalised the parliament in both states and made the agreements enter into force with the signatures by the respective prime ministers and parliamentary ratification came after.²⁶⁹ However, whether such an approach was constitutional is unclear. The ratification of these accords by the Ukrainian parliament did not take place until 24 March 1999, while ratification by the Russian Federation Council took place on 17 February 1999 and was conditional upon Ukraine's ratification of the accords. However, these ratifications were matters of formality rather than substance. By that time the division was almost complete and all of the agreements that regulated the stationing of the fleet and Ukraine's compensation and debt settlement were resolved.

Conclusion

This chapter has argued that during the decision-making process regarding the status and the division of the Black Sea Fleet, the executive policy was relatively consistent, albeit one episode when President Kravchuk during the presidential summit with Yeltsin on 3 September 1993 at Massandra unilaterally altered the policy regarding BSF. In his decision the President stepped away from Kyiv's earlier policy of demanding the division of the fleet and the Russian navy's departure from Ukraine. This change in the preferences of the Ukrainian President was a unilateral decision by Kravchuk, which

²⁶⁸ Dubinin, pp. 198, 219.

²⁶⁹ Sherr, p. 39.

was made under substantial Russian economic and political pressure. At the time Ukrainian enterprises had accumulated enormous debts to Gazprom and the Ukrainian state officially assumed these debts despite most of them actually underpinning Ukraine's shadow economy. Thus, governmental policy change was influenced by vested interests both domestic and international in order to settle the BSF division for the benefit of a particular kind of political economy between Ukraine and Russia. Thus, the combination of national and international vested interests made the decision-making process more difficult. Arguably the Massandra compromise was a temporary solution by the President, to ensure that Ukraine would receive energy supplies for the days to follow, however, presidential commitments limited the ability of the future negotiating teams under President Kuchma to receive a more accommodating position from the Russian side. Crucially, this was the first instance in the Ukrainian-Russian relations where the resolution of the political issue between the two countries was linked by Moscow to Russian energy deliveries. This situation was repeated again during the 2006-2009 gas crises (discussed in chapter 5), but this time the Kremlin would not only threaten, but fully halt the supplies of Russian gas to and through Ukraine. Importantly, the basing of the fleet would once again become the subject of Ukraine-Russia energy relations when in April 2010, in an attempt to negotiate the lowering of the Russian gas prices for Ukraine, the newly-elected Ukrainian President, Viktor Yanukvyh, would extend the basing of the BSF for another 25 years.

In addition to the economic pressure that Moscow used during the Massandra talks, significant military and political upheavals in Sevastopol, the Crimea, southern Ukraine, and in the Ukrainian parliament itself, pushed the president to seek a political resolution to the thorniest issue of the Russo-Ukrainian relations up to date. Moscow

continued to use the nationalist political momentum in Sevastopol and the Crimea to call for the secession of these territories from Ukraine, most likely hoping to pressurise Kyiv to give up the fleet. In accommodating Russia, Kravchuk seemed to have surrendered some of the political sovereignty that Kyiv was claiming over the fleet, Sevastopol and the Crimea by allowing the Russian fleet to have exclusive basing rights in both Sevastopol and in the southern Ukraine. Subsequently, President Kuchma attempted to return to the previous negotiating positions and the final compromise was reached only once Russia recognised Kyiv's sovereignty over Sevastopol and the peninsula. In return, Russia was allowed to base its fleet in Ukraine for 20 years (subject to possible extension), receive preferential agreements regarding the bays in and around Sevastopol and receive a favourable leasing price.

What made the implementation of the Massandra protocol impossible, and thus prevented greater inconsistency, was the position of the Ukrainian parliament, which at the time refused to give in to Russian pressure regarding any issue related to Ukrainian sovereignty. Clear de-jure and de-facto distribution of powers between the president, the cabinet and the parliament mattered for policy consistency, since by making the decision on his own President Kravchuk ignored the procedural aspect of international negotiations and sparked resistance from the members of the cabinet and the parliament. Thus, constitutional and procedural ambiguity in relation to the distribution of foreign policy-making powers within the political system and within the executive in particular contributed to ambiguity in practice. This confirms the first hypothesis posed by this study that unclear distribution of powers in the environment of divergent policy preferences acts as a source of policy change. President Kuchma learned this lesson, knowing full well that any changes in executive commitments regarding the fleet without

full involvement by the parliament would likely be stalled. To avoid this, the Black Sea Fleet accords of 1997 were negotiated in secret and signed in such a way as to circumvent the need for immediate ratification by the parliament. Instead they were signed as inter-governmental agreements to be ratified later together with the Treaty on Friendship, Cooperation and Partnership in 1999.

The Odesa-Brody Pipeline **FOUR**

During the second term of President Kuchma, observers noted a shift in the orientation of Ukraine's foreign and security policies towards greater cooperation with Russia. This change was evident in three ways: firstly in the rhetoric of the president and the intensification of executive ties between President Kuchma and the Russian President Vladimir Putin; secondly in increased economic interaction between the business elites of the two states and finally in particular policy actions – especially in the signing of the Single Economic Space (SES) agreement with Russia, Belarus and Kazakhstan in 2003 and in the reversal of the Odesa-Brody pipeline flow in 2004 (amongst others.) This shift did not equate to a reorientation of Ukraine's strategic integration with European institutions as decreed in the official documents guiding the foreign and security policy of Ukraine. However, projects in which Ukraine cooperated with Russia at that time undermined the long-term goals of integration into European institutions and improvement of Ukraine's economic security vis-à-vis Moscow. For the authorities in Kyiv, building strong and cooperative relations with both of the regional powers, the European Union and Russia, was a matter of providing for Ukraine's security and thus attempts at improving these relationships on both vectors was unsurprising. However, the way in which this multi-vectored policy was managed did not make these objectives – integration with both European and Russian institutions – complementary, but instead competitive. Making decisions to sign the agreement on the SES and temporarily reversing the Odesa-Brody pipeline flow satisfied Russian interests, corporate and state, and brought short-term financial benefits for the regime in Kyiv, but it sent ambivalent signals about Ukraine's intentions. This policy shift was a change in policy goals. The goal was no longer to make

the pipeline operational so as to improve Ukraine's energy security as well as that of Europe, but to serve as a purely commercial asset that would provide immediate economic returns.

The Odesa-Brody pipeline and its adjacent oil terminal "Pivdennyi" (Southern) near Odesa were built to help diversify oil supplies for Ukraine and the EU member states by providing easier access to Caspian oil. Doing so would contribute to greater EU energy security through the creation of a Euro-Asian Oil Transportation Corridor (EAOTC). Upon the completion of the pipeline in 2002, the Ukrainian government struggled to immediately fill it with non-Russian oil. However, after signing cooperation agreements with the EU and Poland in 2003, the political, institutional and financial processes were enacted which would have made this pipeline operational by the beginning of 2004 (albeit at first working with low shipment volumes of Caspian oil). Starting in 2000 the Kremlin proposed to the Ukrainian government to consider halting the construction of the pipeline²⁷⁰ and later, together with Russian oil majors, Moscow aspired to reverse the direction of the oil flow in Odesa-Brody, shipping Russian oil south to the Mediterranean. Soon this idea found support within the leadership of the National Joint-Stock Company Naftogaz (National Oil and Gas Company) and its subsidiary, Ukrtransnafta (Ukrainian Oil Transportation Company) and later President Kuchma himself became its advocate. After a period of consideration, on 4 February 2004 the Cabinet of Ministers in Ukraine decreed that the Odesa-Brody system would be used for the transport of oil in the originally-intended, northern direction to European consumers. However, this resolution did not last and the government reversed its decision on 5 July 2004, enabling the shipment of

²⁷⁰ According to a Ukrainian newspaper, during the visit of President Putin to Ukraine he proposed that the Ukrainian government halted the construction of the Odesa-Brody pipeline and agreed with the conditions and tariffs for the Russian transit of oil through Druzhba. Cited in Sergei Tsokolenko, "Gde nachinaetsia neft, tam zakanchivaiutsia natsional'nye interesy?" *Zerkalo Nedeli*, 13-19 Maia 2000.

Russian oil south. By the end of September 2004 the first oil tanker left Pivdennyi with Russian oil transported to Europe through the Bosphorus.

This chapter examines the change of executive policy between February and July 2004, including the decrees, and analyses how domestic factors contributed to the inconsistency of the policy. The inconsistency began with the change in preferences of President Kuchma who, under pressure from Ukrainian and Russian commercial groups (Gazprom, Naftogaz, and Ukrtransnafta), gas lobby interests (Swiss-registered RosUkrEnergo and TNK-BP) and the Russian government, chose to support the temporary reversal of the pipeline. However, despite being the executive leader he did not have the authority over the issue as it was subordinated to the Prime Minister, Viktor Yanukovich, the cabinet, and Oleksandr Todychuk, Special Envoy of the President of Ukraine for the Euro-Asian Oil Transportation Corridor, all of whom at the time opposed the reversal of the pipeline. The changes of the presidential preferences came as a conceptual shift regarding the pipeline. The change in the President's position produces a general shift in how this policy was framed – from being a security issue to becoming a question of immediate commercial feasibility. This case provides rich material for examining my key hypotheses: the role of unclear distribution of powers within the executive in the context of divergent policy preferences and the role of vested economic and political interest groups in contributing to policy inconsistency.

In the sections to follow, I will firstly discuss the international and domestic contexts in which these decisions developed, where I will argue that the reversal of Odesa-Brody was part of the larger shift in Kyiv's foreign policy towards a greater cooperation with Moscow. Next I will explain how de-facto changes in the domestic

political system affected the way in which this decision was made and later implemented. Following this I will offer a brief historical overview of the initial reasons for the construction of the pipeline – which started in 1993 – and argue that resistance within the governmental structures and state energy companies together with a lack of geopolitical support hindered the realisation of Odesa-Brody until 2002. Further, I detail what benefits the northern and southern options for the transportation of oil offered to the various actors involved: the Ukrainian state, leadership, corporate companies, Western governments, Western commercial firms and the Russian state and its energy firms. While the northern option was important for the energy security of the EU and Ukraine and was commercially viable both in the short and long-term, the southern option was beneficial to a small group of people within the Ukrainian government, state energy companies and Russian state and private interests. Lastly, in examining the deliberations of the government decision on 4 February 2004 I will argue that a high degree of intra-executive conflict over policy options and intense pressure from domestic and international lobby groups made the greatest contribution to policy inconsistency regarding Odesa-Brody.

International Context

The period of Kuchma's second term in office (November 1999-January 2005) saw a shift in Ukraine's foreign policy towards greater economic and political cooperation with Russia. This was a result of structural economic factors and, starting in 2002, of political will. In the preceding period conflicts over the division of Soviet property as well as the fear of the Russian capital monopolising the Ukrainian economy kept substantive economic cooperation between the two countries at a minimum. However, following the

financial crisis in Russia and Ukraine in 1998 and with the rising world commodity prices, both countries experienced rapid economic recovery. Ukraine's economic recovery centred on growth in exports of goods produced with below-the-market prices for energy imported from Russia. Consequently, without significant investments into the restructuring of the economy, the Ukrainian leadership had to work closer together with Moscow to continue domestic economic growth. Following the international "Kuchmagate" scandal,²⁷¹ the Ukrainian president was not welcomed by many leaders in the West and with his international legitimacy tarnished, he turned to Moscow for political support.²⁷² Despite these upheavals in foreign policy the President attempted to balance Ukraine's relations with both Russia and the West. Thus, despite increased economic cooperation with Moscow, Ukraine continued its security dialogue with NATO and in 2003 began to negotiate its first Action Plan with the European Union (EU). Crucially, despite Moscow's preferences regarding the US-led war in Iraq, Ukraine participated in the 'coalition of the willing' to bring down the regime of Saddam Hussein. Consequently, even with Kyiv's increased economic cooperation with Moscow, in the military security dimension the Ukrainian authorities were signalling their determination to maintain security independence.

Geopolitically Russia was attempting to reinstate its role as a regional and world

²⁷¹ In November 2000, a number of senior politicians in Ukraine accused President Kuchma of ordering the murder of a journalist, Georgii Gongadze, who investigated corruption amongst Ukrainian politicians. In addition, the US Department of State accused President Kuchma of selling the Kolchuga passive sensor detection system to Iraq, against the international ban on weapons sales to Iraq. Both of the accusations were based on a series of conversations recorded by Kuchma's bodyguard, Mykola Melnychenko. An international scandal erupted following these revelations, referred by many as 'Kuchmagate'. In March 2011, the office of the Prosecutor general of Ukraine reopened a criminal investigation against Kuchma regarding the murder of Gongadze. See "Ukraine's ex-leader Kuchma probed over Gongadze murder," *BBC News*, 22 March 2011; for more information on the Melnychenko recordings see J.V. Koshiw, "Kuchma's 'Parallel Cabinet' The centre of President Kuchma's authoritarian rule based on the Melnychenko recordings," George Washington University, paper presented at the annual Danyliw Research Seminar on Contemporary Ukraine, 12-13 October 2007, University of Ottawa.

²⁷² Margarita M. Balmaceda, *Energy Dependency, Politics and Corruption in the Former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy, 1995-2006* (Abingdon: Routledge, 2008), p. 29.

power. The arrival of President Putin in 2000 marked a new decade in Russian foreign policy. The renewed wealth and strength of the Russian economy drove Moscow to be more assertive in defending its economic and political interests in nearby countries. This ambition translated into Russian attempts to monopolise energy infrastructure around its region, so as to guarantee continued income from energy sales for years to come. To realise its monopoly position, Moscow needed to gain control through its energy companies of oil and gas sources in the Caspian and ensure that its gas and oil delivery infrastructure to Europe did not have rivals. Russian plans of monopolising energy supplies and routes mainly through state companies were not warmly greeted in Europe and especially not in the US. Thus, the US and the EU began to support pipeline projects that diversified European energy supplies. Amongst these projects was Baku-Tbilisi-Ceyhan (BTC) and later Odesa-Brody, which offered an economically and ecologically efficient way of delivering lighter sorts of Caspian crude to the refineries in Central and Eastern Europe. On the background of these geopolitical developments, the development of Odesa-Brody in the northern direction gained not only domestic importance in diversifying oil supplies in Ukraine, but also international significance. Consequently, in the case of the Odesa-Brody pipeline the interests of the Russian oil companies and the Russian state coincided – to maintain Russian oil monopoly on the Ukrainian domestic market and to prevent Ukraine from becoming an independent transportation corridor to Europe.

Domestic Context

The political system during Kuchma's second term was semi-presidential by design, but in practice during his re-election as President he made a significant effort to

usurp power around him through formal and informal means. This produced a presidential system of governance where the leader made nearly all of the decisions regarding domestic and foreign policy. To weaken and by-pass the power of the cabinet and the prime minister (PM), who used to challenge his leadership during the first term, President Kuchma developed an alternative government within the Administration of the President (AP).²⁷³ The cabinet was usually ignored in the making of policy or was pressured into signing agreements it did not support. For example, the agreement regarding the Single Economic Space mentioned earlier, was secretly negotiated by the AP and later PM Yanukovich was pressured to sign it.²⁷⁴ A similar approach was used in the reversal of the Odesa-Brody pipeline, as the subsequent discussion will show. By abusing his decree powers the President not only made use of the structure of the government, its norms and procedures to his advantage, but also made policies regarding the economy and society, selectively intervening in areas of special interest to him.²⁷⁵ Foreign policy making under this arrangement was under the control of the president and his administration which marginalised not only the cabinet from decision-making, but also the National Security and Defence Council (NSDC), which used to be an important policy-making and coordinating institution during 1994-2000.²⁷⁶ Kuchma exercised his powers through the formal means of appointments, dismissals and decrees, and through informal means of blackmail of his political opponents.²⁷⁷

²⁷³ Hans van Zon, "Political Culture and Neo-Patrimonialism Under Leonid Kuchma," *Problems of Post-Communism*, Vol. 52, No. 5, 2005, 12-22: 14; Author's interview with Mikhailo Gonchar, Kyiv, Ukraine, 20-21 September 2011.

²⁷⁴ van Zon, p. 14.

²⁷⁵ Oleh Protsyk, "Constitutional Politics and Presidential Power in Kuchma's Ukraine," *Problems of Post-Communism*, Vol. 52, No.5, 2005, 23-31: 27-29.

²⁷⁶ Oleksiy Syvak, *The Role of the National Security and Defence Council of Ukraine in the Political Decision-Making Process*. Master's Thesis. Monterey, California: Naval Postgraduate School, 2003, p. 59-60.

²⁷⁷ van Zon, pp. 14, 17.

Parties within the parliament did not represent the general public as votes were frequently bought and elections rigged, but rather a 'selectorate' served as vehicles for various oligarchs and Business-Administrative Groups (BAGs) to protect their interests and provide them with immunity from prosecution. Thus, the Dnipropetrovsk group controlled the Trudova Ukraina (Labour Ukraine Party), Donetsk BAG – Partiia Rehioniv (the Party of Regions), while the Kyiv group, most closely linked with President Kuchma, controlled the United Social Democratic Party of Ukraine (SDPU(o)).²⁷⁸ Opposition parties who gained a significant share of votes following the 2002 parliamentary elections were divided and unable to stage a significant opposition to Kuchma's rule. However, despite the lack of organisation, the plurality of interests and groups within the Ukrainian parliament and oligarchic groups indicated that the looming presidential elections of 31 October 2004 would be pivotal. While early on Viktor Yushchenko's presidential candidacy was backed by the reformist political forces in the parliament, parties supportive of the regime, including Kuchma himself, did not select a candidate until mid-April 2004.²⁷⁹ Before this decision the possibility of Kuchma running for a third term was likely, as the Constitutional Court on 30 December 2003 allowed him to run for re-election.

Business interests played a significant role in policy-making during this period both through the formal channels in the parliament and through the influence of policy-making in the Administration of the President. As I mentioned earlier, the AP dominated domestic and foreign policy-making functions. It intervened in the work of the cabinet regarding any issue it viewed as necessary. With its ability to change any policy it wanted – and

²⁷⁸ Margarita M. Balmaceda, *Energy Dependency, Politics and Corruption in the Former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy, 1995-2006*, p. 42.

²⁷⁹ Jan Maksymiuk, "Oligarchic parties back Yanukovych," *RFE/RL Belarus and Ukraine Report*, 8 August 2004.

provide administrative protection for the businesses, known as 'krysha' (roof) - the AP became a "focus of business lobbying" for various BAGs and oligarchs.²⁸⁰ The effect of this political and interest articulation system was the capture of state institutions by various BAGs. However, this capture took place with the approval of the president and was used as a "currency of exchange" between the executive branch and various business groups, "in the sense that temporary control over state enterprises or over rent-making activities associated with them could be temporarily turned over to one or another clan in exchange for political and economic support."²⁸¹ This was especially true of the state energy companies, like Naftogaz and Ukrtransnafta, whose top managers were often closely associated with a given interest group. As will be discussed later in the chapter, Naftogaz was captured by the personal interests of its director, Yurii Boyko and later by Stanislav Vasylenko, head of Ukrtransnafta, following which they were able to carry out the anti-diversification agenda and prevent the realisation of the Odesa-Brody pipeline in the northern direction.²⁸² The immediate effect of this relationship was that they sabotaged the recalibration of the Odesa-Brody pipeline in the northern direction by preventing the implementation of the agreements with Poland and the EU. Overall, this proximity of special interests to state decision-making promoted policy that did not benefit the state in the long run, but instead promoted the narrow interests of the individuals like Boyko, Vasylenko, and Pinchuk and the regime that they supported. Unlike the other cases in this study, the presence and influence of lobby groups on decision-making was extremely important in contributing to overall policy inconsistency.

²⁸⁰ Rosaria Puglisi, "The Rise of the Ukrainian Oligarchs," *Democratization*, Vol. 10, No. 3, 2003, 99-123: 114.

²⁸¹ Margarita M. Balmaceda, *Energy Dependency, Politics and Corruption in the Former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy, 1995-2006*, p. 89.

²⁸² *Ibid*, p. 90.

Historical Background

Politics of Construction

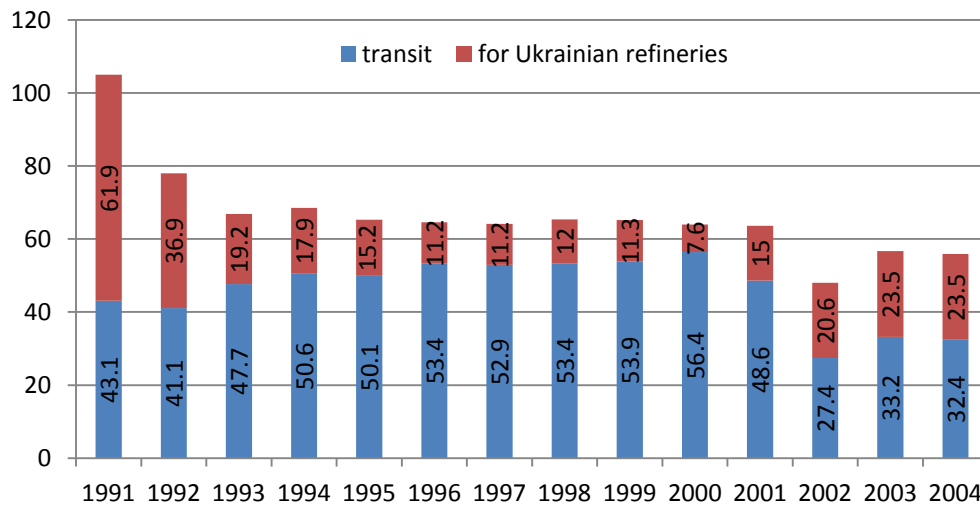
The Odesa-Brody pipeline complex was built to diversify the supplies of oil on the Ukrainian market so as to stabilise energy prices and supply, decrease the monopolistic ability of Moscow to increase prices to its liking and provide Central and East European states with additional volumes of oil. During the early 1990s the volumes of Russian oil deliveries and transit through Ukraine decreased drastically (see Fig. 4.1). Ukrainian refineries operated on low volumes of oil and Ukrainian consumers suffered from the lack of stable energy supplies that translated into a lack of electricity, fluctuating prices for gasoline and unstable supplies of hot water to households, amongst others. Since Moscow was the only energy monopoly operating on the Ukrainian market at the time, it had absolute control over the prices it could charge Ukrainian industrial entities and the government. With the break-up of the Soviet Union and Russian economic liberalisation, Moscow rapidly raised the prices for oil supplied to Kyiv.²⁸³ This monopolist position also created a potential for Moscow to use its market power in resolving political differences between the two states.²⁸⁴ In light of this absolute dependence on Russian oil supplies, in 1992 the Institute of Oil Transportation released its technical and economic evaluation for the construction of the Odesa-Brody pipeline to transport non-Russian oil.²⁸⁵

²⁸³ Paul D'Anieri, *Economic Interdependence in Ukrainian-Russian Relations* (Albany: State University of New York Press, 1999), pp.72-74.

²⁸⁴ For example during negotiations over Ukraine's renouncement of nuclear weapons, Moscow decreased the supply of oil to Ukraine as a way to pressure Kyiv to accept its conditions regarding weapons withdrawal.

²⁸⁵ The pipeline complex (Euro-Asian Oil Transportation Corridor) planned to carry up to 14.5m tonnes of oil annually to European markets of which 7m would be supplied to the Nadvorniansky and Drohobych refineries close to Brody in Western Ukraine for domestic use. The rest of the 7.5m tonnes of oil were to be shipped to refineries in Slovakia, the Czech Republic and Hungary, which at the time also experienced a deficit of crude oil (see Fig. 4.2). On 15 January 1993 and 15 February 1993, Prime Minister Leonid Kuchma decreed to construct the Odesa-Brody pipeline and oil terminal Pivdennyi near Odesa. This decision was reached as a consensus in the government and as a strategic project it moved

Fig. 4.1: Volumes of Pipeline Transportation of oil in Ukraine (million tons)



Source: *National Security and Defence*, No.6, 2009, Razumkov Centre, p. 27.

Early difficulties

Throughout the 1990s the construction of the Odesa-Brody pipeline was delayed due to the lack of prioritisation by the government in implementing this project as well as resistance from actors charged with the implementation. The construction of the Odesa-Brody complex was meant to begin with the construction of terminal Pivdennyi, which would allow lading the oil to and from the pipeline and had a storage capacity of 200mcm.²⁸⁶ The construction of the terminal was delayed until the late 1990s in large part due to administrative difficulties posed by the Odesa city administration – an environment which produced a lack of transparency and opportunities for corruption. Thus, although during the 1990s Ukrainian authorities held talks with the European Bank

under the oversight of the National Security and Defence Council (NSDC) and the president. Leonid Nester, “‘Odesa-Brody’ budet robotat’ v reversnom rezhime,” *Ekonomika*, 29 Avgusta 2006; Alla Yeremenko, “Tranzitnye strasti -3,” *Zerkalo Nedeli*, 20-26 Marta 1999; Taras Stetskiv, “Smozhet li Ukraina konvertirovat’ svoje geostrategicheskoe prostranstvo?” *Zerkalo Nedeli*, 30 Sentiabria-6 Oktiabria 2000; Author’s interview with Mykhailo Gonchar, London, 16 July 2011.

²⁸⁶ The project cost of the terminal was estimated at \$185m, whereas the construction of the pipeline was estimated at \$835m. See “Brody-Odesa: Results of reverse operation of Brody-Odesa oil pipeline,” *TNK-BP Ukraine*, 2007; “‘Odesa-Brody’ zrobyv krok do Evropy,” *Ukrainska Pravda*, 16 Sichnia 2004.

for Reconstruction and Development (EBRD) that usually financed infrastructure projects in the former Soviet Union (FSU), the government never came up with a concrete proposal and the EBRD was reluctant to invest into Ukrainian energy companies that lacked transparency and aided corruption. This was a sign of the initial opposition of the cabinet and pipelines companies (Druzhba and Prydniprovski) which were burdened with financing of the Odesa-Brody pipeline and, since they shipped Russian oil, it was in their interest to prevent policies that could disrupt Russian oil volumes to Ukraine.

Problems with the construction and realisation of the Odesa-Brody complex were in part the product of the disarray in the energy sector in Ukraine, in which government policy in regard to technical and tariffs policies were uncoordinated. To resolve this structural problem on 25 May 1998 the Cabinet of Ministers created an integrated state energy company, Naftogaz, with 100% state ownership and subordinated to the Cabinet of Ministers. Naftogaz united under its auspices Ukraine's two oil transit companies, Druzhba and Prydniprovski, and instructed Druzhba to finish the construction of the Odesa-Brody pipeline, while Prydniprovski was charged with the construction of terminal Pivdennyi. Druzhba was headed by Leonid Buniak and Prydniprovski by Stanislav Vasylenko. Both Buniak and Vasylenko opposed the construction of Odesa-Brody, delaying its construction.

It is important to note key actors behind the idea of constructing Odesa-Brody. As I mentioned earlier this was a strategic project devised in the halls of the NSDC under the leadership of its Secretaries, firstly Volodymyr Horbulin (October 1994-November 1999) and later Yevhen Marchuk (November 1999-June 2003). To facilitate the construction of the pipeline the NSDC issued its resolution on 31 October 2000 regarding the importance of completing the pipeline and following this resolution President Kuchma issued a

decree “On the decision of the NSDC regarding immediate measures to activate Ukraine’s participation in the Euro-Asian Oil Transportation Corridor.” Aside from these more visible policy-makers, a group of officials within different state agencies who worked on the problem of Ukraine’s energy security urged the completion of the Odesa-Brody pipeline, among them Serhii Pyrozhkov (Director of the National Institute for Strategic Studies, Deputy Secretary of NSDC), Valery Shuliko (Deputy Head of the National Committee on Oil and Gas), Mykhailo Gonchar and Oleksandr Moskalets (advisors to the Secretary of the NSDC), and Oleksandr Todiychuk (Director of the Institute of Oil Transportation).²⁸⁷

Executive unity

With the appointment of Anatolii Kinakh as the Prime Minister of Ukraine (May 2001 – November 2002) the realisation of the Odesa-Brody complex received full support from the cabinet.²⁸⁸ Thus, from this point onward the executive was united on completing and commercialising Odesa-Brody in the northern direction. On 21 June 2001 the cabinet created a working group to systematically analyse questions regarding the organisation and functioning of the Odesa-Brody pipeline. The group was formed in response to a proposal by the US to evaluate the Ukrainian oil route, the avenues for its financing and the contracting of the pipeline for the transport of oil.²⁸⁹ On 23 June 2001 the cabinet formed the Joint Stock Company “Ukrtransnafta”.²⁹⁰ Shares of the newly-created

²⁸⁷ Author’s interview with Mykhailo Gonchar, London, 16 July 2011.

²⁸⁸ Author’s interview with Mykhailo Gonchar, Kyiv, Ukraine, 20-21 September 2011.

²⁸⁹ *Order of the Cabinet of Ministers of Ukraine*, 21 June 2001, N-244-p.

²⁹⁰ The decision of the NSDC from 31 October 2000 foresaw the creation of Ukrtransnafta that was meant to unite two state oil transportation companies to better meet the national interests of Ukraine. See Alla Yeremenko, “Filosofiiia ‘Ukrtransnafty’ - balans interesov,” *Zerkalo Nedeli*, 29 Sentiabria-5 Oktiabria 2001.

company were state-owned and transferred into the capital stock of Naftogaz.²⁹¹

Ukrtransnafta was formed to operate and manage the pipelines of Ukraine with three specific goals in mind that directly related to the Odesa-Brody project:

“to promote Ukrainian oil pipeline integration with European oil transport systems; to create attractive business conditions for foreign partners to invest in oil pipeline development; [and] to implement a new business approach to make the Odesa-Brody Pipeline more commercially attractive.”²⁹²

On the insistence of PM Kinakh on 24 July 2001 President Kuchma created the post of 'Special Envoy of Ukraine for the Euro-Asian Oil Transportation Corridor' and appointed as the envoy Oleksander Todiychuk, who by then was selected as a head of Ukrtransnafta and was part of the government working group on commercialisation of the Odesa-Brody pipeline. During the first meeting of the shareholders on 21 November 2001, he was confirmed to head the Board of Directors of Ukrtransnafta (composed of 12 members). Oleksandr Todiychuk headed the Institute of Oil Transportation prior to coming into Ukrtransnafta and undertaking the government post and was known as a supporter of the Odesa-Brody project and its strategic meaning for Ukraine, both in regards to the diversification and transit potential.²⁹³ It was after all upon his institute's recommendation in 1992 that the construction of the pipeline was undertaken.

The duties of the Special Envoy of Ukraine vis-a-vis other government and presidential agencies were not clear at first, but on 19 August 2002, president Kuchma clarified its functions by outlining that: the Special Envoy was directly responsible to the President of Ukraine; he was the ultimate person responsible for the internal organisation

²⁹¹ Ukrtransnafta united two formerly independent state joint-stock companies, Druzhba (Friendship) Main Oil Pipeline (headquartered in Lviv) and Prydniprovski Main Oil Pipeline (headquartered in Kremenchuk). The management of Odesa-Brody was added to its assets. Under this arrangement Ukrtransnafta gained significant independence from Naftogaz, which would be changed by Boyko and Valylenko in August 2003.

²⁹² Website of the OJSC Ukrtransnafta from 2002, see *Forum of the Oil and Gas Complex of Ukraine*,

< <http://www.ngbi.com.ua/td/eng/about.html> >.

²⁹³ Author's interview with Mykhailo Gonchar, Kyiv, Ukraine, 20-21 September 2011.

of the information and events regarding EAOTC and also represented the project abroad; he took part in ministerial meetings and worked together with the Administration of the President, Cabinet of Ministers and other state agencies in supporting and realising his tasks; he reported to the president on a quarterly basis and informed the prime-minister monthly about the progress regarding the project.²⁹⁴ Thus, by appointing Todiychuk to the post of the Special Envoy and the head of Ukrtransnafta, Kuchma created a presidential, executive vertical regarding the strategic realisation of the Odesa-Brody complex.

The construction of the pipeline was completed on 19 August 2001 and the first stage of the Pivdennyi oil terminal became operational on 19 December 2001.²⁹⁵ Consequently, upon the completion of the pipeline, the reorganisation of the oil transportation sector and streamlining of the executive responsibilities, the president and the cabinet took measures to help make the Odesa-Brody complex commercial and create a pan-European Euro-Asian Oil Transportation Corridor extending from Baku (Azerbaijan) – Supsa (Georgia) – Odesa–Brody (Ukraine) and to European markets.

Politics of Oil Supply

Although in the early 1990s Ukrainian authorities considered various sources of non-Russian oil for the Odesa-Brody pipeline, including from the Middle East, the Gulf and from the Caspian, by late 1990s the government concentrated its efforts on Caspian oil. Ukrainian refineries had been receiving Russian and Kazakh oil, transported through Russian pipelines and through the Black Sea, since the time of the Soviet Union. This

²⁹⁴ *Decree of the President of Ukraine*, 19 August 2002, N 722/2002.

²⁹⁵ The pipeline stretched over 674km and had a diameter of 1020mm. The loading capacity of the terminal was 9-14.5m tonnes. In August 2002 the complex was tested when 30,000 tonnes of Caspian oil was delivered to Pivdennyi by the tanker *Minerva Concert* with the deadweight of 100,000 tonnes. See Hanna Liuta, "Terminal Pivdennyi otkruzil pervuiu kommercheskuiu neft," *Zerkalo Nedeli*, 1-7 Fevralia 2003.

choice for Caspian sources was also reinforced by the geopolitical situation around the shipment of oil to the West. Western companies had been prospecting and developing oil fields in the Caspian Sea since the break-up of the Soviet Union and upon major oil finds they were looking to increase transit routes for this new Great Caspian Oil (GCO).

Ukraine proposed a route to ship the oil from Baku to the Georgian port of Supsa and then through Odesa-Brody towards Europe. The construction of the Ukrainian pipeline and the terminal were underway and costs were well-under \$1bn, while the construction of extensions to Poland and Germany if necessary would not exceed another billion. However, even those additions were not immediately necessary since Odesa-Brody could be linked to an existing European pipeline, which was operating in low capacity, Druzhba-Adria, that would ship the oil directly to refineries in Slovakia, the Czech Republic and Southern Germany and possibly towards the deep sea port of Omisalj in Croatia, enabling transcontinental deliveries. However, the Turkish government proposed to construct the pipeline for GCO through its territory, stretching from Azerbaijan, through Georgia and Turkey (Baku-Tbilisi-Ceyhan).

The Turkish route was favoured by the American government from the beginning due to Ankara being a strategic partner of the West and a member of NATO, thus guaranteeing that these transit routes would translate into a long-term geopolitical presence for the US in this resource-rich region.²⁹⁶

²⁹⁶ On 17 August 1998 the US Trade and Development Agency (TDA) provided \$750,000 for the feasibility study of the Odesa-Brody pipeline, while the contractor for the study, Gulf Interstate Engineering of Houston, committed to providing an additional \$750,000. See. "US to finance pipeline feasibility study," *The Ukrainian Weekly*, 30 August 1998. However, when during 1998-1999 the Ukrainian government began to present its route to Western oil companies they took a keen interest, but allegedly due to political pressure had to refuse. On 8 February 1998, the vice-president of BP-Amoco, Richard Nilton, said, following the presentation by the MFA of the Odesa-Brody project that the Ukrainian route for the GCO was considered only as a substitute and the Turkish route was given primacy due to political pressure. See "Neft Kaspiiskaia, proekt Ukrainskii, interest Britanskii," *Zerkalo Nedeli*, 6-12 Fevralia 1999.

The US and Turkish governments had been lobbying for the construction of the BTC pipeline as a main route for the GCO. Both the Azeri government and transnational oil majors were reluctant to back the project and conditioned their involvement on more beneficial concessions and lower transit fees.²⁹⁷ After a period of negotiations and US diplomatic and political pressure to make the pipeline commercially feasible, the Intergovernmental Agreement of the Baku-Tbilisi-Ceyhan Pipeline Project was signed by Azerbaijan, Georgia and Turkey during the summit of the Organisation for Security and Cooperation in Europe on 17-19 November 1999 in Istanbul, which finalised the selection of the BTC as the main transit route for the GCO.²⁹⁸ In light of this development the EAOTC project gained more significance not as a pipeline to deliver new Caspian oil per se, but as a land-based route for existing oil shipments to Europe that were shipped through the Bosphorus.

Odesa-Brody: Northern Route

Despite the realisation of the BTC pipeline and the support that it received from the West, the US and the EU were also interested in realising the Ukrainian project and making it commercially attractive. Western governments were interested in the Odesa-Brody pipeline and its extension, since it would help to diversify European, including Ukrainian, energy markets, contributing to greater energy security on the continent. Russian oil supplies dominated domestic markets of many Central and East European states, while Odesa-Brody offered Caspian producers the ability to bypass Russian

²⁹⁷ The Turkish route, stretched over 1040 miles, was estimated to cost around \$4bn and go through territory of high seismic activity and political instability. See Jofi Josep, *Pipeline Diplomacy: The Clinton Administration's Fight for Baku-Ceyhan*, Case Study 1/99, Woodrow Wilson School of Public and International Affairs, Princeton University. Some estimated that to become financially viable the BTC project required annual subsidies of some \$365-550m per year. See David Ivanovich, "Pumped up: oil firms eye Caspian area", *The Houston Chronicle*, 28 November 1997, p. 1.

²⁹⁸ Tuncay Babali, "Implications of the Baku-Tbilisi-Ceyhan main oil pipeline project," *Perceptions*, p. 40.

pipelines in delivering their crude oil. To this end the US and the EU directed funding and political support. During 2002-2003 the efforts of the Ukrainian government were finally met with the necessary political support in Europe, while preliminary contracts signed with a number of refineries in Central and Eastern Europe and Caspian oil traders indicated that oil could start being transported beginning of 2004. However, internal struggles began to take root within the Ukrainian energy companies, aided by lobbying efforts of the TNK (later TNK-BP) and the Russian government. This struggle was aimed at derailing the realisation of the northern route and changing the preferences of the president regarding the pipeline's use.

Interests of the EU

The EU was interested in the Odesa-Brody pipeline and the possibilities it offered primarily for two reasons: to meet its increasing domestic demand for lighter crude from the Caspian region, and to redirect existing delivery routes away from the Turkish straits. By the early 2000s it was clear that production of oil in the North Sea, Europe's leading oil source, was in decline and it was estimated that by 2015 it would be reduced to 87% whereas in the Caspian the drilling would be increased by 87%. In addition, starting in 2005, the EU was meant to introduce harsher regulations on the presence of sulphur in oil products, which encouraged EU companies to use lighter Caspian crude and save on the costs of refining Russia's heavy-sulphur Urals blend.

Traditionally Caspian oil reached Europe by tanker shipments through the Bosphorus and Dardanelles and was fed into pipelines of southern European states or delivered to oil terminals in Europe. However, by 2003 prices of tanker shipments through the Turkish straits increased by 2-3 times, primarily due to the efforts of the Turkish government to regulate tanker traffic and to prevent environmental disasters and

degradation of its ecological environment near Istanbul, Turkey's largest metropolis. With the increase of tanker shipments through the Turkish straits, the number of environmental disasters from oil spills also increased.²⁹⁹ Tighter regulations of traffic meant that vessels would have to sit at ports for days, contributing to collisions and delays in deliveries. Thus, pipelines like Odesa-Brody could divert oil shipments to European refineries from tankers to pipeline transport, reducing the environmental and financial costs of vessel collisions and oil spills.

Interests of Ukraine

The interests of the Ukrainian government in relation to Odesa-Brody did not change over this period. The government still saw the need for this route for diversification of the domestic Ukrainian market and for increasing its proceeds from oil transit to Europe. In regards to internal consumption, Russia still remained Kyiv's monopoly oil supplier, able to keep oil prices high on the Ukrainian market, irrespective of world crude trends. In addition, Ukraine's revenues from the transit of Russian oil were also decreasing due to the policies carried out by state oil companies and the Russian government. Thus, during this period the policy of Transneft, Russia's state transit company, was to reduce Russia's dependence on neighbouring countries for the transit of its oil and gas to Europe. President Putin made this issue into a national priority. At the same time the Kremlin carried out discriminatory tariff and taxation policies in regards to exports to Ukraine. Thus, from 1st July 2001 Russia introduced a 20% value added tax on products exported to Ukraine coupled with regular increases in export duties on oil. High

²⁹⁹ The biggest collisions in the Bosphorus were Nassia (1994) and Volgoneft-248 (1999). During 1995-2004 traffic through the Bosphorus grew to 45,000- 50,000 vessels per year with about 5,000- 10,000 of them being oil and liquefied natural gas tankers. Mehmet E. Birpinar, Gonca F. Talu, Gonul Su and Mehmet Gulbey, "The Effect of Dense Maritime Traffic on the Bosphorus Strait and Marmara Sea Pollution," *Ministry of Environment and Forestry, The Regional Directorate of Istanbul*, pp. 4-5.

taxation discouraged Russian oil companies from shipping to and through Ukraine and instead encouraged them to seek and build alternative transit routes which translated into an underutilisation of oil refineries in Ukraine. The example of the Suhodolnaia-Rodionovskaia pipeline is a case in point. Throughout the late 1990s Transneft was asking Kyiv to upgrade and invest \$50m into Prydniprovski oil pipelines and in exchange Moscow would not build a bypassing pipeline on its territory. After the upgrade Transneft still decided to build the bypassing pipeline, Suhodolnaia-Rodionovskaia, decreasing volumes of oil shipped through Prydniprovski by a half. Considering that Ukraine's oil transit capacity is 114m tonnes on entrance and 70m tonnes on exit, and that volumes of Russian transit through Ukraine were continuously decreasing (by 2003 Ukrainian transit capacity was used at 40%), the situation required Kyiv to consider alternative sources of oil for transit and as such realising the full potential of Ukraine's geographical position and transit capacity. However, in addition to the economic interest of this project, the government also tied Ukraine's European integration with the realisation of this pan-European project. Similarly, the EU considered Odesa-Brody to be the most important project it had with Ukraine at the time.

Commercialisation of the Northern option

The US government took a keen interest in aiding the commercialisation of the Odesa-Brody complex. In his first visit to Ukraine on 28 January 2002, Steven Mann, senior advisor for the Caspian Basin Energy Diplomacy Commission at the Department of State, noted that the US wanted to work with the government of Ukraine to make Odesa-Brody a commercially attractive project and its interest in promoting this project lay in ensuring that European markets were well-diversified and not monopolised by a single

source.³⁰⁰ As mentioned earlier, to this end the TDA on 23 November 2001 provided a grant in the amount of \$125,000 in addition to the earlier grant of 1998. On 29 January 2002 Ukrtransnafta, using some of the TDA funds, contracted a well-known international consultant, Edward C. Chow, to provide strategic advice on the commercialisation of the pipeline and its adoption to Western standards. The US-based Halliburton Kellogg Brown and Root and Cambridge Energy Research Associates were also hired by Ukrtransnafta and Polish PERN (Przyjazn SA, oil pipeline operator) to research the possibilities and options for the commercialisation of Odesa-Brody. They presented their findings at the working group of Ukraine, Poland, US and the EBRD on 10 April 2002.³⁰¹ Conclusions from these initial studies pointed out that there was a demand for additional Caspian oil in Europe and it would increase in years to come. However, both oil suppliers and refineries in Europe were tied to existing long-term contracts, while many refineries in Central and East European states, especially in Poland, were adapted to the Russian Urals blend of oil and would need investments to switch. Thus, predictions for the northern use of the pipeline suggested that it would be used at low volumes at first with increased use in the future.³⁰²

Having received this initial green light for the prospect of a long-term requirement for the pipeline, the Ukrainian leadership in charge of the project began to take further steps in making the route commercially attractive. Unlike the majority of pipelines that are built with the participation of oil owners or major international oil companies that champion the construction, Kyiv had neither. Thus, although the Odesa-Brody pipeline was built with the tacit political support of Azerbaijan and Kazakhstan, who were looking

³⁰⁰ Alla Yeremenko, "Svet v kontse truby? Zametki o visite Amerikanskogo chinovnika v Ukrainu," *Zerkalo Nedeli*, 2-8 Fevralia 2002.

³⁰¹ *Ukrtransnafta*.

³⁰² Alla Yeremenko, "Edvard Chou: vazhno dlia Ukrainy...vazhno dlia Evropy," *Zerkalo Nedeli*, 27 Aprelia -11 Maia 2002.

for alternatives to Russia's ways of accessing the European market, no hard commitments in oil supplies through the pipeline were made. To make the pipeline commercial, Kyiv had to contract the oil from Caspian suppliers and also contract domestic and European companies that would have the interest and capacity to downstream these supplies. In order to make these stakeholders interested, the government had to make its transit prices and the route competitive. For this purpose Ukrtransnafta in September 2002 carried out a tender to select a Project Developer for the Odesa-Brody complex and in December of the same year PriceWaterhouseCoopers and Chanoil were announced as the winners.³⁰³ These companies worked together on developing a business plan suggesting appropriate tariffs for the government and ways to develop full exploitation of the pipeline while maximising Ukraine's transit potential. Over twenty international presentations on the Odesa-Brody project were made by Ukrainian officials between 2001 and 2003³⁰⁴ and in 2003 support began to materialise on political and diplomatic levels from Poland and the European Union.

Concrete Polish involvement in Odesa-Brody began, following the presentation of a feasibility study by the US firm Privatisation Partners and Kyiv's Institute of Oil Transportation in early February 2000 (carried out using the funds from the TDA grant). The Polish government and oil transportation companies were interested in the extension to Plock and Gdansk and reducing Polish dependence on Russia, considering that Poland imported 90% of its oil from Russia. However, doubts existed regarding the profitability of the pipeline, since Polish refineries were designed for Russian Urals crude and the

³⁰³ Alla Yeremenko, "S chem voshla Ukrtransnafta v 2003 god," *Zerkalo Nedeli*, 18-24 Ianvaria 2003.

³⁰⁴ Yuliia Kysel'ova, "Revers. Abo insha storona medalii," *Ukrains'kyi Tsentri Nezaleznykh Politychnykh Dolsidzhen'*, No. 29/324, 28 Lypnia 2003.

pipeline would require substantial investment of \$400-537m.³⁰⁵ But, with the support of the EU the project could receive both financial backing and political guarantees, helping also to entice Caspian oil producers. On 12 May 2003 the European Commission (EC) adopted an official document regarding the energy policy of the enlarging EU in which the Odesa-Brody complex and extension of the pipeline to Plock were recognised as important elements of European energy security. Further, on 27 May 2003 in Brussels a Joint Declaration was signed by the Cabinet of Ministers of Ukraine, the Council of Ministers of the Republic of Poland and the European Commission for the Support of the Euro-Asian Oil Transportation Corridor Project. To this end the EC also committed through the INOGATE programme to provide €2m to aid in the development of a business plan and to assist with structuring the project and arranging for financing.³⁰⁶

The EU's diplomatic and political support for this project should not be underestimated, as at the time the EC proclaimed Odesa-Brody-Plock a pan-European interest, integrating Ukraine's pipeline system with European oil transport systems. Thus, in addition to the signing of the declaration, a trilateral expert working group was created between the governments of Ukraine, Poland and the EC to streamline the work and commercialise the pipeline in the near future. This initiative was also supported by the US government (which the Ukrainian delegation had visited and presented the project in Washington D.C. between 27 January and 3 February 2003).³⁰⁷ Consequently, starting in 2003 the transportation of Caspian oil in the northern direction began to receive major geopolitical support.

³⁰⁵ 2004 EU Accession: *Implications for Ukraine's Relations with Its Neighbours*, Kyiv: EastWest Institute and, Institute for Regional and Euro-Integration Studies, 2004, p. 72; Alla Yeremenko, "Chto tolku budet Ukraine ot truby, esli neft potechet inym ruslom?" *Zerkalo Nedeli*, 26 Fevralia - 3 Marta 2000.

³⁰⁶ *Status Report: Technical, Economic, Financial and Legal Advisory Support for the Development of the Project Concept for the Odesa-Brody-Plock Oil Transportation System*, INOGATE Programme. Both, the Odesa-Brody pipeline and oil terminal Pivdennyi, were audited earlier through the INOGATE funding.

³⁰⁷ Hanna Liuta, "Terminal Pivdennyi otkruzil pervyiu kommercheskuu neft," *Zerkalo Nedeli*, 1-7 Fevralia 2003.

During the meeting in Brussels on 27 May 2003, PriceWaterhouseCoopers, together with Channoil, presented a business plan for the Odesa-Brody complex. The Odesa-Brody pipeline had three major ways to further develop and link up with the European market (see Fig. 4.2). The first route was *Western*, where the Caspian oil would be transported to refineries in Slovakia, Czech Republic and southern Germany. A second route or *Nothwestern route* would continue towards Plock (in Poland) and then through the existing pipeline Plock-Gdansk with the possibility of further extension towards the German deep-sea port of Wilhelmshaven. This required the linking pipeline between Brody and Adamova Zastava to be constructed on Polish territory and, to reach Wilhelmshaven, further construction of the pipeline from Schwedt to Wilhelmshaven,³⁰⁸ creating a route of Odesa-Brody-Plock-Schwedt-Wilhelmshaven. A third or *Northern* route would ship the oil to Belarus and the Baltic states.³⁰⁹ Thus, the presented business plan proposed to develop three parallel phases for the project:³¹⁰

Phase 1: delivery of oil to the oil refineries: Kralupy (Czech Republic), Vogtburg, Ingolstadt (Germany)

Phase 2: delivery of oil to refineries: Karlsruhe (Germany) and Schwechat (Austria)

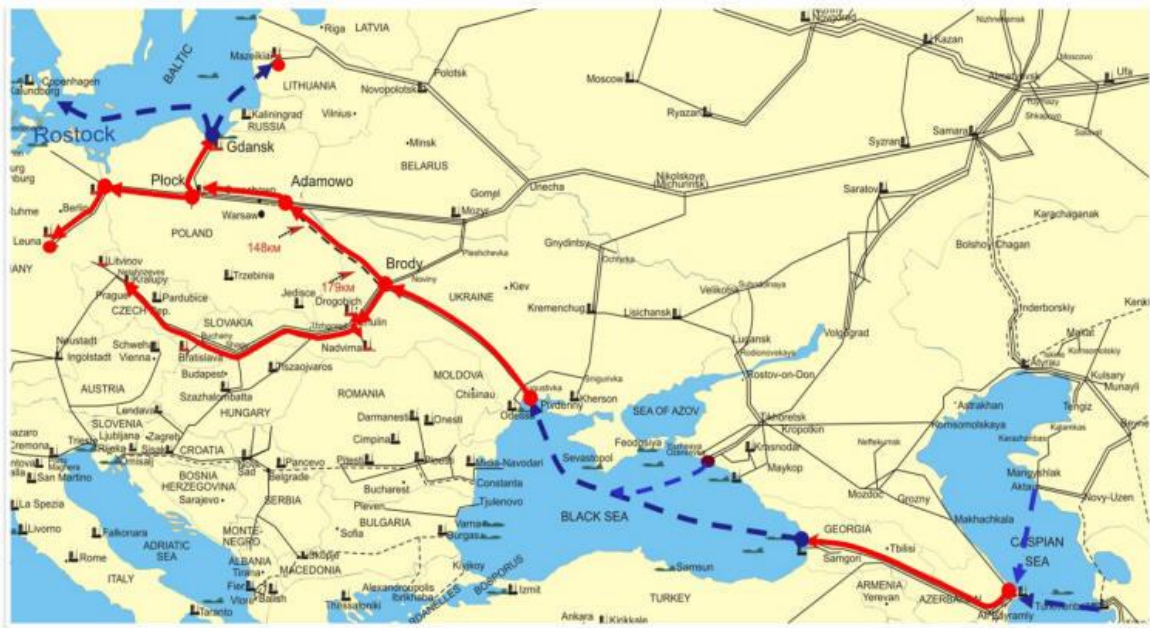
Phase 3: extension of the pipeline to Plock (Poland) with further construction of a pipeline to Wilhelmshaven

³⁰⁸ Plock and Schwedt were already connected with the Northern Druzhba pipeline. In addition, the construction of the pipeline between Schwedt and Wilhelmshaven was planned by the German authorities during 1990s and received all of the municipal approvals. The 300km link from Plock to Wilhelmshaven was projected to cost about \$1m.

³⁰⁹ Mykhailo Gonchar, "Ukrainskii neftetransport: vyzovy i vozmozhnosti," *NOMOS Center*, 29 Maia 2005.

³¹⁰ The realisation of the plan for phases 1 and 2 did not require the construction of new pipelines, since the project would link Odesa-Brody to existing Druzhba pipelines that would transport oil to these refineries in Central and Eastern Europe. These plans were made to optimise the use of existing dormant pipelines and refining capacity in the above-mentioned countries and allow for a more economical shipment of existing Russian crude and potential Caspian oil. In this way Ukraine, Slovakia, Czech Republic and Poland would increase oil transportation volumes and thus income as well as further diversify oil supplies, contributing to their, and broader European, energy security, considering that these countries were set to become members of the EU on 1 May 2004. See Mykhailo Gonchar, "Ukrainskii neftetransport: vyzovy i vozmozhnosti," *NOMOS Center*. "PriceWaterhouseCoopers: Odesa-Brody is Advantageous, Everyone is Gaining Here. Basic Theses of the Concept of the Project's Business Plan," *Caspian Energy International Media Group*.

Fig. 4.2 Map of the Euro-Asian Oil Transportation Corridor



Source: Sarmatia, < <http://sarmatia.com.pl/en/eaotc-project/goals/> >.

On 4 July 2003 Ukrtransnafta signed a cooperation agreement with the Slovakian oil transportation company Transpetrol about cooperation regarding the efficient use of existing pipeline capacities of both states.³¹¹ The Czech government also warmly welcomed the development of the OBP project, as it meant creation of alternative pipelines and the extension of oil transportation routes to refineries in Central Europe. In addition, on 26 November 2003, the governments of Ukraine and Poland signed an agreement regarding the use of the transportation system of Odesa-Brody and its integration with Polish pipelines.³¹² This agreement paved the way for concrete cooperation between the Polish and Ukrainian companies that would be in charge of developing the Odesa-Brody-Plock route. Following this agreement, the governments of Ukraine, Poland and the EC again issued a communiqué where progress in the realisation of the OBP project was noted and once again the sides repeated their commitment to the

³¹¹ Alla Yeremenko, "Dogovor dogovoru rozn'," *Zerkalo Nedeli*, 7-13 liunia 2003.

³¹² Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland regarding the use of capacities for the transportation of hydrocarbons "Odesa-Brody" and its integration with Polish capacities, 26 November 2003.

project. However, in the meantime when the cooperation between Ukraine and EU took a strategic direction and the EAOTC project began to gain real substance, an alternative plan for the use of Odesa-Brody began to find its supporters in the state energy companies of Ukraine, notably Naftogaz and Ukrtransnafta.

Thus, when the Ukrainian officials in charge of the pipeline were in Brussels in May 2003 establishing a strategic dialogue with the European Union in support of this project, for the first time a possibility of the reversed use of the pipeline began to take root. This happened when information appeared in the press a few days earlier stating that the deputy director of Ukrtransnafta, Stanislav Vasylenko, and the head of Naftogaz, Yurii Boyko, had signed a protocol of intentions with TNK-BP- about the use of the pipeline to transport Russian oil - without any official agreement from their governments. Ukraine's Special Envoy, Todiychuk, had to rebuff the importance and legality of this protocol while in Brussels, but this event did not add to the confidence of the foreign partners in the actions of the Ukrainian government and Europeans began to pay close attention to the political battle that soon took place inside Ukraine regarding the use of the pipeline.

Brody-Odesa: Southern Route

The option to use the Odesa-Brody pipeline in the reverse direction was initiated by Russian oil majors in 2001 and soon their efforts were supported by the Kremlin. In this endeavour the interests of Russian oil companies, the Russian state pipelines monopoly Transneft and the Russian government went hand-in-hand with the primary goal of preventing the diversification of the Ukrainian market and blocking Ukraine's attempts at becoming an alternative direct transporter of non-Russian oil to Europe. To make the reverse use of the pipeline possible, Russian oil companies and the government found

backing within the top ranks of the Ukrainian leadership. Their key supporter within the Ukrainian government was Yuriy Boyko, who headed the state energy monopoly Naftogaz of Ukraine, and since 3 August 2003 had also been appointed by the President as the First Deputy Minister of Fuel and Energy. Boyko once headed one of the Ukraine's largest refineries (Linos in Lysychansk) and helped to sell this state company to TNK. Formally, Boyko together with Stanislav Vasylenko, deputy head of Ukrtransnafta, became articulators of the reverse flow plan, while the president's son-in-law, Viktor Pinchuk, became the informal direct link, enabling lobbying efforts by the Russian companies. With the help of these individuals, commercial lobbying and pressure from the Russian government the preferences of President Kuchma changed in favour of the reversal plan.

The Southern Route: Origins and Stakeholders

The origins of the Russian activism regarding the reversal of the Odesa-Brody pipeline can be explained by the steep efforts to complete and commercialise the pipeline in the northern direction, undertaken by PM Kinakh with the start of his premiership. Upon the completion of the Odesa-Brody pipeline in August 2001, while the terminal Pivdennyi was still under construction, Vagit Alekperov, the president of LUKOIL, one of Russia's major oil companies, proposed that Ukraine allow LUKOIL to use the pipeline in the reverse direction from Brody to Odesa to ship Russian oil for export around the world.³¹³ Thus, some of the oil going through the Druzhba pipeline would be diverted to Brody and shipped to Pivdennyi, followed by tanker transportation to the Mediterranean and beyond. In October 2002, vice-president of Yukos, Mikhail Yelfimov, made a similar proposal, arguing that the Bosphorus could allow for the transit of an

³¹³ Oleg Chernitskii, "Ukrainu razvernuli: LUKOIL khochet eksportirovat' bol'she nefti cherez Odessu," *Vremia Novostei*, 22 Avgusta 2001.

additional 4-5m tonnes a year in tanker shipments and unless Ukraine took up the proposal the pipeline was likely to remain empty for the next 3 years.³¹⁴ Both of the proposals were rejected by the government and deemed as a provocation by officials in Ukrtransnafta, whereas President Kuchma welcomed the interest of the Russian companies in the pipeline. However, pressure from the Russian companies, reductions in the transportation of Russian oil to western Europe, and crucially the beginning of the exploitation of the Suhodolnaia-Rodionovskaia pipeline that bypassed Ukraine and reduced the transit through Prydniprovski by half, forced the MFE of Ukraine to seek a creative solution.³¹⁵

In January 2003, following a letter by a TNK senior executive, Herman Han, to President Kuchma about the benefits of the reversal, Ukrtransnafta made a decision to use 52km of the 674km of the Odesa-Brody pipeline in the reverse mode, to ship oil belonging to Russian TNK.³¹⁶ On 28 January 2003 the first tanker with TNK oil left the Ukrainian port. It was agreed that TNK and LUKOIL would jointly pump 4m tonnes of oil through this route in 2003 and TNK announced that it was happy to continue to use this route in the future.³¹⁷ In Ukraine this move was explained as a temporary diversion and should Russian companies desire to maintain this route Ukrtransnafta would construct a parallel 52km pipeline to service it without blocking the operations of the EAOTC in the northern direction. However, benefits from this short-term re-routing were presented as arguments for the continued use of the pipeline in the southern direction indefinitely. Russians promised to continue pumping the oil, and the financial arrangements used for

³¹⁴ Aleksandr Tutushkin i Oleg Gavrish, "Razvernute trubu v Odessu," *Vedomosti*, 31 Oktiabria 2002.

³¹⁵ Oleg Gavrish, "V storonu rossiiskikh kompanii," *Vedomosti*, 28 Ianvaria 2003.

³¹⁶ The route began in Russian Michurinsk and went through Ukrainian Kremenchug and Snigirevka towards the Pivdennyi oil terminal (see Fig. 4.2).

³¹⁷ Hanna Liuta, "Terminal Pivdennyi otkrugzil pervuyu kommercheskuiu neft," *Zerkalo Nedeli*, 1-7 Fevralia 2003. "Odesa-Brody rozvertaietsia na pivden," *Den'*, 5 Liutoho 2003.

the transactions allowed ample opportunities for political corruption that will be discussed later.

Naftogaz attempts to dictate policy

The first attempt by the supporters within the Ukrainian government to fully reverse the pipeline was made on 23 April 2003 when a protocol of intentions was signed in Moscow between Naftogaz (signature of Yurii Boyko), Ukrtransnafta (signature of Stanislav Vasylenko) and representatives of Russian, state-owned Transneft and TNK.³¹⁸ According to the calculations attached to the protocol, profitability of this new route with the transport of 8m tonnes of oil would be 29.6% and net income for the Ukrainian side would be \$14m, with some \$11.5m going to the Ukrainian treasury. In addition, TNK promised to provide Ukraine with a trade credit for \$380,000-420,000 at 12% for the purchase of technological oil for the pipeline.³¹⁹ Interestingly, money allocated through the Ukrainian budget for the purchase of technological oil for Odesa-Brody was spent earlier by the head of Naftogaz, Yurii Boyko, but not for the stated purchase of technological oil supplies.³²⁰

This protocol did not become public in the media until 24 May, days before the presentation of the EAOTC project in Brussels on 27 May.³²¹ Thus, once in Brussels,

³¹⁸ Under the protocol the Odesa-Brody pipeline would be used for the annual transport of 9m tonnes of Russian oil (route Samara-Mozyr-Brody-Pivdennyi terminal) for the next 21 years (later reduced to 3 years). See Oleg Gavrish, "V storonu Odessy," *Vedomosti*, 27 Maia 2003.

³¹⁹ In the states of the former Soviet Union, 'technological oil' means crude oil line fill used to operate the pipeline.

³²⁰ Throughout 2003 the budget of Ukraine was returning to Ukrtransnafta Value Added Taxes it paid earlier and according to the decree by the Cabinet of Ministers of Ukraine from 9 August 2002, No. 441-p, these funds would be used for the purchase of low-sulphur technological oil for Odesa-Brody. However, Yurii Boyko used these funds for the needs of Naftogaz and none of the returned 236m UAH (or approximately \$43m) were spent in the decreed fashion. For example, Ukrtransnafta used 46.5m from these funds to pay the debt Naftogaz owed to EuralTransGas, a Hungarian offshore firm that Boyko brought in to serve as an intermediary operator for the supply of Turkmen gas to Ukraine (more on this in Chapter 5). As mentioned earlier in the chapter, Deputy PM Haiduk and Minister of Fuel and Energy Yermilov who inquired about these funds and attempted to make financial flows of Naftogaz and Ukrtransnafta transparent were later dismissed by President Kuchma. See Mikhail Gonchar, "Prozorist naftogazovoho sektoru ekonomiky Ukrainy," *NOMOS Center*, 19 Sichnia 2008.

³²¹ Vitalii Kniazhanskii, "Navishcho pidpysuvaly?" *Den'*, 28 Travnia 2003.

Ukraine's Special Envoy Todiychuk dismissed it as an attempt at provocation and denounced it as illegal, saying that his deputy, Vasylenko, did not have the powers to sign the protocol and only the government could make decisions regarding the direction in which the pipeline could be used. Neither did Ukrtransnafta make a decision at its Board of Directors meeting and during the prime ministerial meeting on 16 May, it was discussed that the pipeline would be used in the northern direction.³²² Vasylenko defended his actions by asking what else he should do if the head of Naftogaz signed the protocol.³²³ Europeans understood the political dynamics taking place around the pipeline, reflected by Faouzi Bensarsa, Senior Energy Counsellor at the Directorate General for Energy in the EC:

“We are not going to play with pipelines and get involved in political games. And if you see in the press that this is a silly and hopeless project, do not believe it. It is a very good project. And it is already in Brussels, regardless of who likes it or not.”³²⁴

This event marked the beginning of a political battle within Ukraine and by the end of 2003 TNK's proposal was considered and evaluated on the level of the cabinet, despite the agreements and commitments signed with Poland, EU and other partners for the exploitation of the Odesa-Brody in the northern direction.

The signing of the protocol could not have taken place without the approval of the President of Ukraine and it seems that preferences of people within his administration as well as Kuchma himself were changing towards the reverse use of the pipeline with the immediate financial benefits that it entailed.³²⁵ In May of 2003 sources within the Presidential Administration noted that Ukraine intended to sign the protocol with reservations, since it could ensure immediate inflow of \$12.6m into the budget and net

³²² Tatiana Silina, “Ch'i interesy kachat budem?” *Zerkalo Nedeli*, 31 Maia - 6 liunia 2003.

³²³ Alla Yeremenko, “Dogovor dogovoru rozn’,” *Zerkalo Nedeli*, 7-13 liunia 2003.

³²⁴ Ibid, (translation mine).

³²⁵ Boris Biletskii, “Odessa-Brody: ekonomika dolzhna diktovat' politiku,” *Zerkalo Nedeli*, 21-27 liunia 2003.

input into the Ukrainian economy at over \$98m.³²⁶ By July 2003 President Kuchma had clearly stepped away from the notion that Odesa-Brody should serve a function other than commercial utility. Thus, by then the idea of the strategic need for Odesa-Brody as a source of diversification of Ukrainian energy resources and European integration remained only with the members of the cabinet.³²⁷ However, considering that Kuchma could not directly order the cabinet to do his bidding and considering that the cabinet resisted the decision to reverse the pipeline at a time when the possibility of Caspian oil delivered to Europe was becoming a reality, it was conceived that the reversal could be realised through legal entities such as Naftogaz and its subsidiary Ukrtransnafta, irrespective of the cabinet to whom they were subordinated.³²⁸ In addition, the president began to change the composition of the government to enable the reversal, starting with the appointment of Yurii Boyko to the post of First Deputy Minister of Fuel and Energy on 31 July 2003 in Yanukovych's cabinet.³²⁹ The cabinet was supposed to announce an official decision on the direction of the pipeline by 1 July, but decided to move the final decision to 15 January 2004 and involve independent consultants to evaluate the southern option.

Russian pressure builds and Ukrtransnafta re-organises

While up to this point the Russian government applied its pressure to persuade the Ukrainian government to accept the TNK offer informally, on 18 July during the inter-governmental committee meeting where Ukraine and Russia were supposed to sign the

³²⁶ Oleg Gavrish, "V storonu Odessy," *Vedomosti*, 27 Maia 2003.

³²⁷ Author's interview with Mykhailo Gonchar, London, 16 July 2011.

³²⁸ Interestingly, this arrangement seems to have been suggested by the Executive Director of TNK, Herman Han. In a letter sent by Herman Han to President Kuchma and received on 16 August 2003, the TNK executive wrote that the temporary reversal of the Odesa-Brody pipeline could be a business project and a contract enabling the reversal could be signed between corporate entities of Ukraine and Russia without the need for a separate decision by the Cabinet of Ministers. Copy of this letter was acquired by *Zerkalo Tyzhnia* and published on 23 August 2003. See "Dniu nezalezhnosti prysviachuetsia...", 23 Serpnia 2003.

³²⁹ *Decree of the President of Ukraine*, N 776/2003, 31 July 2003.

15-year agreement (2003-2018) for the transit of Russian oil through Ukraine, which gave Moscow the right to transit 79.5m tonnes of oil per year, Russian PM Mikhail Kasianov said that the agreement would not be signed until the question regarding the transit of Russian oil through Brody-Odesa was resolved.³³⁰ Considering that this agreement was long coveted by the Ukrainian government, this was formidable official pressure from Kremlin.

To further intensify the conflict of interests within the energy sector in Ukraine and in Ukrtransnafta more specifically, Naftogaz moved the meeting of shareholders of Ukrtransnafta that was supposed to take place on 21 July to 1 August 2003. This was done knowing full well that the Chairman of Ukrtransnafta and Special Envoy for EAOTC, Oleksandr Todiychuk, would be abroad on an official visit. During the extraordinary meeting of shareholders of Ukrtransnafta on 1 August 2003 the company was reorganised by changing its corporate structure. Stanislav Vasylenko was appointed as Director General of the company and functions previously held by Todiychuk were transferred to the Director General. The position of the Chairman of the Board was annulled and Todiychuk was elected as the President of Ukrtransnafta with sole responsibility for the EAOTC, but no executive power over company decisions.³³¹ Essentially, the move equated to corporate raiding, prevalent in the countries of the FSU. In this case Yurii Boyko reorganised Ukrtransnafta to marginalise the opponents of the reversal of Odesa-Brody without approval from the Cabinet of Ministers to whom Naftogaz was subordinated. However, it was well-known that Yurii Boyko at the time was

³³⁰ Alla Yeremenko, "Vremia "Ch", ili chiu neft, otkuda i kuda kachat' budem?" *Zerkalo Nedeli*, 26 liulia-1 Avgusta 2003; Andrei Litvinov i Ivan Yegorov, "Sosed. Rossiiskaia neft ne proshla cherez Yaltu," *Gazeta*, No. 129, 21 liulia 2003.

³³¹ Alla Yeremenko, "Stanislav Vasylenko: ia ne politik i operiruiu iskluchitelno ekonomicheskimi kategoriiami," *Zerkalo Nedeli*, 8-14 Noiabria 2003. Also when accepting the new position of the President of Ukrtransnafta Todiychuk requested the PM Yanukovich return his functions to him, but likely Yanukovich did not want to go into direct confrontation with President Kuchma. Alla Yeremenko, "Aleksandr Todiychuk: 'Ia rukovodstvuus' iskluchitel'no gosudarstvennymi interesami," *Zerkalo Nedeli*, 8-14 Noiabria 2003.

not controlled by PM Yanukovych or the cabinet, but supported and instructed by President Kuchma.³³² The PM remained on the sidelines during these processes, considering that these developments were under presidential directives.

In September Vasylenko began the reversal, and on behalf of the shareholders he sent a letter to the national oil companies of Azerbaijan, Russia, Kazakhstan and Uzbekistan and asked them to provide Ukraine with some 400,000 tonnes of technological oil as trade credit in order to prevent the corrosion of the pipeline. It should be noted that the pipeline was safely filled with a special conservative to prevent the corrosion. Within days TNK-BP (British Petroleum merged some of its assets with TNK in September 2003, creating a joint venture) responded to the offer and on 2 October it sent an ultimatum to Ukrtransnafta to either accept or reject the offer by 8 October.³³³ On 3 October 2003 the Board of Directors of Ukrtransnafta empowered Vasylenko to sign a contract with TNK-BP and begin the exploitation of the pipeline.³³⁴ However, filling the pipeline with oil high in sulphur made little sense if one intended to transit low-sulphur oil from the Caspian. In addition, these actions were taken independently, by a government-owned company despite the fact that the government had not made its decision regarding the exploitation of the pipeline and contracts that were signed by Ukrtransnafta with TNK-BP had not been examined and approved by the MFE, nor had they received government approval as was customary. The MFE, commenting on the signed agreement, said that any decision regarding the pipeline prior to the governmental

³³² Yulia Mostova, "Za kadrom reshaiut vsio," *Zerkalo Nedeli*, 2-8 Avgusta 2003.

³³³ Vladimir Kravchenko, "Nechego brodit' po Odessam," *Zerkalo Nedeli*, 4-10 Oktiabria 2003.

³³⁴ According to sources, during this meeting 3 people on the board that voted against this decision were lobbied by PM Yanukovych, who was known to oppose the reverse, while another 4, who supported the decision to fulfil TNK-BP's ultimatum, executed the will of President Kuchma. See Vladimir Arieiev, "V ozhydanii vzaimnosti," *Zerkalo Nedeli*, 11-17 Oktiabria 2003.

decision was illegal, whereas Vasylenko insisted that Ukrtransnafta was an independent legal entity and its decision was legal under the Ukrainian Law on Business Entities.³³⁵

In October 2003, the Ministry of Fuel and Energy held a tender to select an independent consultant to evaluate the Russian offer,³³⁶ and upon the request of the Russian side Oleksandr Todiychuk was excluded from the selection committee. On 20 October, Energy Solutions was announced as the winner. The company was tasked with evaluating European demand for an additional 9m tonnes of Russian oil through the Brody-Odesa route and estimating tariffs for transit and transshipment so as to be competitive with other routes (through Odesa, Novorossiysk, Primorsk).³³⁷ While initially Energy Solutions was supposed to present its findings by 19 January 2004, it later asked for an extension until 31 January. The final government decision on the direction of the pipeline was to be taken by 1 February 2004. The governmental inter-agency group regarding the use of Odesa-Brody held its last meeting on 27 January 2004 and at this meeting Energy Solutions presented its findings.

The company carried out calculations of profitability across nine major transit routes through Ukraine for three and ten years. The Kremenchug-Pivdennyi route was named the most economically sound and best short-term option for transit. In three years it would bring \$120m into the state treasury (see Fig. 4.3). The Odesa-Brody-Plock-Wilhelmshaven route in the long term was named as the best option as during this period

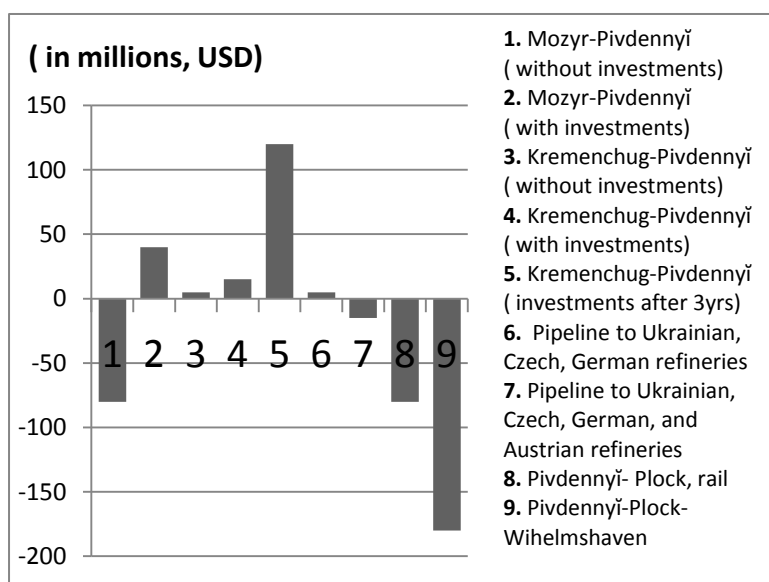
³³⁵ Alla Yeremenko, "Stanislav Vasylenko: Ia ne politik i operiruiu iskluchitelno ekonomicheskimi kategoriiami," *Zerkalo Nedeli*, 8-14 Noiabria 2003.

³³⁶ The EU expressed its surprise at the events in Ukraine regarding possible reversal when on 27 August in the letter to the Prime Minister, Loyola de Palacio, Vice-President of the EC, asked PM Yanukovich to clarify if the agreements and plans made within the framework of working group EU-Poland-Ukraine were still relevant. See Tatiana Silina, "Evropeitsy i Amerikantsy udivliaiutsa," *Zerkalo Nedeli*, 30 Avgusta- 5 Sentiabria 2003.

³³⁷ Hanna Liuta, "Zhdite otveta do fevralia," *Zerkalo Nedeli*, 24-30 Ianvaria 2004.

Ukraine would earn \$1.2bn when calculated at 25m tonnes a year (see Fig. 4.4).³³⁸ Thus, Energy Solutions recommended that Ukraine continue to work on the implementation of the EAOTC to Europe as it was the most economically profitable route. However, considering that in the short-term perspective Kremenchug-Pivdennyi was the most promising option and would require the reversal of part of the Odesa-Brody pipeline they recommended to accept the offer by TNK-BP, but with ten specifications and reservations that could be detrimental to the realisation of EAOTC.³³⁹

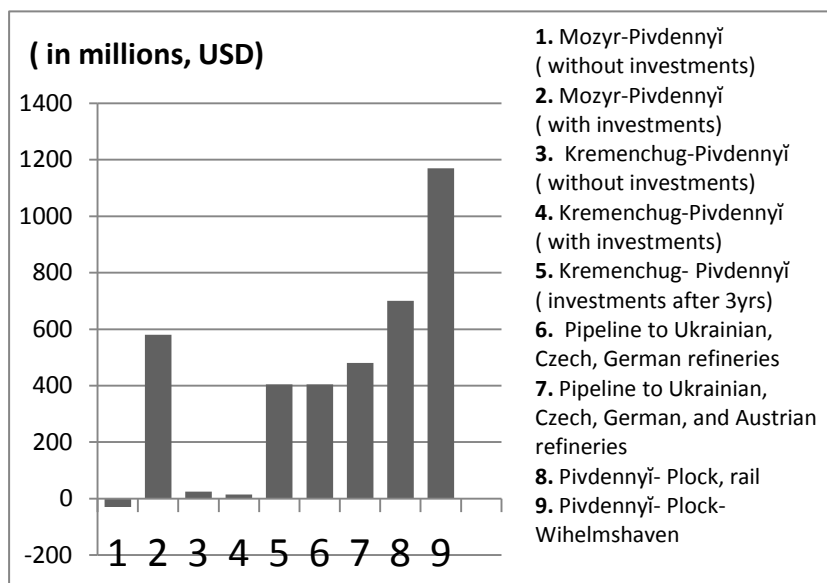
Fig. 4.3 Estimated Profit or Loss of pipeline options at end of a 3-year period



³³⁸ However, the system could be expanded to 40m tonnes in which case the state would earn over \$1.5bn during the 10 year period.

³³⁹ Hanna Liuta i Antonina Shchegelskaia, "Proekt 'Druzhba-Adria': Ukrtransnafta integriruet svoi interesy s neftetransportnymi partnerami," *Zerkalo Nedeli*, 8-14 Fevralia 2003; Margarita M. Balmaceda, *Occasional Paper: Ukraine's Eenergy Policy and U.S. Strategic Interests in Eurasia* (Washington D.C.: Woodrow Wilson International Center for Scholars, Kennan Institute, 2004) pp. 9-10; Ivan Honta in an interview with Sergei Yermilov, "Neftetransportnyi mik: ekonomika i faktor vremeni," *Zerkalo Nedeli*, 31 Ianvaria-6 Fevralia 2004.

Fig. 4.4 Estimated Profit or Loss of pipeline options at end of a 10-year period



Source: Ivan Honta, "Neftetransportnyi mikhs: ekonomika i faktor vremeni," *Zerkalo Nedeli*, 31 Ianvaria-6 Fevralia 2004, (translation mine).

The meeting, which was headed by Serhiy Yermilov, Minister of Energy and Fuel, consisted of representatives of various ministries (MFA, MFE, and Ministry of Economy), representatives of Naftogaz, Ukrtransnafta and foreign companies including Transneft, TNK-BP, Gomel, and various consultants. During the meeting Ukrtransnafta requested hearing the findings of PWC/Chanoil, since their study did not calculate specific directions but worked out a system of flexible tariffs for oil transit that made the route Pivdennyi-Brody competitive compared to tanker shipments through the Bosphorus. The calculations of both Energy Solutions and PWC/Chanoil matched. Following these presentations and the calculations and rationale behind them, the head of TNK-BP said that should their offer be declined, the company would be happy to participate in further construction of the Brody pipeline to Plock, which illustrates that the Odesa-Brody complex in the

northern direction was economically feasible only if TNK-BP was ready to invest in it.³⁴⁰

The rationale for Ukraine and its companies

In evaluating the utility and efficacy of the Southern option of the pipeline for the Ukrainian state one must consider the benefits that such use might bring in financial, economic and political terms. In the case of Odesa-Brody, the political aspects of the pipeline consisted of: its ability to diversify energy supplies within Ukraine, providing for domestic energy pricing and supply stability, and thus security; its ability to aid European energy diversification, and considering that the pipeline integrated Ukraine with the EU oil sector, the pipeline became a means of integrating Ukraine into the EU (one of Ukraine's strategic policy aims since independence); its potential to make Ukraine a direct transportation corridor not only for Russian but also for Caspian oil and in this way increase state revenues and regional prestige. The reversal use of the pipeline could bring political benefits of its own from cooperation with Russia in forms of international support, discounted deals for natural resources, preferential market access and, crucially, domestic political standing, since the preferences of the Russian government are able to influence the electoral preferences of southern and eastern citizens of Ukraine. But, putting aside these political benefits, the offer by TNK-BP to ship Russian oil south was neither immediately viable nor profitable in the long-term, offering marginal, short-term returns that could have been achieved by fulfilling contracts already made in transporting Caspian oil north.³⁴¹ Crucially, the volumes the Russian oil sector was promising to

³⁴⁰ Ibid.

³⁴¹ By the end of 2003 Ukrtransnafta signed a number of agreements both with suppliers and consumers of oil: firstly, agreements with the state oil and gas company of Kazakhstan, KazMunayGaz, and Turkish oil trading company, SOM Petrol, about the supply of at least 7.6m tonnes of oil in 2004 (4 and 3.6m tonnes respectively); secondly, protocols of intention with Polish refineries, PKN Orlen and LOTOS, for the annual supply of up to 7m tonnes of light-sulphur oil; thirdly, memorandum with Czech holding Unipetrol for the supply of 2.5m tonnes of low-sulphur oil to their refinery in Kralupy; and lastly, guarantees from Ukrainian refineries, Nadvirna and Drohobych, for the refining of 2m tonnes of oil

transport (9m tonnes of oil yearly) had to be guaranteed annually without the reductions of transit through the Druzhba and Prydniprovski pipelines.

In addition, if the Russian side was willing to satisfy these conditions, Ukraine had to make its deliberations regarding Odesa-Brody in close consultation with the EU and Poland, partners with whom it already signed international agreements and whose money and efforts were spent up to that point to realise the EAOTC. This had to be done not only as a way to make sure that partners did not lose confidence and trust in the efforts of the Ukrainian government as a partner, but importantly to explain the actions of the Ukrainian government so that a much more lucrative, long-term project of developing EAOTC towards Plock and Wilhelmshaven could be created. Having met these conditions, the southern option of reversal would indeed have been beneficial in the short-term.

It is also important to consider in this calculation the role of a 15-year agreement on oil transit that the Russian government tied to the deliberations on the direction of Odesa-Brody. Since the signing of this agreement (that happened to be long-term) was crucial to the Ukrainian government at the time, the argument frequently heard was that it had to reverse the pipeline in order to sign it. The agreement was deemed as 'important' since it provided long-term security of oil shipments (thus stability in revenues for the state) and stable financial income for Ukrainian energy companies and refineries. This purely commercial logic, however, went against the economic security dimension of the northern route since the Odesa-Brody pipeline was meant to provide stability of oil supply to and through Ukraine of non-Russian oil. In short, EAOTC was

annually starting 2004. See Mikhailo Gonchar, "Prozorist' naftohazovoho sektoru ekonomiky Ukrainy," *NOMOS Center*, 19 Sichnia 2008; also confirmed by Olenkandr Todiychuk, see Vladimir Kravchenko, "Nechego brodit po Odessam," *Zerkalo Nedeli*, 4-10 Oktiabria 2003.

conceived to reduce the need of the Ukrainian state for long-term agreements on oil shipments with Russia and to increase the bargaining position of the Ukrainian state during such negotiations, with the logic that if Russian companies would not want to ship oil through the pipelines, Caspian producers would. Thus, in light of Russian efforts to diversify away from Ukraine's oil transportation system, abandoning the northern route for Odesa-Brody at the peak of its possible realisation would not benefit the state in the long-term. The Ukrainian state energy companies stood to immediately benefit from both offers, the northern and the southern, since contracts and oil were available for both, but it was now for the president to decide 'in whose interests they were going to pump' in the longer term.

The rationale for private and political interests

Several individuals and interest groups stood to benefit financially and politically from the reversal of the pipeline and adherence to Russian preferences. These advantages consisted of using opaque financial structures in oil trading operations, thus bringing financial benefits to top-ranking politicians within the government and of securing political support from the Russian government ahead of the December 2004 elections in Ukraine.

Ukraine's energy sector is well-known to be one of the most corrupt sectors in Ukraine and the case of Odesa-Brody promised to break the cycle by creating a wholly transparent international consortium for the transportation of oil in the EAOTC. Such an institutional setting required the elimination of offshore companies and intermediary firms that were frequently used to evade taxes, launder money, and provide illegal revenues to top-ranking politicians and public officials. Thus, those benefiting from

continuing operations in this manner argued for the reversal of the pipeline since the Russian firms would help to maintain these institutions, especially considering that the same corrupt institutions were in place in Russia. Neither the Russian government nor Russian oil companies would question the choices of intermediaries and offshore companies made by the Ukrainian officials. Although it is next to impossible to know the specific beneficiaries of intermediary firms and tax evasion schemes, it is safe to assume that the promoters of the reversal would have financially benefited from it, including the head of Naftogaz, Yurii Boyko and the head of Ukrtransnafta, Stanislav Vasylenko. In addition, the President's son-in-law, Viktor Pinchuk (one of Ukraine's wealthiest oligarchs and member of the Dnipropetrovsk clan), had been seen to play a role in convincing the President of the benefits of the southern route.³⁴² To illustrate how these schemes operated, it is worthwhile to examine two cases that related to the use of the Odesa-Brody complex by the Ukrainian-Russian ventures, specifically: the conditions of transshipment at Pivdennyi oil terminal and financial structures enacted for the reverse of Odesa-Brody, both detailed by one of Ukraine's senior analysts of the energy sector, Mykhailo Gonchar.

³⁴² According to reports, the CEO of TNK BP, Herman Han, usually met with President Kuchma through and in a company of Pinchuk and Boyko, and Pinchuk usually set these meetings up in a family format (at a country house near Kyiv or on vacation in Crimea). The circumstances surrounding the letter from 15 August by Han, which detailed the mechanism that could overcome the opposition of the cabinet, namely the signing of the contract between TNK and Ukrtransnafta for the supply of technological oil in October 2003 as business entities, is a telling example. It emerged that on 9 August 2003 at a birthday party of Leonid Kuchma, he was greeted by guests including Herman Han, Semyon Vainshtok, Russian Ambassador, Viktor Chernomyrdin, Boyko and Pinchuk. During the dinner the problem of Odesa-Brody was discussed and Han sent the official letter with the concrete proposal by TNK on 15 August. The letter was registered in the Administration of the President the next day with a personal directive by Kuchma for Yurii Boyko to "urgently process". On 3 October 2003, the agreement between TNK-BP Ukrtransnafta was signed without governmental involvement. See Viktor Poniatsvskii, "Koruptsiine dosie rezhymu. Sprava N.1. Revers Odesa-Brody," *Ukrainska Pravda*, 7 Hrudnia 2004. In response to these accusations, Pinchuk noted; "I never lobbied for either option of using the Odesa-Brody pipeline...oil has to be pumped in the direction that can yield more revenues to Ukraine's national budget...I told Americans: 'Show us the benefits of the direct use option. You are interested in limiting some of Russia's possibilities?...But you've got to show Ukraine what it can gain from it'...The Russians put it on the line: 'Your profit from the reverse mode will be so-and-so'." Pinchuk's logic further illustrated how short term, commercial and corporate interests of individuals close to the president can begin to influence presidential preferences. For Pinchuk's position see Yulia Mostova in an interview with Viktor Pinchuk and Olena Franchuk (President's daughter) "Literally Father," *Zerkalo Nedeli*, 17-23 liulia 2004.

Before commercial exploitation of Pivdennyi terminal, in November 2002, a Swiss firm, “Collide S.A.”, was created and chosen by the leadership of Naftogaz as an operator for the transshipment of oil at Pivdennyi. This company in turn on 13 June 2003 created “Collide Limited”, an offshore firm which was incorporated on the British Virgin Islands. Gonchar reports that the beneficiaries of these companies were top managers of Russian and Ukrainian firms as well as high-ranking officials of both states.³⁴³ The companies worked together based on a service agreement and Collide Ltd. had an agreement with Russian Transneft (22 December 2003) for servicing transshipment of 4m tonnes of oil with the possibility of increasing to 9m tonnes at Pivdennyi for 2004. Collide had similar agreements with Ukrtransnafta. It emerged that several Russian companies, including LUKOIL, Yukos, Surgutneftegas, Slavneft, and the Ministry of Industry and Energy of the Russian Federation expressed their dissatisfaction with the high tariff for the transshipment of oil at \$6 per tonne that Collide was charging, whereas the official tariff of Ukrtransnafta at the time was \$3.5 per tonne. Some traders reported that in 2004 Collide asked \$14 per tonne of oil. In this scheme, using government personnel and assets, Collide had an income of \$24m at transshipment of 4m tonnes of oil, \$14m of which were paid to the Ukrainian government and the remaining \$10m was laundered and appropriated by the beneficiaries of Collide.³⁴⁴ A similar scheme was used for financial operations in the reverse use of the Odesa-Brody by TNK-BP.

In financial arrangements that operationalised the Brody-Odesa route, an offshore intermediary called “Skilton” was used, registered on Cyprus on 22 January 2001, which belonged to the group of companies owned by TNK. Skilton’s founder was “TNK

³⁴³ According to some reports the beneficiaries of Collide S.A. were: Yuriy Boyko (Chairman of Naftogaz), Herman Han (CEO of TNK), Semyon Vainshtok (CEO of Transneft) and Viktor Pinchuk (Ukraine’s oligarch and son-in-law of President Kuchma); See Viktor Poniatovskii, *Ukrainska Pravda*, 7 Hrudnia 2004.

³⁴⁴ Mykhailo Gonchar, “Prozorist naftogazovoho sektoru ekonomiky Ukrainy,” *NOMOS Center*, 19 January 2008.

International”, registered in the British Virgin Islands. It is reported that the beneficiaries of Skilton included top-mangers of Ukrainian and Russian energy monopolies.³⁴⁵ The company was proposed as a creditor of the \$90m needed to purchase technological oil from TNK-BP. In sum five agreements were concluded between Skilton and Ukrtransnafta. Through this arrangement TNK-BP received almost total control over the financial flows from these transactions. It should be noted that the supplier of technological oil was TNK-BP, the creditor and administrator of the account Skilton (offshore of TNK-BP), the user of the Brody-Odesa was TNK-BP and finally Collide was the operator of the pipeline. Complicated financial structures involved in the provision of the credit and analyses of the financial flows of the reversal gave grounds to consider that these arrangements were enacted to legalise funds hidden from the Russian Federal Taxation Service.³⁴⁶ Notably, in 2008 Deputy Head of the Secretariat of the President of Ukraine, Andriy Goncharuk, complained that Ukrainian pipelines were under practical control of two companies – Skilton and Transneft.³⁴⁷

These two illustrations provide an idea on how high-ranking Ukrainian officials involved in organisation of the energy trade could individually profit from continuing to operate in the opaque trading schemes that were facilitated by their Russian partners. In this way intermediary firms become avenues of personal enrichment and offered financial resources to run political campaigns and thus maintain the power in society. In addition to these financial benefits Kuchma and his associates had also gained political support from the Russian government at the time.

³⁴⁵ Ibid.

³⁴⁶ Ibid.

³⁴⁷ “RNBO vidshukala dvi firmy, vid iakych zalezhyt’ vsia naftopererobna haluz’ kraïny,” *Tema*, 1 Serpnia 2008.

In 2003 Ukraine was nearing presidential elections due to be held in December 2004. Although elections in Ukraine during Kuchma's time in office have hardly been fully free and fair, the incumbent regime still had to carry them out and receive some support from the population. The 'Russian factor', that is, policies and rhetoric that suggest close cooperation with Russia, plays a strong role in gaining political support of the population in the eastern and southern parts of the country. The legitimacy, domestic and foreign, of the second Kuchma presidency was highly undermined at the time by high levels of corruption, weak international support due to the Kuchmagate scandal and the repressive forms of governance through press censorship, political executions and politically-motivated, criminal prosecution of the opposition. Direct endorsement from Russian President Vladimir Putin, popular in some parts of Ukraine, would considerably aid the political campaign of the incumbent candidate. The reversal of Odesa-Brody could become one of quid pro quo in this arrangement.³⁴⁸

The rationale for the Russian state and its oil companies

The Russian state and its monopoly pipeline company, Transneft, benefited from the reversal of the Odesa-Brody pipeline in three significant ways: by helping Moscow to maintain its near-monopoly of oil supply to Europe; by aiding the Kremlin in remaining the monopoly reseller and transportation corridor of Kazakh and Azeri oil to Central and Eastern Europe; and by tying the Ukrainian elite to Russia-friendly deals that offered personal benefits and ensured that policies in other areas would be more cooperative to Russian interests.

Russian pipelines have for a long time played a significant part in its international and geo-economic relations. Moscow's extensive network of oil pipelines throughout

³⁴⁸ Viktor Poniatovskii, "Koruptsiine dosie rezhymu. Sprava N.1. Revers Odesa-Brody," *Ukrainska Pravda*, 7 Hrudnia 2004.

Europe broke down after the break-up of the Soviet Union and put Russian oil companies into transit dependency with the former Soviet republics and satellites. This dependency was not positively viewed by the Russian government and the strategy of the state and its state pipeline monopoly, Transneft, was to reduce this dependency. In the words of the head of Transneft, Semen Vaynshtok:

“... we need to move away from transit dependency. Russia has a unique opportunity to not depend on anyone in oil transportation. We have direct access to the Pacific coast, to the northern Arctic Ocean, to the Black and Baltic Seas. Why should we use transit?”³⁴⁹

However, while constructing pipelines to bypass many of the former Soviet republics Russia has also attempted to remain a monopoly supplier of Caspian oil to Europe. Odesa-Brody and other pipeline projects that attempted to challenge Russian pipeline dominance were opposed by Moscow. As discussions in the Russian media at the time illustrate, the likely reason why Moscow changed its opposition to the construction of Baku-Tbilisi-Ceyhan was because it deemed the Ukrainian project of Odesa-Brody more threatening.³⁵⁰ Odesa-Brody threatened to break the Russian pipeline monopoly on the transport of Caspian oil to Europe and this was opposed by the Russian state and by Russian oil majors that dominated the oil market within Ukraine and whose traditional markets in Europe would have also been threatened.³⁵¹ Through the reversal of the Odesa-Brody pipeline the Russian oil majors were attempting to protect their revenues. By August 2003 the Kremlin began to perceive the threat that Ukraine’s Odesa-Brody

³⁴⁹ Interview with Semen Vaynshtok, “Rossii ne nuzhen tranzit po inostrannoï territorii,” *Kommersant*, 17 liunia 2004, (translation mine).

³⁵⁰ See article by Vladislav Beregovoi, “Rossiia i Ukraina raskladyvaiut neftianoi pas’ians,” *Vremnya MN*, 4 Dekabria 2001. The author argued that Russia had to react to the Ukrainian initiative of Odesa-Brody, otherwise Moscow’s traditional markets would be taken over by competitors. To minimise the losses for the Russian companies from Baku-Tbilisi-Ceyhan while at the same time leaving no oil for Odesa-Brody, was to support BTS and attempt to influence the distribution of Caspian oil flows, by, for example, buying up Kazakh oil exports and transport them through Russian pipelines.

³⁵¹ In July 2003, in addition to already mentioned TNK-BP, LUKOIL and Yukos, Sibneft and Slavneft sent a letter to the PM Yanukovich guaranteeing annual transit of 9m tonnes of oil through Brody-Odesa. Oleg Gavrish, “TNK-BP zapolnit ukrainskuiu trubu,” *Vedomosti*, 6 Oktiabria 2003.

posed to their energy dominance in Europe.³⁵²

The Decision and its Unmaking

In the months following the presentation of the findings by Energy Solutions a conflict between those supporting the southern and those supporting the northern routes was transformed into a conflict between President Kuchma and PM Yanukovych and his cabinet, who still adhered to the idea that reversal at that given point was not beneficial in the short term nor the long-term interests of the state. The preferences of President Kuchma regarding the reversal crystallised in January 2004 during his meeting with Putin, following which Kuchma began to use his powers of appointment and dismissal to remove the opponents of the reversal, especially since 'soft-methods' of persuasion did not change the resolve of the cabinet that on 4 February 2004 had issued a governmental decree No. 114 to use Odesa-Brody in the northern direction.

However, this decision did not last. PM Yanukovych conceded to presidential pressure and made the reversal of the pipeline possible in June 2004. Although the use of the pipeline was constitutionally under the purview of the prime-minister as part of his economic sphere of governance, nevertheless President Kuchma used his informal and formal powers of appointment and dismissal to cajole the PM and the cabinet into siding with his preferences. It is likely that PM Yanukovych changed his views for electoral purposes, as shortly before his concessions on Odesa-Brody he was chosen as a candidate from the regime to stand in the November 2004 presidential elections. These events illustrated that a clear distribution of powers within the executive and the maintenance of checks and balances between these offices matter for policy consistency. These

³⁵² Ivan Tregubov, "Trubnie ambitsii Kuchmy groziat Rossii poterei \$8 mlrd," *Utro.ru*, 18 Iulia 2003, reprinted in *Zerkalo Nedeli*, "Rossiane v otkrytiu demonstruiut svoi 'trubnie ambitsii'," 2-8 Avgusta 2003.

developments also showed that the proximity of vested interests to policy-making circles translated into influence on policy either indirectly (like the example of Pinchuk or Herman Han) or directly (by occupying a public office like Boyko or Vasylenko). This proximity is likely to contribute to policy inconsistency since final decisions end up being guided not by the long-term interests of the state and the greater public, but by the narrow interests of the particular group, company, or individual that happens to be favoured by the President or the PM.

Cabinet versus the President

Throughout the fall of 2003 presidential preferences regarding policies concerning Moscow were questioned by a number of government officials who strongly advocated Ukraine's integration into the European Union and the development of projects like Odesa-Brody that would aid the realisation of this goal. All of these oppositional players were marginalised and later dismissed through the administrative powers of President Kuchma. Thus, following the signing of SES agreement with Russia in September 2003, the Minister of Economy and European Integration, Valerii Khoroshkovskii, was dismissed in January for his opposition to SES.³⁵³ Similarly in December, economic issues including Odesa-Brody were taken away from the prerogatives of the First Deputy Minister of Foreign Affairs of Ukraine, Oleksandr Chaly, who on 14 May resigned from his post.³⁵⁴ The reason for his leaving was opposition to the direction of Ukraine's foreign policy, considering that Chaly was the strongest advocate of Euro-integration within the

³⁵³ Khoroshkovskii was known to oppose Ukraine's signing of SES, but officially he resigned due to impossibility to carry out his duties that were blocked by the Cabinet of Ministers. See "Khoroshkovskii ide u vidstavku, Obihod – u SBU," *Ukrainska Pravda*, 27 Hrudnia 2003. *Decree of the President of Ukraine*, 11 January 2004, N 15/2004.

³⁵⁴ "Kuchma zvinyv Chalogo, yakyi vidpovidav za evrointegratsiiu v MZS," *Ukrainska Pravda*, 14 Travnia 2004; "Chaly u vidstavtsi. Kinets ievrointehratsii?" *Ukrainska Pravda*, 17 Travnia 2004.

government.³⁵⁵ On 5 December 2003 the President dismissed Vitalii Haiduk, Deputy Prime Minister in charge of fuel and energy questions, reportedly for his opposition to the reversal of Odesa-Brody and the creation of the gas consortium between Naftogaz and Gazprom.³⁵⁶ In addition, Haiduk questioned Yurii Boyko about the disappearance of budget funds that were allocated for the purchase of the technological oil for Odesa-Brody.³⁵⁷ During 23-24 January 2004 Russian President Putin visited Ukraine and held talks on a number of issues including the 15-year agreement on the transportation of oil. This meeting seemed to solidify Kuchma's preferences regarding the reversal as the Russian side insisted on the inclusion of the Odesa-Brody pipeline into the long-term agreement.³⁵⁸ Following this meeting Kuchma began to take a more active role in the Odesa-Brody issue.³⁵⁹

After several delays in the making of the final decision regarding the direction of the Odesa-Brody pipeline, on 4 February 2004 the Cabinet of Ministers decreed that the pipeline would be used in the intended northern direction, following the recommendations of the inter-agency working group of 27 January.³⁶⁰ The decision to use the pipeline in the northern direction was also supported by the NSDC, the Ministry

³⁵⁵ "Chaly pishov u vidstavku, bo Ukraina vybrala SEP," *Ukrainska Pravda*, 15 Travnia 2004.

³⁵⁶ Anastasiia Zanuda, "Za shcho zvilnyly Vitaliia Haiduka," *BBC Ukrainian*, 6 Hrudnia 2004; *Decree of the President of Ukraine*, 5 December 2003, N 1406/2003.

³⁵⁷ Tatiana Silina, "Sergei Yermilov: v natsionalnykh kompaniakh ne dolzhno byt' rukovoditelei unizhaiushchikh svoimi deistviiami i sebia i stranu," *Zerkalo Nedeli*, 6-12 Marta 2004; also see footnote 40.

³⁵⁸ Oleg Gavrish i Alexei Nikolski, "Putin i Kuchma razvernuty trubu," *Vedomosti*, 23 Ianvaria 2004.

On 23 January 2004, before the talks of Putin and Kuchma, Ambassadors of Poland, Czech Republic, Turkey and the United States wrote a letter to President Kuchma, with copies to PM Yanukovych, Deputy PM Kliuev, and Minister of Foreign Affairs Konstantyn Hryshchenko stating that they wanted: "to express their concern over indications that Ukraine is wavering in its commitment to use Odesa-Brody as a land-based Caspian transportation corridor to Europe. We also want to reaffirm our convictions that utilising the Odesa-Brody-Southern Druzhba as an oil transport corridor to Central Europe makes short-term and long-term commercial, economic and political sense. See copy of the letter in Annex 5 in Mykhailo Gonchar, Alexander Duleba and Oleksandr Malynovskyi, *Ukraine and Slovakia in a Post-crisis Architecture of European Energy Security*, (Bratislava-Kyiv: Research Center of the Slovak Foreign Policy Association, 2011), pp. 180-181.

³⁵⁹ Hanna Liuta, "Nefteprovod Odessa-Brody: tupik ili ugroza natsionalnym interesam?" *Zerkalo Nedeli*, 30 Aprelia- 15 Maia 2004.

³⁶⁰ *Order of the Cabinet of Ministers of Ukraine*, 4 February 2004, N 114-2004-n.

of the Economy, the Ministry of Finance, and the Ministry of Foreign Affairs (ministries which according to the cabinet procedures have to approve a project of this magnitude).

Deputy PM Adrii Kliuev was charged with the implementation of the decree, while a ministerial committee in relation to the use of Odesa-Brody was also formed. The ministerial committee was charged with the effective use of the Ukrainian pipelines and preparation of the proposals regarding conditions for the transit of oil through Odesa-Brody, including the period of the construction of Brody-Plock. The committee included: Minister of Fuel and Energy (head of the committee), Deputy Minister of Economy regarding European integration, Deputy Minister of Foreign Affairs, Deputy Minister of Justice, Deputy Minister of Fuel and Energy, Deputy Head of the State Property Fund of Ukraine, Deputy Head of Naftogaz, and President of Ukrtransnafta.³⁶¹ Thus, through this order not only did PM Yanukovich confirm the northern use of the pipeline and transferred the control over pipelines away from state companies to the cabinet and the committee more specifically, he also reinstated the executive functions of several key officials that were marginalised by presidential decrees, crucial among them was President of Ukrtransnafta, Oleksandr Todiychuk.

In explaining the decision, the Minister of Fuel and Energy, Serhii Yermilov, said that the cabinet was motivated by economic calculations, especially the effectiveness of the use of the pipeline in the long-term perspective. However, already in 2004 the government expected to transport 4-5m tonnes of Caspian oil from Azerbaijan and Kazakhstan.³⁶² In order to operationalise the pipeline, the cabinet supported the idea of turning the Odesa-Brody pipeline and terminal Pivdennyi into a concession. In addition,

³⁶¹ Ibid.

³⁶² Ivan Honta, "Neft s Ukrainy poidet v Evropu," *Zerkalo Nedeli*, 7-13 Fevralia 2004.

the cabinet ordered the MFE, Naftogaz and Ukrtransnafta to make the pipeline operational by fulfilling the existing international agreements and protocols signed with partners regarding the transit of oil through Odesa-Brody.³⁶³ While the government continued to work on realising Odesa-Brody over the following months, the supporters of the reversal were not giving up. Boyko and Vasylenko kept on sabotaging the realisation of the northern direction,³⁶⁴ while the President began to remove key supporters of the EAOTC from the government. On 5 March 2004 President Kuchma dismissed the Minister of Fuel and Energy, Serhii Yermilov, on grounds similar to Vitalii Haiduk.³⁶⁵ On 15 May 2004 he annulled the position of the Special Envoy of Ukraine for the EAOTC and dismissed Oleksandr Todiychuk from this post, following which Todiychuk resigned from the post of the President of Ukrtransnafta.³⁶⁶ Thus, although the President did not have the power to decree the cabinet to act in a certain way, he could remove officials from the cabinet who opposed his position. In this way the power of the President was not limited through appropriate checks and balances, therefore allowing him to control policies that he was interested in.

Prime Minister Concedes

The months of May and June 2004 turned out to be pivotal for the realisation of the southern route. During this period President Kuchma applied increasing pressure on

³⁶³ "Ukraina khochet prodolzhit' neftianoi dialog s Rossiei i Pol'shei," *Zerkalo Nedeli*, 14-20 Fevralia 2004.

³⁶⁴ Minister of Fuel and Energy Yermilov asked the PM Yanukovych to fire the general director of Ukrtransnafta, Vasylenko, as he was not fulfilling ministerial orders regarding the purchasing of technological oil for Odesa-Brody. Similarly, when Ukrtransnafta was supposed to carry out an experiment with Slovakian Transpetrol and Czech MERO at the end of January 2004 to test Druzhba-Uzhhorod pipeline in order to transport different sorts of oil, Urals crude and then Azerbaijani crude (Brody – Budkovce – Kralupy), which would have been a first try to deliver Azeri oil to refineries in Central Europe, Vasylenko together with Transneft, and Russian shareholders within Transpetrol sabotaged the deal. In addition, Ukrtransnafta and Naftogaz boycotted the directions of the ministry by refusing to pay PriceWaterhouseCoopers and Energy Solutions for the consulting work they carried out. See Mykhailo Gonchar, Alexander Duleba and Oleksandr Malynovskyi, p. 134; Tatiana Silina, "Sergei Yermilov: v natsionalnykh kompaniakh ne dolzhno byt' rukovoditelei unizhaiushchikh svoimi deistviiami i sebia i stranu," *Zerkalo Nedeli*, 6-12 Marta 2004.

³⁶⁵ *Decree of the President of Ukraine*, 5 March 2004, N 274/2004; Silina, *Zerkako Nedeli*, 6-12 Marta 2004.

³⁶⁶ *Decree of the President of Ukraine*, 15 May 2004, N 574/2004.

PM Yanukovich to stop contradicting his preferences.³⁶⁷ Although it is not clear why Yanukovich changed his position regarding the pipeline, it is likely that his official nomination in mid-April as an incumbent candidate for the presidential elections in the fall necessitated it. Yanukovich's later actions regarding the pipeline when he became a Prime Minister during Yushchenko's presidency (4 August 2006 – 18 December 2007) and now as a President (25 February 2010 – present) suggest that his initial intention was not to reverse Odesa-Brody.³⁶⁸ On 5 July 2004 PM Yanukovich personally amended the earlier cabinet decision by removing the wording, "in the direction from Odesa to Brody", from the February order.³⁶⁹ He did not do this in consultation with the Ministry of Fuel and Energy as required by cabinet procedures; thus, the decision reportedly was not collegiate, but a personal one.³⁷⁰ The decision was made behind the scenes and away from the public eye. For a week mass media tried to take a look at the ministerial amendment, which was not posted on the site of the Cabinet of Ministers as customary, and when prompted about it, the PM responded: "Have you seen this order? I have not."³⁷¹

On 8 July 2004 the supervisory board of Ukrtransnafta made two contradictory decisions: firstly, to sign the agreement with Polish PERN on the creation of the

³⁶⁷ Tatiana Ivchenko, "Leonid Kuchma prizval ne vorotit' nosom Rossii. Ukrainskoe pravitel'stvo peresmotrit svoiu pozitsiiu po proektu Odessa-Brody," *Nezavisimaia Gazeta*, 19 Maia 2004.

³⁶⁸ As a PM during the Presidency of Yushchenko, Yanukovich almost immediately issued an order to diversify the sources of oil in Ukraine, prevent the emergence of crisis situations on the Ukrainian market, and increase volumes of oil transited through Ukraine. The order detailed a substantial programme to realise these goals including measures until 2015 to restart the realisation of the EAOTC and implement the Northern direction of the pipeline with alternative to Russian oil supplies. See *Order of the Cabinet of Ministers of Ukraine*, 8 November 2006, 1572-2006-n. In May 2010 Ukraine began to transit Venezuelan oil to Belarus using railways and starting November 2010 the oil was transported from Odesa to Brody towards Belorussian Mozyr. See "Ukraina kachateme do Bilorusii naftu Chaveza," *Ukrainska Pravda*, 2 Lystopada 2010. Starting 13 February 2011 Ukrtransnafta began to ship Azeri Light to partners in Belarus. See "Odesa-Brody uzhe kachaie kaspiisku naftu v Bilorus'," *Ekonomichna Pravda*, 15 Liutoho 2011.

³⁶⁹ *Order of the Cabinet of Ministers of Ukraine*, 5 July 2004, N 831/2004; Hanna Liuta, "V napravlenie na Brody – iskliuchit'," *Zerkalo Nedeli*, 3-9 liunia 2004.

³⁷⁰ Alla Yermenko, "'Dzien Zwira' v Ukraine," *Zerkalo Nedeli*, 10-16 liulia 2004.

³⁷¹ Ibid. As it emerged later, in September 2004 the Polish side was still trying to find out under what conditions and when the pipeline could be used in the projected, Northern direction. See Ivan Honta, "Polsha – Ukraine: kak vy smozhete razvernut' nefteprovod Odessa-Brody?" *Zerkalo Nedeli*, 4-10 Sentiabria 2004.

Ukrainian-Polish joint venture, Sarmatia, that would work on realising the construction of the Brody-Plock pipeline; the second, to transit Russian oil from Mozyr through Brody and Pivdennyi. Neither Polish government nor PERN were consulted before making these decisions, especially surprising considering that Poland and Ukraine had already signed an intergovernmental agreement regarding Odesa-Brody.³⁷² Thus, for the Polish side to have Ukrtransnafta independently re-write international, strategic agreements was unexpected, especially since no warning came from the Ukrainian government. Similarly, the government did not consult or warn the EC. The Polish reaction to these decisions was summed up by Anna Skovronska-Luchinska, a trade advisor to the Polish Ambassador in Ukraine: “Do you think it is possible to realise these two decisions simultaneously?” In her view the actions of the Ukrainian government made it an untrustworthy partner since both the EU and the Polish government spent a considerable amount of time and money in trying to bring this project to fruition.³⁷³

On 27 July 2004 Ukrtransnafta declared the signing of the contract with TNK-BP for the transit of up to 9m tonnes of oil through Brody-Odesa for a period of three years. In total five agreements were signed. The company would provide \$108m to Ukrtransnafta for the purchasing of up to 425,000 tonnes of technological oil at an annual interest of 8 percent.³⁷⁴ Finally, the intergovernmental agreement for the transit of Russian oil through Ukraine until 2019 was signed in Sochi on 18 August 2004, including the supply of Russian oil in the direction of “Brody-Odesa- sea port Pivdennyi.”³⁷⁵ In the words of Oleksandr

³⁷² Yeremenko, *Zerkalo Nedeli*, 10-16 liulia 2004.

³⁷³ Ibid.

³⁷⁴ Oleg Gavrish, Aleksandr Tutushkin, Rodion Levinskii i Anastasia Gerasimove, “Ukrtransnafta gotovitsa vziat v kredit neft dlia truby Odesa-Brody,” *Vedomosti*, 7 Iulia 2004; Alla Yeremenko, “Ukrtransnafta obiaвила o podpisanii kontrakta s TNK-BP...” *Zerkalo Nedeli*, 31 liulia- 6 Avgusta 2004.

³⁷⁵ *Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine regarding the transit of oil through the territory of Ukraine*, N 643_284, 18 August 2004; Alla Yeremenko, “Ukraina vykupit

Chaly, the question regarding Odesa-Brody was not in the reverse use of the pipeline, but who controlled it. All of the agreements in actuality transferred the control over the scheduling of the oil flows in the pipelines to Transneft, while Ukrtransnafta merely executed functions as the operator.³⁷⁶

While the supporters of the reversal justified the decisions by arguing that there was no alternative to Russian oil for the direct use of the pipeline, letters from Turkish, Lithuanian and American companies suggest that both the suppliers and customers existed, and what was lacking was political will to make it happen.³⁷⁷ Thus finally, the idea of the reversal of the oil flow in Odesa-Brody, which originated in Russian state and private companies, was realised by firstly finding powerful interest groups and individuals within Ukraine who were able to lobby for an alternative policy and secondly to convince President Kuchma of its precedence over other options. He in turn used his formal and informal powers to make sure his policy choice was implemented. The resulting policy benefited the immediate interests of the groups and individuals who lobbied for the

turkmenskii gaz u rossiiian, a nefteprovod Odessa—Brody Naftogaz sobiraetsia zapolnit' neft'iu do 20 sentiabria," *Zerkalo Nedeli*, 4-10 Sentiabria 2004.

³⁷⁶ Alla Yeremenko, "Odessa – Brody: problema ne v reverse, a v kontrole nad etim neftemarshrutom," *Zerkalo Nedeli*, 9-15 Oktiabria 2004.

³⁷⁷ In a letter from 26 January 2004 to Deputy PM Klyuev Sitki Aiyar, the President of SOM Petrol, a Turkish trader of Kazakh and Turkmen oil, wrote: "SOM Petrol has extensive experience working in the market of oil and oil products, and today we can say with confidence that we are one of the main exporters of oil, drilled in Kazakhstan and Turkmenistan. Due to the harsh conditions for the shipments through the Bosphorus and Dardanelles, as well as increasing volumes of vessels through this route our company, like others, carries significant losses...We once again confirm our readiness to develop our earlier agreements and sign agreements with Ukrtransnafta regarding: supply to Europe over 3.6m tonnes of Caspian oil annually through Odesa-Brody; participate in the supply of technological oil for the Odesa-Brody pipeline in the amount of 360,000 tonnes; [and] invest the construction of the railway loading complex at terminal Pivdennyi." A letter from the CEO of the American ChevronTexaco, David O'Reilly, to the President of Ukraine from 29 January 2004 reads: "We are ready to continue our cooperation with Ukrtransnafta and other pipeline companies on the implementation of this project and to supply oil by the Odesa - Brody pipeline to Central Europe". Finally, on 17 June 2004 before the July decision by the PM to reverse the pipeline, a letter from Baltic Petroleum, a trader of ChevronTexaco, stated: "We are ready to conclude an agreement on transporting crude oil through the facilities of the Odesa - Brody with the volume of 5 - 7m tonnes over the first 18 months, starting September 2004." Baltic Petroleum offered line fill oil [that is technological oil for which Ukrtransnafta was taking on a credit from TNK-BP] for free and it could have been pumped starting September – October 2004. See Mykhailo Gonchar, "Prozorist naftogazovoho sektoru ekonomiky Ukrainy," *NOMOS Center*, 19 Sichnia 2008; also in Mykhailo Gonchar, Alexander Duleba and Oleksandr Malynovskyi, p. 133-134;

reversal but it resulted in considerable losses for long-term state stability and security of energy supply.

Conclusion

In this chapter I have shown that the executive policy regarding the use of the Odesa-Brody pipeline was inconsistent as the policy changed on 5 July 2004 when PM Yanukovych amended the previous cabinet decree to enable the transportation of Russian oil in the southern direction. I have argued that two domestic factors were the most significant influences on policy inconsistency regarding the pipeline: the differences within the executive over policy preferences and the influence of vested interests (domestic and foreign) on the policy-making process.

The preferences of President Kuchma changed not because there was no oil for the Odesa-Brody pipeline or that refineries in Europe could not purchase oil shipped through this pipeline, but because he stopped viewing Odesa-Brody as a source of energy security for Ukraine and instead interpreted the project from the perspective of the interests of commercial companies of Ukraine and Russia and the financial and political interests of his close associates and himself. The purpose of the pipeline was no longer to diversify the Ukrainian energy market and that of Europe, but to extract commercial and political benefits from the use of the pipeline. The conclusion of the temporary reversal of the pipeline served the interests of the individuals close to the president (Yurii Boyko, Viktor Pinchuk, Stanislav Vasylenko), Russian companies (TNK-BP, Transneft), and the Russian government that aimed to maintain its oil supply and infrastructure monopoly in Ukraine and in Europe. Kuchma chose to accommodate Russian demands in light of the pro-Russian shift in Ukraine's foreign policy and the decreasing legitimacy he held within

Ukraine and abroad. Moscow became Kuchma's political ally and by extension also an ally of the regime incumbent, Yanukovich, in the looming presidential elections. Russian political backing and financial support through the use of intermediaries in the gas and oil trade via money that could be transferred into personal accounts were most likely the advantages that persuaded the president to change his policy preferences regarding the use of the pipeline.

The intra-executive disagreement between the president and the cabinet emerged when Kuchma changed his preferences regarding Odesa-Brody, but he did not have the authority to implement the policy single-handedly. In light of the cabinet's opposition to the reversal an internal battle took place within the government over which option would be pursued. This explains why throughout 2003 two policies seemed to be implemented simultaneously, one by the cabinet in the northern direction, and one by Naftogaz and Ukrtransnafta, attempting to commercialise the pipeline in the southern direction. The intra-executive split regarding policy preferences also explains the two contradictory cabinet decrees – the first from 4 February 2004 authorising the use of the pipeline towards the north and then on 5 July 2004 denouncing that earlier resolution. While the first decree was made by the cabinet in spite of the opposition of the president, the latter was amended to accommodate presidential preferences.

Lastly, vested interests played an important role in both derailing the commercialisation of Odesa-Brody in the originally-intended direction and in lobbying the president to change his policy preferences. These interests were composed of individual Ukrainian officials and businessmen who stood to personally benefit from the reversal, such as Yurii Boyko, Viktor Pinchuk and Stanislav Vasylenko and of Russian private and state energy companies such as TNK-BP and Transneft. Working together through formal

and informal channels they were able to convince the president that the reversal would be advantageous, following which he changed his policy preferences regarding the use of the pipeline.

This evidence regarding the influence of domestic sources in the executive policy inconsistency regarding the Odesa-Brody pipeline confirms both hypotheses posed in the introduction to this thesis. Firstly, that unclear distribution of powers and functions within the executive (in this case aggravated by the usurpation of power by President Kuchma) contributed to the inconsistency of foreign policy decisions. Secondly, greater foreign policy inconsistency was evident when vested interests were able to influence decision-making (in this case those vested interests were both domestic and foreign).

The 2006-2009 Gas Disputes FIVE

Following the dramatic events of the Orange Revolution in Ukraine in the fall of 2004 that brought in President Viktor Yushchenko at the helm of the state, a new regime emerged in the country, with greater freedom of the press and individual liberties and with a new orientation in foreign and security policy. Due to the Kremlin's direct involvement both before and during the Orange Revolution on the side of the outgoing regime of Leonid Kuchma, the 'Orange team' of political parties and their key leaders Viktor Yushchenko and Yulia Tymoshenko opposed the previous policy of Kuchma that stipulated close relations with Moscow and European integration in name only. Instead, they called for Ukraine's speedy entry into Western economic, political (WTO and the EU) and security structures (NATO). Arguably, in response to the geopolitical choices of Yushchenko and his team, but more importantly due to Yushchenko's determination to move away from Ukraine's Soviet past and historical Russification, Moscow reacted by using all means available to it to oppose Kyiv's course. Moscow's levers of influence in Ukraine included: Russian-leaning political forces (namely the Communist Party and the Party of Regions); ethnically Russian and Russian-speaking populations that looked up to Moscow in informational, cultural and religious realms (concentrated in southern and eastern regions of Ukraine); Russian businesses that at times operated in Ukraine (as we have seen in the discussion of the Odessa-Brody pipeline); and most importantly Ukraine's high dependence on Russia's energy imports.³⁷⁸

³⁷⁸ Ukraine imports about 53% of its energy resources (gas, oil and nuclear), while 60% of imports are from Russia (either directly or are transported by Russian pipelines). "Diversification of Energy Supply as a Necessary Precondition of Ukraine's Energy Security," in *National Security and Defence*, No. 2 (Kyiv: Razumkov Centre, 2001), p. 55. Although Ukraine has inherited such high dependence on Russia for its energy supplies from the Soviet Union, in contrast to most of the Central and East European countries the policies of the consecutive governments of Ukraine since 1991 have

Amongst these levers it is Ukraine's energy dependence that has been most widely discussed by observers. Reducing or halting energy supply to Ukraine was used on several occasions by Moscow as a 'weapon' in order to gain political and economic concessions from Kyiv. The ability of the Kremlin to potentially use Ukraine's energy dependence on Russia for political purposes lies not only with the threat of the substantive economic effects of price increases on Ukrainian industry but crucially also on politics within Ukraine. The opaque energy trade with Russia and Turkmenistan has traditionally provided financial and political paybacks to the governing elites, enabling and maintaining their hold on power. A year into Yushchenko's term, the new government seemed to indicate that it wanted to revise previous arrangements in its gas trade with Russia due to the lack of transparency, while the Russian political leaders decided to change market prices for gas to the CIS states.³⁷⁹ As the overall relations between Ukraine and Russia worsened by the end of the year, the gas crisis broke out on 1 January 2006 with Russia's three-day cut off of supplies to Ukraine, even though transit to Europe continued. A similar situation occurred at the beginning of 2008, and by the end of the year due to the failure to reach an agreement on issues of debt arrears for transit and supply prices, Moscow cut-off gas supplies to Ukraine for 20 days, severely affecting not only Ukrainian but European energy deliveries.³⁸⁰

This chapter examines the gas disputes between Ukraine and Russia, in particular the 2006-2009 gas crises in order to understand how domestic sources influenced the

failed to manage the energy sector and reform the economy so as to reduce this dependence. See Margarita M. Balmaceda, "Ukraine's Persistent Energy Crisis," *Problems of Post-Communism*, Vol. 51, No. 4, 40-50: 41-46.

³⁷⁹ Jonathan Stern, *The Russian-Ukrainian Gas Crisis of January 2006* (Oxford: Oxford Institute for Energy Studies, January 2006), p. 5.

³⁸⁰ Simon Pirani, Jonathan Stern and Katja Yafimava, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment* (Oxford: Oxford Institute for Energy Studies, February 2009), pp. 19-25; Aleksandar Kovacevic, *The Impact of the Russia-Ukraine Gas Crisis in South Eastern Europe* (Oxford: Oxford Energy Institute, March 2009), pp. 10-14.

conduct of the Ukrainian leadership and what role these factors played in contributing to the inconsistency of executive policy within this particular case. If under the Kuchma regime gas trade with Russia was used to subsidise an energy-intensive economy and also provide personal benefits to the regime from the use of intermediaries, under the post-2004 government the executive aimed to eliminate these intermediary companies. Both President Yushchenko and PM Tymoshenko agreed on this principle, but they differed on the timing and conditions for implementation of this policy. The inconsistency began with the attempts by the new Prime Minister Yulia Tymoshenko and President Yushchenko in 2005 and then again in late 2007 to revise gas agreements between the corporate energy companies of Ukraine (Naftogaz of Ukraine), Russia (Gazprom) and Swiss-registered RosUkrEnergo (RUE, at the time de-facto controlled by Gazprom). A conflict with Gazprom emerged in March 2008 when Tymoshenko independently of the President attempted to remove RUE from Ukraine's domestic market. Later the inconsistency re-emerged during December 2008, before Gazprom stopped its supplies to Ukraine on 1 January 2009 and once again during the Tymoshenko-Putin negotiations of 17-20 January. Thus, while examining this case I have attempted to evaluate how intra-executive differences between Yushchenko and Tymoshenko and vested interests such as RUE, Gazprom, and Naftogaz affected policy consistency in relation to Odesa-Brody.

In the following sections I begin by setting the international and domestic context that more broadly conditioned the emergence of the gas disputes. I argue that the geopolitical strain between the West and Russia, President Yushchenko's anti-Russian policies and a global financial and economic downfall, limited the willingness of the Russian leadership to accommodate Kyiv, while domestic political competition in Ukraine made gas policy subject to internal political strife between the President, the Prime

Minister (PM), and various vested interest groups. Further discussion on the historical background of Russo-Ukrainian gas relations will show that the underlining cause of the continuous gas crises has to do with the way in which Ukrainian authorities have failed to address Ukraine's dependency on Russian gas while the energy trade became the main sector for corruption and subject to the influence of vested interests. Later I examine the re-negotiations of the 2006 gas agreements and argue that the desire by the Orange leadership to make the gas trade more transparent ended the further monopolisation of the Ukrainian gas market by Gazprom. Lastly, I discuss reasons that led to the emergence of the March 2008 conflict, the failure of the bilateral talks on 31 January 2008 and factors that led to the resolution of the crisis on 19 January 2009, where I show that domestic factors such as intra-executive competition and the influence of vested interests contributed most to the inconsistency of the executive policy regarding the gas trade during 2008-2009. This case confirms both of the hypotheses to a different degree. A high degree of intra-executive conflict (set in an environment of the unclear distribution of functions that followed the constitutional changes of 2006) was fuelled by intense political competition between President Yushchenko and PM Tymoshenko, and their respective political blocs. Consequently, intra-executive tensions were the most visible factor in driving policy inconsistency in this case. In addition, energy lobby groups and companies close to decision-making circles both in Ukraine and Russia were influential in preventing any policy development that contradicted their preferences.

International Context

During the period from 2004 to 2009, the Ukrainian leadership faced an international environment wrought with great power competition on the European

continent. This was compounded by mid-2008 with the severe global financial crisis. Both events had consequences for the choices made by the Ukrainian officials, including the 2009 energy dispute. Before the events of what became known as the 'Orange Revolution' in Ukraine, officials in Moscow officially backed the presidential candidate of the incumbent regime, Viktor Yanukovich, for the elections of October 2004. Moscow's direct political backing, provision of financing and Russian political advisors to Yanukovich – and crucially the supply of Russian Special Forces to Kyiv to help the crumbling regime crush the opposition protesters – brought the differences in political values of the West and Russia to the forefront. Moscow opposed the popular uprisings against the authoritarian regimes of Ukraine and other former Soviet republics so as to maintain, arguably, the Russian sphere of influence in the 'near abroad', by extending Russian legitimacy and support to the repressive regimes in the region. The West, on the other hand, has historically opposed such coercive methods of 'empire-building' in the region, thus Moscow's direct involvement in the events of the Orange Revolution worsened this perception. Consequently, from 2004 onwards tensions between the dominant powers in Europe increased and Ukraine's disputes with Moscow only added to the strain of the relations between Russia and the West. This geopolitical competition, aided by the perceived expansionism of the West in Russia's 'near abroad', fuelled the desire of the Kremlin to defend its geopolitical space by using economic and energy dependencies as tools of economic and possibly political coercion in securitising energy relations.

The foreign policy agenda of the newly elected President Viktor Yushchenko and his team consisted of further integration of Ukraine into the EU and, crucially, becoming a

member of the NATO security alliance – both of which, one could argue, favoured the preferences of the West. Thus, actions that the ‘Orange team’ took internationally and domestically became a source of friction between Ukraine and Russia. During the period under examination, conflicts between the two arose almost in regards to every issue of their mutual relations: military, economic, political, and cultural. In the military sphere most notable disputes arose over the attempts by the officials in Kyiv to gain the prospect of membership of NATO, to discontinue the basing of the Black Sea Fleet (BSF) on Ukrainian territory beyond 2017 and to impose greater control over the movements of the BSF in the Black Sea (as its ships were used during the Russo-Georgian war and Kyiv sided with Georgia). In relation to economic matters, issues of market access to Russia and disputes in the energy sphere (in 2006, early 2008 and 2009) were extremely confrontational. Political elements of this Russo-Ukrainian discord during this period mainly included rhetorical feuds and spats over the expulsion of diplomats, spies and political *personae non gratae*, namely controversial Ukrainian and Russian politicians. Lastly in the cultural sphere, Yushchenko’s attempts to revise Soviet historiography and heighten the role of the Ukrainian language, culture and Ukrainian orthodox patriarchates in the wider sphere of Ukrainian society undermined Russian efforts to preserve its cultural influence in Ukraine.

The global financial and economic crisis that started in 2007 was the biggest economic event that took place during the emergence and the resolution of the case under examination. Although the effects of the crisis on Ukraine and Russia were not felt until the fall of 2008, these structural conditions influenced the choices of decision-makers in both countries. The financial crisis made it even more difficult for the Ukrainian

authorities to pay for the Russian gas supplies and this was most evident during the November-December negotiations. Importantly, the crisis seemed to make it necessary for Gazprom to get paid for the gas arrears its customers had accrued, receive timely payments for the gas and achieve market prices for the gas it supplied to Ukraine while keeping Kyiv's transit fees as low as possible. This tightening of conditions on trade was necessitated by an expected fall in Gazprom's revenues by mid-2009 since the global economic slowdown inevitably led to the reduction of the demand for energy supplies, Russia's main source of budget revenues. Thus, in 2009 Russia was expected to incur a budget deficit of 8% of GDP for the first time in ten years.³⁸¹ Consequently, structural economic conditions demanded that the Russian authorities reduced the influence of politics on its financial and economic relations with countries in the neighbourhood by making gas prices more market-based rather than below-the-market.

Domestic Context

After the Orange Revolution, Ukraine found itself in the middle of a continuous political crisis due to the competition between political elites and their inability to agree on the rules for politics and the governance of the state. Political instability in turn contributed to domestic economic underperformance and did not prepare the country to effectively fend off the consequences of the global financial crisis. During the 2005-2009 period, Ukraine had changed its prime-ministers four times,³⁸² held two parliamentary elections one of which was pre-term due to the political deadlock of 2007 and potentially faced another parliamentary election in the fall of 2008.³⁸³ This constant political re-

³⁸¹ *Economist Intelligence Unit*. Country Report—Russia, June 2009, p. 3.

³⁸² Yulia Tymoshenko, 24 January 2005- 8 September 2005; Yuriy Yekhanurov, 8 September 2005- 4 August 2006; Viktor Yanukovich, 4 August 2006-18 December 2007; Yulia Tymoshenko, 18 December 2007-4 March 2010.

³⁸³ Parliamentary elections were held on 26 March 2006, but due to the struggle between the President and the parliamentary majority, President Yushchenko dissolved the parliament on 2 April 2007 and political forces agreed to

shuffling prevented successful domestic and foreign policy-making as various branches of power were preoccupied in competing with each other, not so much over the ideological component of policies, but over appointments that ensured political control.³⁸⁴

The source of the breakdown in elite cooperation, following the events of 2004, can be found both in constitutional changes and perhaps more importantly, in how these alterations of the formal political institutions failed to change the informal patterns of political behaviour in Ukraine that characterised the preceding regime.³⁸⁵ As part of the political compromise during the events of the Orange Revolution on 8 December 2004 President Yushchenko was persuaded to amend the Ukrainian constitution through which some of the powers of the president were transferred to the prime-minister, who was appointed by a majority coalition in the parliament. This effectively transformed Ukraine's political system from presidential-parliamentary (where the president had powers of appointment and dismissal of the PM and his cabinet) to premier-presidential (where the PM and the cabinet were accountable to the majority in the parliament, while some ministers were accountable to the president thereby creating a duality within the cabinet). Due to a lack of constitutional clarity regarding the prerogatives of the president and the PM regarding the rules for the formation of the cabinet, and regarding the rules governing the formation of the parliamentary coalition, the amendment failed to create a balance of powers within the executive branch and between the executive and the legislature, which contributed to a high level of political, and crucially, intra-executive

hold pre-term elections on 30 September 2007. For more information on the elections see Nathaniel Copsey, *Election Briefing No. 24: Europe and the Ukrainian Parliamentary Elections of 2006* and *Election Briefing No. 38: The Ukrainian Parliamentary Elections of September 2007*, University of Sussex European Institute.

³⁸⁴ Geir Flikke, "Pacts, parties and Elite Struggle: Ukraine's Troubled Post-Orange Transition," *Europe-Asia Studies*, Vol. 60, No. 3, 2008, 375-396: 377, 395.

³⁸⁵ Serhiy Kudelia, "The Constitutional Changes and The Breakdown of Elite Cooperation in Ukraine After 2004," University of Toronto, paper presented at the *2010 World Convention of the Association for the Study of Nationalities*, 15-17 April 2010.

conflicts.³⁸⁶ In light of the lack of ideological alignment between the president and some of the cabinet leaders (most notably Viktor Yanukovych and Yulia Tymoshenko), cabinet leaders tended to compete with President Yushchenko over the law-making and appointment powers in order to achieve ultimate control over policy-making and the distribution of rents. Since the constitutional amendments fragmented presidential control over the agencies of coercion in favour of the parliament and the PM, political opponents began to use the powers of prosecution and law to oust one another.³⁸⁷ This institutional amendment together with the changes of the electoral law were not implemented until 1 January 2006 and more fully until the new parliament convened on 25 May 2006.

While the constitutional shortcomings of 2006 created even more opportunities for the branches of the government to compete, the underlining reason that made the authority over policy-making and appointments in Ukraine so vital is that these functions enabled the distribution of rents in the Ukrainian economy. The political system under President Kuchma institutionalised the neopatrimonial relationship between businesses and the regime in such a way that the latter controlled which businesses succeeded and which failed through state subsidisation, contract and license allocation (not just for public procurement, but virtually for any kind of activity), and favourable privatisation deals.³⁸⁸ In addition, politicians themselves were not simply the arbiters of this process, but participants, since many of them entered politics to protect their capital as well as ensure future survival of their businesses, which led to the emergence of the Business

³⁸⁶ *Ukraina v 2006 rotsi: Vnutrishnie i Zovnishnie Stanovyshche ta Perspektyvy Rozvytku*, (Kyiv: Natsionalnyi Instytut Stratehichnykh Doslidzhen', 2007), pp. 81-83.

³⁸⁷ Kudelia, pp. 9-15.

³⁸⁸ Hans von Zon, "Political Culture and Neo-Patrimonialism under Leonid Kuchma," *Problems of Post-Communism*, Vol. 52, No. 5 2005, 12-22.

Administrative Groups (or BAGs). This informal system did not inherently change under President Yushchenko,³⁸⁹ and similarly to the experiences of many African states, pressures “to generate patronage through ministerial and administrative appointments [made] attempts by opposing parties to share executive power simply unworkable.”³⁹⁰ Thus, in a neopatrimonial state, like Ukraine, the semi-presidential power arrangements following 2006 created both formal institutional and economic incentives to compete for absolute control of the political Olympus.

It is also important to note the role of the general population in these intra-elite conflicts as indirectly the political volatility that followed after the Orange Revolution contributed to myopic political behaviour by political actors and made long-term policy-making and planning extremely difficult. Political opponents gained legitimacy not only through beneficial legal rulings and successful use of mechanisms of coercion, but also by receiving popular support. In vying for their support, competing elites implemented populist measures that helped their political standing vis-à-vis the public, but negatively impacted the ability of the government and of the president to push through the badly needed albeit unpopular reforms. Considering that Ukraine during this period was going through what seemed to be constant electoral campaigning, popular preferences (either real or imposed by the elites) should not be underestimated in contributing to the instability since leaders had to remain sensitive to their electorate in the conduct of foreign policy. Thus, despite Yushchenko’s preference to remove intermediaries from the gas trade he insisted that the new arrangements offered by Moscow had to

³⁸⁹ Margarita M. Balmaceda, *Energy Dependency, Politics and Corruption in the Former Soviet Union: Russia’s Power, Oligarchs’ Profits and Ukraine’s Missing Energy Policy, 1995-2006* (Abingdon: Routledge, 2008), pp. 121-122.

³⁹⁰ Linda Kirschke, “Semipresidentialism and the Perils of Power-Sharing in Neopatrimonial States,” *Comparative Political Studies*, Vol. 40, No. 11, 2007, 1374-1394: 1380.

accommodate Ukrainian residential and industrial customers who required a slow transition to market prices. PM Tymoshenko was also sensitive to the electorate but in a different manner. Her image as a revolutionary leader who fights corruption and offers radical change required her to fulfil her electoral promises of an increase in social payments and removal of corrupt intermediary companies.

The Ukrainian economy was hit by an overlapping global economic meltdown and domestic political crisis due to a power stand-off between Prime Minister Tymoshenko and President Yushchenko starting March 2007. Since 2005 economic policy in Ukraine had moved away from an export-oriented model to a more inward-looking growth strategy which prioritised the domestic market as an important source of growth. Thus, economic policy was geared away from mainly serving the interests of the export-oriented chemical, machine-building and metallurgical enterprises to the wholesale and retail trade and food and agricultural sectors of the economy.³⁹¹ However, this shift in economic drivers was not so much a consequence of significant structural economic reforms, but a result of the government limiting the influence of big business on government policies, increasing social payments and allowing for the growth of private external debt.³⁹² The increase in social spending by the government and the growth of easy foreign credit stimulated consumer spending and created bubbles in household debt and real-estate. The global financial and economic meltdown became the trigger for the economic and financial crisis in the fall of 2008 in Ukraine, the immediate domestic causes of which lay in the government mishandling of the fiscal policy since the start of

³⁹¹ However, despite these structural changes, exports made up about half of Ukraine's GDP and were significant factors in economic growth (steel made about 40% of Ukrainian exports). Y. Zhalilo, D. Pokryshka, i O. Moldovan ta inshi, v Y. Ruban, *Ukraina v 2005-2009 rokakh: Stratehichni Otsinky Suspilno-Politychnoho ta Sotsial'no-ekonomichnoho Rozvytku* (Kyiv: Natsionalnyi Instytut Stratehichnykh Doslidzhen', 2010), p. 222-228.

³⁹² Y. Zhalilo, D. Pokryshka, i O. Moldovan, pp. 221, 230.

the year and in the lack of coordination between officials responsible for monetary and fiscal policies.

While the sub-prime mortgage industry collapsed in the US in March 2007, by the time Yulia Tymoshenko became prime-minister (18 December 2007) the signs of the global financial and economic downfall and dire consequences it could potentially have for Ukraine were ignored by the Tymoshenko government and led to fiscal loosening at the time when the opposite policy was required. In fact, as late as October 2008, the prime-minister was denying the existence of the financial crisis in Ukraine and acknowledging only problems in some export-oriented sectors.³⁹³ Failure to understand how the global financial crisis affected Ukraine (through the withdrawal of Foreign Direct Investment [FDI] and foreign credits that fuelled business activities and consumer spending, a tightening of the liquidity available for Ukraine, and a fall in exports) led to a misguided policy of social expenditures starting in 2007, which increased inflationary expectations, and during October-December 2008 the Ukrainian currency lost some 60% of its value in relation to the US dollar.³⁹⁴ Policies of increased social spending by PM Tymoshenko were particularly important for our understanding of the looming gas dispute, in that due to lack of resources Naftogaz of Ukraine (subordinate to the government) did not pay its debts on time to the intermediary RosUkrEnergo, which in turn did not pay Gazprom. This became one of the reasons for Moscow's refusal to sign a new transit and supply agreement for 2009 with Kyiv (as will be discussed in more detail later in the chapter).

Perhaps the government's fiscal policies would not have been so devastating if they had been coordinated with the monetary policy carried out by the National Bank of

³⁹³ "Tymoshenko ne vidit priznakov finansovogo krizisa v Ukraine," *Liga Novosti*, 16 Oktiabria 2008.

³⁹⁴ Olga Pogarska and Edilberto L. Segura, *Ukraine: Macroeconomic Situation*, SigmaBleyzer, January 2008, p.3.

Ukraine (NBU), the head of which was nominated by the president. Thus, while NBU and its monetary policy was more accountable to President Yushchenko, fiscal policy was in the hands of the government of Tymoshenko. While the president and the PM, whose parties were in a parliamentary coalition, began to differ on a number of policies starting in 2008, they reached a peak of their disagreement in September and October of 2008.³⁹⁵ The duality of the executive, political conflicts about what economic and budgetary policies should be like between the teams of the prime-minister and the president and the lack of a clearly delineated line of responsibilities between the government and the NBU all translated into a lack of policy coordination between the two parties and further increased the economic instability of the country.³⁹⁶ Only after the IMF's agreement to provide Ukraine with a stand-by arrangement of \$16.4bn in November 2008, did the financial situation in the country improve and Ukraine's economic collapse was avoided.³⁹⁷ The arrangement immediately provided \$4.5bn to Ukraine, making it possible for the government to pay its gas debt arrears to RUE and avoid the gas dispute with Gazprom. However, by that time the political and economic chaos in Ukraine provided an opportunity for the Kremlin and Gazprom to gamble the security of its supplies to Europe and attempt to renegotiate the gas supply contracts with Ukraine on its terms. Equally, for the Ukrainian government the fall in industrial production opened an opportunity to

³⁹⁵ In early September 2008 members of the Tymoshenko's party bloc sided with the opposition parties (Party of Regions and the Communist Party) during the vote on transferring some of the presidential powers to the PM, including rights to dismiss Ministers of Defence, Foreign Affairs and Interior as well as appointment powers over the security services. In opposition to this move Yushchenko's party left the coalition and it was dissolved on 16 September. A new coalition was not formed in 30 days and the president called for new pre-term parliamentary elections to be held in December 2008. The date was later postponed due to the financial and economic crisis that began to impact Ukraine. Yuri Zarakhovich, "Why Ukraine's Pro-Western Coalition Split," *The Times*, 4 September 2008; "Snap election called in Ukraine," *BBC News*, 8 October 2008; "Ukraine's president says no elections this year," *UNIAN Information Agency*, 12 November 2008.

³⁹⁶ *Konsultatsii shchodo Zmitsnenia Roli NBU u Zabezpechenni Tsinovoï Stabil'nosti*, (Kyiv: Natsionalnyi Bank Ukrainy, Berezen' 2008), pp. 6-9; Y. Belinska v Y. Zhalilo, O. Babanin, Y. Belinska ta inshi, *Ekonomichna Kryza v Ukraini: Vymiry, Ryzyky, Perspektyvy* (Kyiv: Natsionalnyi Instytut Stratehichnykh Doslidzhen', 2009).

³⁹⁷ "IMF Approves US\$16.4 Billion Stand-By Arrangement for Ukraine," *International Monetary Fund*, 5 November 2008.

renegotiate what it viewed as opaque and discriminatory gas trade contracts with Gazprom.

The Gas Issue in Historical Perspective

The gas trade became an issue between Ukraine and Russia following the break-up of the Soviet Union when Ukraine's dependence on the subsidised imports of Russian and Central Asian gas that fuelled its economic production became apparent.³⁹⁸ However, the inability of the political elites to successfully deal with this dependency and in fact their exacerbation of the issue in allowing Moscow to control energy markets and the supply of gas to Ukraine to the profit of several local groups and individuals,³⁹⁹ created the problems that came to the fore during the events of 2006-2009.

Dependence

The nature of Ukraine's gas relations with Russia have relied on a high degree of energy dependence on Moscow and also significant energy interdependence between the two countries. In 2007 Ukraine imported over 70% of its gas from Russia, while the share of gas in Ukraine's total energy consumption was 41% (in comparison with average 21% in the world and 24% in the EU).⁴⁰⁰ Factors that have fostered Ukraine's dependence on Russian gas imports include: the most energy-intensive industry in the world, inefficient use of gas for municipal and residential purposes, pervasive state subsidisation

³⁹⁸ During the time of the Soviet Union cheap Russian, Central Asian as well as Ukrainian gas was used to subsidise industrial and residential consumers throughout the USSR. With the break-up of the Soviet Union and introduction of convertible currencies, former Soviet republics were asked to pay for their energy use or reduce energy purchases. The latter required immediate restructuring of the industrial production and municipal services to make the use of energy more efficient, which was politically unpopular and difficult to carry out in practice. See Simon Pirani, *Ukraine's Gas Sector* (Oxford: Oxford Institute for Energy Studies, June 2007), pp. 4-5, 17.

³⁹⁹ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, pp. 1-5.

⁴⁰⁰ "Gas Market in Ukraine: State and Problems," in *National Security and Defence*, No. 8, (Kyiv: Razumkov Centre, 2008), p.18.

of the industrial production and residential customers (i.e. cheap gas), lack of transparent market mechanisms in foreign and domestic gas trade and distribution, underinvestment into the domestic gas production sector and a crucial lack of diversification of gas imports.⁴⁰¹ However, aside from consuming a significant amount of Russian gas, Ukraine transits some 76% of Russian gas exports to Europe or about 36% of the total European gas purchases (additional volumes go via Belarus – 20.3%, and directly to Finland – 3.7%) through its gas transportation network, which is reported to be the largest in the world.⁴⁰²

Considering the large extent to which Russia has been dependent on Ukraine's transportation network and Ukraine's internal market for its energy, it is fair to say that the relationship between the two states has been that of interdependence, albeit asymmetrical insofar as Moscow has been more effective in gathering the international support required for the construction of the pipelines that bypass Ukraine,⁴⁰³ whilst Kyiv proves unsuccessful in diversifying its dependence on Russian gas. It is important to point out in these relationships that as much as Moscow has supplied Ukraine with cheap gas, Kyiv has kept its transit and gas storage fees at an all-European low. Thus, the argument that Moscow has been subsidising Kyiv's economy⁴⁰⁴ can be equally reversed with Kyiv arguing that it has been subsidising Russia.

In the past, Kyiv has been able to effectively bargain with Moscow when the latter attempted to increase gas prices by asking for increases in transit and storage fees, as

⁴⁰¹ "Gas Market in Ukraine: State and Problems," in *National Security and Defence*, No. 8, pp. 18-22; Pirani, *Ukraine's Gas Sector*, pp.11-16.

⁴⁰² In 2007 the EU imports of gas totalled 309.5bcm while Ukraine transited 112.1bcm to the EU, see "The EU Gas Market: State and Trends of Development," in *National Security and Defence*, No.8, p. 6, and Pirani et al, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, p.6.

⁴⁰³ With the construction of the Yamal-Europe pipeline in 1999, current construction of the sub-sea Nord Stream pipeline through the Baltic Sea and a proposed South Stream pipeline through the Black Sea, the Russian government aims to reduce its dependence on Ukrainian transit routes.

⁴⁰⁴ Gregory V. Krasnov and Joseph Brada, "Implicit Subsidies in Russian-Ukrainian Energy Trade," *Europe-Asia Studies*, Vol. 49, No.5, 1997, 825:843.

before 2006 these contracts had been linked by inter-governmental agreements. In addition, it should be noted that much of Ukraine's initial energy dependence and economic stagnation during the 1990s had worsened as the way in which Soviet assets and liabilities were divided between the former Soviet republics. Moscow insisted on a "zero option," through which the new Ukrainian state was relieved of any Soviet debt obligation, while it also lost rights to Soviet assets (real estate worldwide, third world debt obligations, precious metals and currency reserves, investments abroad, some \$579m owed by Soviet banks to the Ukrainian SSR, and about \$150bn held by Ukrainian residents in the Soviet savings bank in Moscow, etc).⁴⁰⁵ Ukraine has for years pursued these issues with Russia, but with little progress. In fact, from the early 1990s on, Moscow demanded Kyiv to pay higher prices for energy supplies including gas. The new Ukrainian state had few funds to pay for them, accumulating gas debts that were used by Moscow to pressure Ukraine into selling its infrastructure to Russia. Consequently, if a fair division of assets and liabilities had occurred from the start of their bilateral relations, many of the present-day problems seen in the energy relations between Ukraine and Russia would have been less acute, providing a better chance for the Ukrainian state to both pay for its gas purchases and possibly invest into the modernisation of industrial production, power generation and the municipal sector.

Management Problems

Despite the initial gas dependency that the new Ukrainian state inherited in 1991, the consecutive governments managed to make it worse by allowing Moscow to increase

⁴⁰⁵ Ivan Diak, *Enerhetychna Bezpeka Ukrainy* (Kyiv: Knyha, 2001), pp.112-121.

its control over the Ukrainian energy market.⁴⁰⁶ The Ukrainian leaders failed to take action in at least three key aspects: introducing market reforms to restructure the economy, fully liberalising the gas sector and diversifying gas supplies (geographically, contractually and through the delivery infrastructure).

Economy of subsidies and debts

The structure of the Ukrainian economy following the disintegration of the Soviet Union relied heavily on the use of energy, especially gas, both for industrial production and for power production/district heating for households. During the Soviet times energy had been in abundance and practically no energy-saving technologies were introduced. After independence the Ukrainian government did not change this Soviet era policy. Instead, it continued to subsidise industries and residents, shielding them from market prices while making little effort to invest into gas sector reform so as to make the use of energy more efficient. In fact, as I demonstrate in the following section, a strong argument can be made that the political and economic elites in Ukraine maintained both their political power and personal profits from this 'energy-intensive' economy, and did not have either political (since reforms were unpopular) or personal economic reasons to change the status quo. Thus, over the last two decades gas prices for industrial and household customers remained below the cost of delivery, making the government pay for the difference.⁴⁰⁷

⁴⁰⁶ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, pp. 2-3, 144-143. As noted by Balmaceda, in 1991 Ukraine inherited dependence of 89% in oil and of 56% in gas on mainly Russian imports (p.45).

⁴⁰⁷ Pirani, *Ukraine's Gas Sector*, pp. 13, 25-26; Michael Fredholm, *Natural-Gas Trade between Russia, Turkmenistan, and Ukraine* (Stockholm: Stockholm University, Department of Oriental Languages, November 2008), p. 11. In addition, non-payments by customers, especially residential, for gas were regular throughout the 1990s and to a lesser extent to the present day, contributing to the continuous insolvency of the national gas suppliers (presently Naftogaz and its subsidiaries) and the accumulation of their debts to Russian companies.

Ukraine's economy after independence began to recover in the early 2000s, with positive GDP growth rates and a rise in the standard of living. This recovery was mainly fuelled by the global demand for raw materials and an increase in energy prices. Under these conditions, Ukraine's low currency rates, low wages, and below-the-market energy use for industrial production made metallurgy and chemical exports the driver of Ukraine's economic growth, and this remained true to a lesser extent following the Orange Revolution.⁴⁰⁸ Table 5.1 shows the below-the-market prices paid by Ukrainian consumers in 2006 in relation to other European countries.⁴⁰⁹

Table 5.1. Prices for natural gas delivered to European consumers, 2006 (including VAT)⁴¹⁰

Residential Customers	\$/mc m	Industrial Customers	\$/mc m
Ukraine	36.6	Ukraine	141.6
Russia	44.8	Russia	61.7
Moldova	118.0	Moldova	118.7
Poland	460.0	Poland	237.4
Germany	478.7	Germany	420.0
Average EU	523.4	Average EU	430.0

The issue of the Ukrainian energy debts, especially for gas, both real (vis-à-vis non-payments by domestic customers) and artificial (created by corrupt practices of the

⁴⁰⁸ Leonid Grigoriev and Marsel Salikov, "Ukraine-Growth and Gas," *Russia in Global Affairs*, Vol.4, No.2, 2006, 156-176; 158, 159, 162, 163.

⁴⁰⁹ While the global economic developments improved the ability of the industrial customers to pay for their energy use, residential customers, public sector organisations, district heating and power generating sectors remained amongst the biggest non-payers with the most wasteful energy use, contributing to the accumulation of corporate and state debts and promulgating dependence on high volumes of imported gas. Pirani, *Ukraine's Gas Sector*, pp. 68-69.

⁴¹⁰ As compiled and cited by Simon Pirani, *Ukraine's Gas Sector*, p.26.

intermediaries whose debts were taken over by the state – see discussion below) are key to understanding why energy conflicts between Moscow and Kyiv arose, since they frequently became reasons for the energy cut-offs and Moscow's takeover of industrial assets and infrastructure in Ukraine throughout the 1990s.⁴¹¹ To deal with recurring gas arrears the government attempted to reform the gas sector. However, the way in which reform had been carried out did not solve the problem, but made it worse by introducing additional avenues for corruption within the gas sector.

Failed gas sector reform

State distributors of gas to Ukrainian customers were unable to collect the payments, leading to the accumulation of sovereign debt to Russia. To stop this accumulation, the IMF pressured Ukraine in April 1996 to liberalise the gas trade by introducing the gas trading concessions system.⁴¹² Thus, the Ukrainian gas sector was fragmented while the state, at least in theory, no longer guaranteed payments for gas imports as relations were concluded between corporate entities of both states. However, instead of the emergence of a competitive environment, the government awarded exclusive rights to several gas traders who at times also acted as regulators of the market. This failed liberalisation led to the emergence of several trading monopolies across Ukraine, who on the one hand were more effective in extracting payments from customers, but, on the other hand were closely tied to the political elite that allowed corporate debts – real or inflated – to be assumed by the state.⁴¹³ The enlargement of debts usually occurred when traders manipulated gas prices through barter and

⁴¹¹ Pirani, *Ukraine's Gas Sector*, pp. 19-20; Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, pp. 29-32.

⁴¹² Pirani, *Ukraine's Gas Sector*, p. 7.

⁴¹³ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, pp. 48-53.

discounted bills of exchange, or ‘stole’ gas intended for European consumers, which was then calculated as part of Ukraine’s debt to Gazprom.⁴¹⁴ In order for these companies to continue their operations, they frequently provided rents to the political elites, who in turn gained a stake in the illicit trade (or were owners of these companies) and helped them to succeed. Thus, “energy rents actually created (or strengthened) Ukraine’s most important political actors of the post-Soviet period.”⁴¹⁵

By fragmenting the gas trading sector, President Kuchma helped to foster capital accumulation by a number of individuals and groups who began to challenge the president’s power (most notably his Prime Minister Pavlo Lazarenko) and contributed to the decision to re-integrate the gas sector in 1998 by creating a vertically-integrated structure owned by the state, Naftogaz of Ukraine, that controlled practically all oil and gas production, gas supply, transit and distribution.⁴¹⁶ The head of Naftogaz was appointed by the President and the company’s activities have led observers to believe that it worked not so much to promote the corporate interests of the company or the national interests of Ukraine, but that of its top managers and Kuchma himself.⁴¹⁷ Thus, the partial reforms of the gas sector failed due to the rents offered by the energy trading scheme with Russia and the Central Asian states.

Lack of diversification

Lastly, Ukraine’s gas dependency on Russian imports was exacerbated by the government’s inability to diversify both supply and delivery infrastructure, as well as successfully develop replacements for gas imports. Throughout the 1990s Ukrainian gas

⁴¹⁴ Although Gazprom has constantly accused Ukrainian companies of ‘stealing’ gas, Balmaceda argues that most likely Gazprom managers also benefited from these deals (pp.104-105); Ibid, pp. 102-104.

⁴¹⁵ Ibid, p. 106.

⁴¹⁶ Ibid, pp. 109-111.

⁴¹⁷ Ibid, p. 111; “Gas Market in Ukraine: State and Problems,” in *National Security and Defence*, No. 8, p.24.

imports were supplied through direct contacts both with Russian and Central Asian states, especially Turkmenistan. Thus, although these volumes passed through the Russia-owned pipelines, Russian obligations to Central Asian states meant that these gas supplies could not be halted unilaterally by Moscow. However, since non-transparent intermediaries were used in the transportation of the Turkmen gas - rarely delivering full contracted amounts of gas (actual deliveries were between 60-94%) and timely and full payments - official relations between Turkmenistan and Ukraine worsened.⁴¹⁸ Ukraine's energy relationship with Turkmenistan reached its nadir during December 2004, when Ashgabat halted gas supplies due to the high prices of barter goods from Ukraine (gas supplies from Turkmenistan were paid in cash and barter goods) and also demanded a higher price for gas supplies. On 29 June 2006 Turkmenistan unilaterally breached its contract with Ukraine due to both accrued debt and Russian attempts to monopolise gas supplies from Turkmenistan by buying them out at higher prices, giving a clear sign that Ashgabat no longer wanted to deal bilaterally with the Ukrainian side.⁴¹⁹ Thus, Ukraine's failure to establish a good payments record and gas trade rapport with Turkmenistan made Moscow more willing to forsake its direct relations with Kyiv and opt out for more stable and timely payments by Gazprom, which in turn made Ukraine more dependent on Russian state-owned companies for gas imports from Central Asia.

Similarly, the Ukrainian government failed in diversifying its delivery methods due to a lack of political will and financial resources. Thus, although Ukraine has a 100% dependency on gas pipelines that pass through Russia, it could have diversified supplies by building a gas-pipeline by-passing Russia or securing deliveries of liquefied natural gas

⁴¹⁸ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, p. 92.

⁴¹⁹ Fredholm, *Natural-Gas Trade between Russia, Turkmenistan, and Ukraine*, p. 24.

(LNG). While talks on constructing a Russia-alternative, Trans-Caspian gas pipeline called the White Stream, were held throughout the 1990s within Ukraine, only after the Orange Revolution did the government begin to take steps to realise the project. However, the project was estimated to cost some €3.8bn in the first phase, thus requiring high diplomatic, political and financial commitment by the Ukrainian government to turn it into a reality.⁴²⁰ Similarly, although potentially Ukraine had an option to diversify its gas imports with the supplies of liquefied natural gas which can be transported by tankers, it required investments into this sector since Ukraine lacks the necessary technologies and equipment.⁴²¹

Lastly, Ukraine's gas imports from and through Russia could have been replaced by domestic gas production or gas-substituting energy sources. Ukraine's own production of gas has annually stood at about 20bcm or about 25% of its needs. Main hydrocarbon basins in Ukraine are located in the Dnipro-Donetsk region in the southeast of the country, in the western Carpathian region, and Black and Azov seas, which have deep-sea deposits that could be developed.⁴²² However, due to the lack of financial resources needed to develop domestic production, a lack of technologies, and a poor investment climate and accommodative regulation that could attract international majors, these deposits have remained largely non-developed. Similarly, the government has invested very little in renewable energy sources like wind, hydro, solar, geothermal and bio-fuel power technologies, all of which have great potential in Ukraine.⁴²³

⁴²⁰ "Diversification of Sources of Natural Gas Supply in Eurasia," in *National Security and Defence*, No. 6 (Kyiv: Razumkov Centre, 2009), p. 20.

⁴²¹ Ibid, pp. 12-13.

⁴²² Pirani, *Ukraine's Gas Sector*, pp. 48-49.

⁴²³ "Ukraine: Country Profile, 2009," *European Bank for Reconstruction and Development: Renewable Development Initiative*.

So, although the Ukrainian government had inherited an economy which was heavily reliant on Russian gas imports, it made few efforts to change this status quo by - reforming energy inefficient production and household use; liberalising the gas sector that would eliminate price monopolies and supplies; and strategically diversifying sources of gas and energy and the delivery methods of imported natural gas for Ukraine. Instead, the political elite chose to keep the volumes of Russian energy supply and transit high as a way to personally benefit in schemes that this opaque trade offered.⁴²⁴

The 2006 Gas Dispute: Origins and Consequences

In order to understand the emergence of the 2009 gas conflict it is important to briefly discuss the gas dispute that erupted between Moscow and Kyiv during 2005-2006, since a consequence of this settlement – the establishment of RosUkrEnergo, an intermediary firm introduced to import all Central Asian and Russian gas to Ukraine – played a significant role in the 2009 dispute within Ukrainian political elites and also between Naftogaz and Gazprom. After the Orange Revolution, the new elites in Kyiv wanted to revise the situation in the Ukrainian-Russian-Turkmeni gas trade and while the Ukrainian negotiations were rather successful with Turkmenistan,⁴²⁵ talks with Russia broke down in December 2005 due to the desire by Moscow to charge Ukraine higher prices (without appropriate increase in payments for transit) and to eliminate direct sales by Turkmenistan to Ukraine. Moscow then halted the supply of gas for three days to

⁴²⁴ For excellent reports that detail government and business elites in Ukraine and Russia who personally benefited from the Russo-Turkmen-Ukrainian gas trade see Fredholm, *Natural-Gas Trade between Russia, Turkmenistan, and Ukraine*; and a report by an international NGO, "It's a Gas. Funny Business in the Turkmen-Ukraine Gas Trade," *Global Witness*, 25 July 2006.

⁴²⁵ In December 2004 Turkmenistan wanted to increase the prices for the gas it sold to Ukraine following a halt to supplies on 31 December for 3 days. In December 2005 the Presidents of Ukraine and Turkmenistan agreed that Ukraine would purchase 40bcm of gas at \$50, starting 1 January 2006 with the increase to \$60 in the second half of 2006. Fredholm, p. 24.

Ukraine starting 1 January 2006, citing a lack of a signed contract for supplies despite the existence of a valid intergovernmental agreement with Russia from 2001 and Ukraine's agreement with Turkmenistan for the supply of gas from December 2005.⁴²⁶ Vested interests that wanted to remain in the Ukrainian gas trade and Russian pressure to raise prices and further monopolise gas supplies to Ukraine played the most important role during this crisis. This crisis shows how the proximity of vested interests (namely, EuralTransGas and later RUE, and Gazprom) to policy-making circles in Ukraine and in Russia have captured state energy policy and attempts at revising these trading arrangements ended up sparking a gas crisis between Ukraine and Russia. This became more apparent in the 2009 crisis when the issue of how to handle energy intermediaries became one of the policy differences between President Yushchenko and PM Tymoshenko.

Pre-2006 Crisis Situation

Prior to the crisis of 2006 the Ukrainian-Russian gas trade (supply and transit through Ukraine and transit of Central Asian gas for Ukraine through Russia) was regulated by intergovernmental agreements between the cabinets of Ukraine and Russia. Thus, the last intergovernmental agreement signed on 4th October 2001 would be in effect until 2013.⁴²⁷ Yearly agreements on volumes, prices for transit and supplies, and any changes to the agreements were supplemented by intergovernmental protocols.⁴²⁸ In the absence of the agreed annual protocol (as in 2006), the sides were supposed to resolve their differences through consultations, or as a last resort, through international

⁴²⁶ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, p.126.

⁴²⁷ *Uhoda mizh Kabinetom Ministriv Ukraïny ta Uriadom Rosiï's'koï Federatsii, Verkhovna Rada*, 4 Zhovtnia 2001.

⁴²⁸ Protocol for 2003; Protocol for 2004 was not signed by the cabinet and the PM Yanukovich, but the prime-minister empowered his deputy, Vitalii Haiduk, to sign the approved protocol and make amendments that do not contradict it; Protocol for 2005.

arbitration (since the 2001 agreement was ratified and became an international agreement between Ukraine and Russia). Thus, the Russian reduction of 2006 gas supplies violated this intergovernmental agreement.

While intergovernmental agreements and protocols regulated trade, corporate entities, both state and private, implemented these agreements. With Vladimir Putin's ascension to power in Russia, Moscow began to centralise Gazprom's control (a controlling stake of the company is owned by the Russian government) over the gas trade within and through Russia.⁴²⁹ At the end of 2002 Gazprom together with Naftogaz removed Itera from the shipment of Central Asian gas to Ukraine.⁴³⁰

On 5 December 2002 Naftogaz and Gazprom signed an agreement to create a joint venture for the export of Central Asian gas to Ukraine, but as it turned out it was not a transparent, government-owned joint venture, but a private, Hungarian-registered firm, EuralTransGas, controlled by a complex network of off-shore companies linking existing government officials and private businessmen in Ukraine, Russia and abroad.⁴³¹ This entity in the Ukrainian-Russian gas trade was criticised for links to organised crime both domestically and abroad. To clean the reputation of Gazprom and Naftogaz officials decided to switch to a new intermediary, RosUkrEnergo, registered in Switzerland on 22

⁴²⁹ On Vladimir Putin's energy policy, see Harley Balzer, "The Putin Thesis and Russian Energy Policy," *Post-Soviet Affairs*, Vol. 21, No. 3, 2005.

⁴³⁰ Existing evidence shows that privately-owned, off-shore company Itera was ousted from the Russian intermediary trade as Gazprom and its new officials did not have a stake in it and wanted to use Russian pipelines and enable Gazprom to prosper more effectively in the CIS by directly capitalising on its pipeline monopoly and not through an intermediary. Itera, well known for its corrupt schemes that traded and shipped Turkmen gas to Ukraine from 1994 to 2002, was thus eliminated from the lucrative shipment of gas to Ukraine, Armenia, Georgia and Azerbaijan. Reportedly, intermediary operations by Itera were supported by the head of Gazprom, Rem Vyakhirev (on post from 1992 to 2001) who was replaced with Alexei Miller by Putin. The activities of Itera were also rumoured to have been supported by the Russian Security Services through now arrested criminal, Semyon Mogilevich. Itera's corporate structure has never been revealed, but reports show that its benefactors included top officials of Russia, Turkmenistan and Ukraine. See Fredholm, pp. 14, 19; Viktor Chervokunia, "'RosUkrEnergo' - matrioshky Firtasha-Fursina," *Ukrainska Pravda*, 27 Kvitnia 2006; *Global Witness*, 25 July 2006, pp. 33-37.

⁴³¹ *Global Witness*, 25 July 2006, pp. 37-48. Participants of these events claim that EuralTransGas entered the Ukrainian market with the support from President Leonid Kuchma and PM Viktor Yanukovich, see questioning of Oleksandr Turchunov during Tymoshenko trial, "Yulia Tymoshenko dopytala Oleksandra Turchynova," *Ukrainska Pravda*, 12 Serpnia 2011.

July 2004. The new intermediary was at first said to be owned by Gazprombank through ArosGas Holding (50%) and Raiffeisen Investment AG on behalf of CentraGas Holding AG (50%), but the owners later appeared as Gazprom (50%) and Ukrainian businessman Dmytro Firtash (owned 45%, who was the founder of the previous intermediary structure – EuralTransGas) and Ivan Fursin (5%). Despite Ukrainian Naftogaz not being part of this venture, two Ukrainian officials (Yurii Boyko, head of Naftogaz and Deputy Minister of Fuel and Energy and Ihor Voronin, deputy head of Naftogaz) sat on the board of RUE at least until 2005.⁴³² What precisely was their engagement with RUE and whose interests they represented remains a mystery.⁴³³ During the Kuchma administration Firtash's supporters in the government were Boyko and Voronin, the latter also known to have connections in the Russian security services.⁴³⁴ Both were at first relieved of their duties following the Orange Revolution, but later Voronin and Boyko re-entered the executive branch. From this point onwards both Boyko and Voronin were the links within the Ukrainian post-revolution government to RUE and its lobbyists.⁴³⁵

Thus, prior to the Orange Revolution, heads of Naftogaz and Gazprom, Alexei Miller and Yuriy Boyko signed a set of agreements that regulated the supplies of Turkmen gas to Ukraine starting 1 January 2005 until 2028 through RUE. At the same time, using a barter agreement Russia also supplied its gas to Ukraine at a nominal price of \$50/mcm and Ukraine charged Gazprom \$1.093/mcm for 100km of transit (Ukraine's transit

⁴³² A copy of the protocol of the Naftogaz meeting emerged in the press from 19 October 2004 where Yurii Boyko as a head of Naftogaz appointed himself and his deputy Ihor Voronin to the coordination committee of RosUkrEnergo. See, Mustafa Naiem, "Yulia Tymoshenko: ispyt Yuriem Boyko," *Ukrainska Pravda*, 18 Serpnia 2011.

⁴³³ Fredholm, pp. 22-23.

⁴³⁴ According to sources in a conversation between President Putin and the head of the Russian FSB, Nikolai Patrushev, Putin referred to Voronin as "our guy." See Chervokunia, *Ukrainska Pravda*, 27 Kvitnia 2006.

⁴³⁵ Chervokunia, *Ukrainska Pravda*, 27 April 2006. Boyko and Firtash were especially close friends to the point that from December 2005 to July 2006 Firtash gave Boyko his power of attorney in Ukraine regarding all of his assets with all necessary powers, arguably to help during Firtash's divorce. Notably, Ukrainian parliamentary elections took place on 26 March 2006 and by August 2006 Boyko became the Minister of Fuel and Energy. Thus, very likely Firtash's assets were available to Boyko during the electoral campaign. A copy of the power of attorney document was published in "Rodyna RosUkrEnergo. Taiemnytsia vidnosyn Firtasha i Boyka rozkryta," *Ukrainska Pravda*, 5 Lypnia 2007.

charges were paid by Russian gas supplies).⁴³⁶ The elites in opposition vowed to dismantle these corrupt schemes and when the Orange Revolution brought them to power, President Viktor Yushchenko and his PM Yulia Tymoshenko seemed to be in agreement over the removal of intermediaries from the gas trade. In March/April 2005 the head of Naftogaz appointed by Yushchenko, Oleksii Ivchenko, suggested to his Russian counterparts that gas transit tariffs should be moved to European levels and paid for in cash.⁴³⁷ In March 2005 PM Tymoshenko and her ally in charge of the secret services of Ukraine (SBU) Oleksandr Turchunov opened investigations into activities of Naftogaz, UralTransGaz and RosUkrEnergo.⁴³⁸ Following these developments the Ukrainian idea to move prices for transit to 'European levels' was picked up in Russia and in Turkmenistan and the leadership of the two countries began to demand a price increase for gas supplies.⁴³⁹

Although in principle supportive of the idea to move towards the European, formula-based prices for gas supply and transit, President Yushchenko wanted to do so in a phased manner, with incremental increases over several years. However, people within his Secretariat who were close to the RUE owner, Dmytro Firtash, began to play a crucial role in introducing him to the president and likely convincing Yushchenko of the necessity of the scheme involving RUE.⁴⁴⁰ By the fall of 2005 disagreements between the various factions within the Orange coalition and between the president and the PM led to the

⁴³⁶ Fredholm, pp. 21-22. According to some estimates Gazprom and Naftogaz each lost some \$478m in annual revenues (as cited in Fredholm p. 22).

⁴³⁷ Pirani, *The Russian-Ukrainian Gas Crisis of January 2006*, p. 5.

⁴³⁸ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, p.123.

⁴³⁹ Pirani, *The Russian-Ukrainian Gas Crisis of January 2006*, p. 5; Fredholm, pp. 24-25.

⁴⁴⁰ Reportedly Yushchenko's advisor, Mykhailo Doroshenko, arranged the first meeting between Firtash and the President in December 2004, see Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, p.124. Oleksandr Turchunov during Tymoshenko's trial said that in May 2005 President Yushchenko asked him not to investigate gas issues, "Yulia Tymoshenko dopytala Oleksandra Turchynova," *Ukrainska Pravda*, 12 Serpnia 2011; also claimed that President's first aide, Oleksandr Tretiakov, made calls to him to stop his investigation, *Global Witness*, 25 July 2006, p. 57.

dismissal of Tymoshenko on 8 September 2005. Disagreements developed over policies regarding oil trade with Russia and crucially over gas trading schemes.⁴⁴¹ By the end of August and early September 2005 PM Tymoshenko, Turchynov, and Yushchenko's chief of staff, Oleksandr Zinchenko, accused the President and several individuals within his administration including the Secretary of the NSDC, Petro Poroshenko, of corruption and an attempt to become the beneficiaries of the RUE rents scheme.⁴⁴² Following presidential dismissals of both Poroshenko and Tymoshenko all investigations into intermediaries and activities of Naftogaz were stopped, while Ihor Voronin (with links to RUE) was shortly re-hired to work for Naftogaz.⁴⁴³ Thus, although Yushchenko supported the removal of intermediaries in his policy preferences, he did not take active steps to dismantle the scheme due to both the immediate costs to industrial producers (without the intermediaries Moscow's price ultimatum for gas doubled) and the vested interests around him.

2006 Crisis

The 2006 gas crisis emerged due to Gazprom's attempts to increase the price of gas for Ukraine, while keeping the transit at a minimum, to monopolise supplies of Central Asian gas to Ukraine, and to receive a share of the Ukrainian domestic gas sales. Since Yushchenko's administration took an aggressive anti-Russian stand in relation to the role of Russian culture and language in Ukrainian life and set out on a course towards integration with the EU and NATO, Moscow took a harder position in relation to the energy prices paid by Ukraine. The interests of the intermediary companies, on the other

⁴⁴¹ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, pp. 120, 123.

⁴⁴² Ibid, p.123; "Zinchenko bombshell," *Kyiv Post*, 7 September 2005.

⁴⁴³ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, p.123.

hand, were to remain in the gas trade and the only way they could do it was by offering Gazprom market prices for Russian gas, while at the same time providing discounted gas to the Ukrainian government in return for a monopoly over gas sales within Ukraine, which was precisely the outcome of the 2006 crisis. The alternative option for the Ukrainian government to fully revise its gas trading scheme and introduce market-based formulas for the supply and transportation of gas was not considered.

Throughout the fall of 2005 prices for oil on world markets rose significantly, which also meant an increase in world gas prices since the latter is tied to the former. By the end of 2005 republics of the former Soviet Union were paying 3-4 times less than Russia's European customers and thus Gazprom was seeking to increase its price.⁴⁴⁴ At the time Ukraine was paying \$50mcm and was prepared to pay \$80mcm in 2006. Gazprom on the other hand demanded an increase to around \$160-230mcm. Disagreements lasted throughout December and Ukraine refused to budge. Talks were held with Gazprom and on the last day an agreement was made over fax on 31 December 2005 at 22:30, which stipulated that the transit tariff remained the same and the two sides would find a compromise on the price during the first quarter of 2006.⁴⁴⁵

In light of this agreement, Putin's and Miller's decision to halt gas supplies to Ukraine the next day came as a complete surprise to the leadership in Kyiv, considering that it was Turkmen gas that Russia was shipping to Ukraine and Kyiv had just concluded a long-term supply agreement with Ashgabat. Why Turkmenistan's supplies were tied to the negotiations over Russian gas prices remained unclear, but as it later turned out in the last few days of 2005 Gazprom bought out 30 bcm of Turkmen gas at \$65/mcm to be

⁴⁴⁴ Pirani, *The Russian-Ukrainian Gas Crisis of January 2006*, p. 6.

⁴⁴⁵ Interview with the head of Naftogaz, Oleksii Ivchenko, Mustafa Naiem, "Oleksii Ivchenko: Ia b zaras kupyv toi Mercedes," *Ukrainska Pravda*, 9 Lystopada 2007.

delivered in the first quarter of 2006. This gas was contracted by Ukraine earlier at \$50/mcm. Thus, Turkmenistan did not honour its agreement with Ukraine, and the head of Naftogaz-Ivchenko flew to Ashgabat and threatened to fly to Brussels on 4 January and accuse Moscow and Ashgabat of political conspiracy if the two failed to honour their agreements.⁴⁴⁶ By 4 January 2006 the supplies were restored and Naftogaz and Gazprom signed a series of corporate agreements in Moscow for transit and supply for the first time without the appropriate intergovernmental protocols regulating them.

Consequences

The contracts signed on 4 January did not resolve the problem of the lack of transparency and supply diversification in Ukraine's gas trade; instead it damaged this process. These 5-year contracts brought a few improvements to Ukraine-Russia gas relations, namely eliminating barter trade and allowing for lower gas price for Ukraine (\$95/mcm for 2006 reaching \$179.5/mcm in 2008 but notably Ukrainian transit and storage fees were set at low levels for 5 years) but the contracts also significantly degraded the terms of energy trade in at least four ways. Firstly, agreements were signed between corporate entities- Naftogaz, Gazprom and RosUkrEnergo and not in a state-to-state format as was previously done under the intergovernmental protocols.⁴⁴⁷ As Balmaceda notes, this no longer made Russia responsible for the gas supplies to Ukraine (and with RUE having statutory capital of \$37,000 Naftogaz would have difficulty recovering losses should gas transit be halted). Naftogaz had no guarantees that after it paid RUE, the funds would be transferred to Gazprom. Secondly, under the agreements RUE became the sole operator of Turkmen and Russian gas imports (supply and transit) to

⁴⁴⁶ Ibid.

⁴⁴⁷ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, p.132.

Ukraine, taking away Naftogaz' transit and re-export profits. Ukraine no longer negotiated directly with Turkmenistan.⁴⁴⁸ Thirdly, import gas for Ukraine became a mix of Central Asian and Russian gas, which fully eliminated whatever contractual diversification Ukraine held in the previous years.⁴⁴⁹ Fourthly, the agreements, at least in Moscow's interpretation, de-linked transit from a supply agreement. Thus, Gazprom's European transit was no longer linked to the gas supply to Ukraine, which became a large point of contention during the 2009 crisis.⁴⁵⁰ Lastly, Ukraine allowed Gazprom to participate in the Ukrainian domestic gas sales by creating a joint venture of RUE and Naftogaz called UkrHazEnergo, which received almost a complete monopoly of gas sales to Ukraine's industrial enterprises (the best paying sector of Ukrainian domestic market and a large chunk of revenues that kept Naftogaz from going bankrupt).⁴⁵¹ In fact UkrHazEnergo, which according to 2006 agreements also supplied fuel gas to Ukraine, later served to inflate debt obligations by Naftogaz and contributed to its insolvency (the point of contention during 2008) by charging Ukrainian Ukrtransgas and regional gas distributors (operators of transit and distribution of gas who used fuel gas) \$143/mcm while according to government policy and contracts they were supposed to be at \$95/mcm.⁴⁵²

Although it is clear that the crisis had an element of economic pressure whether it had a political dimension in relation to Ukraine's post-Orange leadership or its foreign policy allegations is disputed. Fredholm considers the dispute to be economic, rather than political in nature, taking place in the seller's market, where Ukraine had little choice but

⁴⁴⁸ Ibid, p.132.

⁴⁴⁹ Ibid.

⁴⁵⁰ Pirani et al., *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, pp. 8-9.

⁴⁵¹ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, p. 127.

⁴⁵² Interview with the head of Naftogaz, Oleksii Ivchenko, Mustafa Naiem, "Alexei Ivchenko: Rossia na bliudechke poluchit nashu gazotransportnuiu sistemu," *Ukrainska Pravda*, 12 Noiabria 2007.

to heed Moscow's demands.⁴⁵³ However, Pirani and Balmaceda point out that although Russian prices for gas supplies increased for all CIS states for 2006 (ranging between \$46.7/mcm for Belarus and \$110/mcm for Caucasus), a jump to \$230/mcm was not economically justified.⁴⁵⁴ In addition, both Russia and Turkmenistan could have re-opened negotiations over gas prices or go through international arbitration to achieve more advantageous supply and transit contracts. Instead a significant reduction in gas supplies was chosen as a method to revise the contracts right before the March parliamentary elections in Ukraine. This was likely done by Moscow in the hope that the gas crisis would discredit the Orange government and boost the electoral chances of the Party of Regions that at the time was viewed as a more Russia-friendly party. In addition, this circumstantial evidence of abnormally high gas prices and timing suggest a likely explanation that Moscow wanted to transition into market-based operations with Ukraine in light of Ukraine's Euro-Atlantic choice, unless Kyiv was willing to let Moscow into the ownership of gas assets in Ukraine and continue transactions through the intermediaries.

Thus, with the end of the 2006 gas crisis Moscow (through Gazprom and RUE) achieved a three-level monopoly over Ukrainian gas trade: monopoly over Turkmen exports, monopoly of all gas exports to Ukraine (RUE and Gazprom) and a monopoly over domestic sales within Ukraine.⁴⁵⁵ Although some, including Gazprom, have claimed that RUE is an independent entity, which includes Ukrainian shareholders, such a belief is far from true. This point is important since one of the major official causes for the Russian

⁴⁵³ Fredholm, p. 25.

⁴⁵⁴ Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, p.131; Pirani, *The Russian-Ukrainian Gas Crisis of January 2006*, pp. 10-13.

⁴⁵⁵ Ibid, p. 127.

gas cut-off at the end of December 2008 was that RUE did not pay Gazprom in time, while Naftogaz claimed that it paid RUE in full. However, Gazprom partially owns (50%) RUE and enables all of RUE operations. Gazprom allows RUE to buy Russian gas and transit the gas it buys from Central Asian states through Russian pipelines to Europe, and sell this gas to European customers. However, all of these operations Gazprom could easily perform itself, but instead it chose to work through the Swiss intermediary to both hide income from Russian tax authorities and relieve European fears of Gazprom's monopolisation of energy supplies, since de-jure it owns half of RUE.

In addition, as some of the leaked Ukrainian documents from the arbitration proceeding between Naftogaz and RUE in Stockholm in 2009 have shown, RUE negotiations with Naftogaz in March 2008⁴⁵⁶ were carried out not only by official representatives of Gazprom who held simultaneous senior executive positions in RUE,⁴⁵⁷ but also by Gazprom officials who had no relation to RUE including the CEO of Gazprom, Alexei Miller, the Head of the Gazprom's Department for Coordination with former Soviet Union countries and Director of 'Gazprom Sbyt Ukraine', Anatoli Podmyshalskii, and Deputy Head of Department for Cooperation with the Former Soviet Union countries,

⁴⁵⁶ During March 2008 negotiations between Naftogaz and RUE over the purchase-sale contract for 2008, promises were made by Gazprom/RUE officials regarding delay in payments without sanctions. Details of these meetings which highlight these verbal agreements and de-facto control of RUE by Gazprom were noted by Naftogaz officials and later submitted as part of Naftogaz's third pleading in Stockholm. This third pleading was later recalled when Deputy Head of Gazprom, Valery Golubev, wrote to Naftogaz and asked them to "clean" their pleading of any mention of Gazprom and its senior officials or they could expect conflict with Gazprom. This pleading was edited by a direct order of Yulia Tymoshenko despite opposition of Naftogaz lawyers and firms that represented the company in Stockholm, Magisters and White and Case. As a consequence of this editing, Naftogaz lost its case in Stockholm to RUE. Copies of unedited and edited third pleading, correspondence between senior Naftogaz officials and its counsel, and Gazprom's letter to Naftogaz were leaked in *Ukrainska Pravda*, Mustafa Naiem, "Yulia Tymoshenko: skelety hazovoi shafy," 8 Lypnia 2010 ; Mustafa Naiem, "Obloha Stokholma. Iak vidmyvaly Gazprom," 26 Lypnia 2010.

⁴⁵⁷ Valery Golubev, Deputy Chairman of Gazprom and Member of RUE's Coordination Committee; Konstantin Chuichenko, at that time, Head of Gazprom's Legal Department and Executive Director of RUE; Nikolai Dubik, at that time, Deputy Head of Gazprom's Legal Department and Deputy Executive of RUE. Also Alexander Medvedev, Deputy Chairman of the Board of Executive Directors of Gazprom, was also involved with RUE as a Member of the Coordinating Committee, but was not present at the negotiations in March 2008. Mustafa Naiem, *Ukrainska Pravda*, 26 Lypnia 2010.

Viktor Valov. In addition, all talks between RUE and Naftogaz took place in Gazprom's office.

This evidence suggests that it is more appropriate to view RUE as a de-facto subsidiary of Gazprom at the time, than as an independent intermediary. So, if Naftogaz claimed that it sent the money to RUE, Gazprom had access to see what was in RUE's accounts. It is important to also note that it is not clear who insisted on re-introducing RUE into the gas trade in 2006, the Ukrainian or the Russian side. While the agreements from 2004 made by Yurii Boyko before the Orange Revolution suggest that it was initiated by the Ukrainian beneficiaries, events during 2006 reveal that RUE was part of Moscow's ultimatum – either with RUE and the price is \$95/mcm for 2006 or with Gazprom directly and the price is \$230/mcm.⁴⁵⁸ Consequently, it is not clear whether the Ukrainian officials had much choice in crafting gas trading arrangements considering Gazprom's price ultimatum.

Emergence of the 2009 Dispute, Crisis and its Resolution

The context in which the 2008-2009 crisis began to develop was set out in the previous sections, where I pointed to at least two long-term domestic causes of the 2009 dispute: the lack of political will to reform Ukraine's gas trade and gas sector due to both popular pressure and vested interests (i.e. the gas lobby and industrial sector connected to it); and a symbiotic relationship between the gas trade and political survival in that rents from the gas trade encouraged the maintenance of the status quo in the gas sector and provided funds for political competition between elites. The fact that the 2006

⁴⁵⁸ See questioning of former PM Yurii Yekhanurov during Tymoshenko trial, Mustafa Naiem, "Sud Yulii Tymoshenko: bytva pomaranchevykh premieriv," *Ukrainska Pravda*, 3 Serpnia 2011.

conflict did not change the status quo, but further entrenched the role of intermediaries in both foreign and domestic gas trades supports this conclusion. Consequently, political and corporate actors shaped the nature of the government's energy policy and have played a crucial role in setting the scene for the events to follow.

At the start of 2007 Yushchenko and Tymoshenko worked together to eliminate intermediaries from the Ukraine-Russia gas trade and successful talks on the level of presidents and prime-ministers of both countries were concluded by the end of October 2008. The leadership of Naftogaz, who held talks in Moscow, received presidential directives as well as directives from the Cabinet of Ministers to negotiate with Gazprom and finalise the contracts by 31 December 2008. Policy inconsistency emerged with Tymoshenko's first attempt to single-handedly remove RUE from the domestic gas sales and continued during the December negotiations over the 2009 commercial contracts and later with Tymoshenko's personal negotiations with Putin during 17-20 January 2009.

Contracts for 2009 were not concluded in December due to both domestic and external factors and Gazprom cut-off gas supplies to Ukraine on 1 January. Domestic factors in the failed December negotiations included the rising intra-executive split between Yushchenko and Tymoshenko, which prevented timely payments to RUE and Gazprom, and the influence of vested interests on these talks during the last days of December. External influences on the failure of the negotiations consisted of changes in the approach by Gazprom and the Russian leadership who wanted to further escalate the conflict in the hope of getting more beneficial trading arrangements from the Ukrainian side.

On 15 January 2009, in the midst of the gas conflict, the positions of Tymoshenko and Yushchenko parted over how to resolve the gas crisis. Tymoshenko wanted to

eliminate RUE at all costs even if it meant almost completely acquiescing to Moscow's demands and to sign the commercial contracts in the shortest possible time to secure political victory, while Yushchenko wanted to keep negotiating with Russia and involve the European Union to help establish market relations as well as to oppose Moscow's economic pressure. The intra-executive split between the President and the PM over policy preferences and functions were key domestic factors that persisted throughout the crisis and led to its resolution – the signing of the 19 January commercial gas contracts.

Yushchenko, Tymoshenko and RosUkrEnergo

From the fall of 2007 to mid fall 2008, the executive policy seemed to be united over the alteration of the gas trade arrangements with Gazprom, despite a growing battle over the division of functions between the Secretariat of the President headed by Yushchenko and the Cabinet of Ministers, headed by PM Tymoshenko. However, early signs of the growing disagreement between Yushchenko and Tymoshenko arose in February-March 2008 over a number of key policy issues including gas trade and the unpaid debts of Naftogaz to RUE and consequently to Gazprom. As a result, throughout 2008 and the January 2009 gas crisis the level of cooperation or confrontation between the President and the PM influenced the level of conflict or cooperation between Gazprom and Naftogaz in resolving their differences. Thus, gas trade (even between semi-state corporate entities) was hostage to the intra-executive disagreements within Ukraine. Three periods of major gas talks took place between the leadership of Ukraine and Russia over this period: 12 February presidential talks between Yushchenko and Putin, 12 March agreements between Naftogaz and Gazprom and 2 October 2009 inter-governmental talks between Ukraine and Russia.

Presidential agreements of 2008

Starting in March 2007 Gazprom officials began to indicate that they were willing to change gas trade arrangements with Ukraine and to remove intermediary structures.⁴⁵⁹ Similar preferences were echoed by the Ukrainian president starting in July 2007.⁴⁶⁰ With the appointment of Yulia Tymoshenko as prime-minister on 18 December 2007 (following the 2007 parliamentary elections when Yushchenko's and Tymoshenko's blocs united into a governing coalition) executive policy regarding the elimination of intermediaries from the gas trade remained united.⁴⁶¹ Their first step was to limit the role of RUE in domestic markets by taking away the license to supply gas to industrial consumers from UkrGazEnergo (50% Naftogaz, 50% RUE).⁴⁶² However, disagreements between Tymoshenko and Yushchenko began to surface during January 2008 over the government's budget policy, Soviet savings pay-outs, the privatisation programme,⁴⁶³ the president's proposals to revise powers of the cabinet,⁴⁶⁴ and most crucially over gas policy, when Tymoshenko wanted to visit Moscow ahead of the President⁴⁶⁵ and began to talk of raising the transit tariff for 2008,⁴⁶⁶ which Yushchenko opposed.⁴⁶⁷ Ultimately, disagreements abounded due to the political differences between the President and the

⁴⁵⁹ In March 2007 Valerii Golubev, Deputy Chairman of Gazprom's Management Committee, and on 15 October 2007 Dmitri Medvedev, at the time Chairman of Gazprom's board of directors, suggested that in 2008 the company wanted to begin direct supplies to Ukraine. As cited in Fredholm, p. 29. "Putin: RF gotova postavliat Ukraine gaz bez posrednikov," *Korrespondent*, 14 Fevralia 2008.

⁴⁶⁰ As reported by *Vedomosti*, "Yushchenko gotov otkazatsa ot RosUkrEnergo," *Lenta.ru*, 5 liulia 2007.

⁴⁶¹ "President gotov otkazatsa ot uslug RosUkrEnergo," *Kommersant*, 7 Fevralia 2008.

⁴⁶² "Tymoshenko doruchyla perekryty RosUkrEnergo povitria?" *Ukrainska Pravda*, 9 Sichnia 2008; Fredholm, p. 30.

⁴⁶³ "Tymoshenko vyrishyla pustyty slova prezidenta povz vyha," *Ukrainska Pravda*, 18 Sichnia 2008; "Prezydent shche raz poprosyt' Tymoshenko vhamuvaty svoi apetyty," *Ukrainska Pravda*, 22 Sichnia 2008.

⁴⁶⁴ "Tymoshenko skarzhytsia shcho Yushchenko zazikhnuv na ii prava," *Ukrainska Pravda*, 12 Sichnia 2008; "Yushchenko katehorychno proty shchob Tymoshenko tiahla svoiu kovdru na sebe," *Ukrainska Pravda*, 15 Sichnia 2008.

⁴⁶⁵ Presidential administration asked Tymoshenko not to go to visit Russian PM Viktor Zbykov on 23 January 2008, since the second inter-governmental committee meeting was scheduled for 12 February, during which presidents of both states were to meet. Tymoshenko agreed to postpone her visit. "Yushchenko ne hoche vidpuskaty Tymoshenko do Moskvu?" *Ukrainska Pravda*, 17 Sichnia 2008; "Yushchenko posylaie Bohatyriuvu protopaty stezhku do Putina. Tymoshenko pochykaie," *Ukrainska Pravda*, 21 Sichnia 2008.

⁴⁶⁶ "Rosiiia vtratyla soiuznyka v hazovykh spravakh z Ukrainoiu," *Ukrainska Pravda*, 18 Sichnia 2008.

⁴⁶⁷ "Yushchenko poperedyv shcho haz krashche ne chipaty," *Ukrainska Pravda*, 20 January 2008; "Tymoshenko nedoslukhalas' Yushchenka i tysne na haz," *Ukrainska Pravda*, 23 Sichnia 2008.

PM and due to the lack of clarity over the division of functions and line of subordination, especially in light of part of the cabinet and the heads of state agencies being either nominated by the president or representing his party.⁴⁶⁸ Yushchenko acted as if the government's policy should be agreed with him, while Tymoshenko ignored the procedural aspects of policy-making within the cabinet to quickly push through policies advocated personally by her.⁴⁶⁹

During early February before the official visit of President Yushchenko to Russia, Moscow threatened to cut off gas supplies to Ukraine on 11 January over the non-payment of gas supplied to Ukraine, claiming that Ukraine owed some \$1.5bn.⁴⁷⁰ Naftogaz was blaming RUE over the non-payment for the gas supplies,⁴⁷¹ while the company was not receiving money for the gas due to a lack of technical purchase agreement with Naftogaz since 1 January 2008.⁴⁷² Naftogaz refused to sign the agreement based on the pricing terms of UkrHazEnergo.⁴⁷³ However, in a letter from 31 January 2008 Naftogaz proposed that Gazprom pay for accrued arrears directly,⁴⁷⁴ but Gazprom did not take up the offer. In addition, Moscow accused Naftogaz of siphoning gas, while Naftogaz claimed that there was less gas due to RUE exporting it.⁴⁷⁵ Failure by Naftogaz to pay UkrGazEnergo was an attempt by the PM to single-handedly, without Moscow's involvement, remove RUE from the Ukrainian domestic gas trade, while Gazprom's threat to cut-off gas supplies likely indicated that Moscow would not remove

⁴⁶⁸ Viktor Chervokunia, "Retsediv kholodnoi viiny Yushchenka i Tymoshenko," *Ukrainska Pravda*, 6 Liutoho 2008.

⁴⁶⁹ "Yushchenko peredav Tymoshenko nevdovolennia ii 'beshketom'," *Ukrainska Pravda*, 23 Sichnia 2008.

⁴⁷⁰ "Gazprom pohrozhuie perekryty Ukraini z ponedilka haz," *Ukrainska Pravda*, 7 Liutoho 2008.

⁴⁷¹ "Kabmin zmusyt' RosUkrEnergo viddaty hroshi Gazpromu," *Ukrainska Pravda*, 7 Liutoho 2008.

⁴⁷² "Boyko kazhe: Ia poperedzhav – a use 'huchni deklaratsii'," *Ukrainska Pravda*, 8 Liutoho 2008.

⁴⁷³ Mustafa Naiem i Serhiy Leshchenko, *Ukrainska Pravda*, 8 Liutoho 2008.

⁴⁷⁴ A copy of the letter was leaked in Mustafa Naiem, "Yulia Tymoshenko vs RosUkrEnergo. Ostannia bytva," *Ukrainska Pravda*, 11 Liutoho 2008.

⁴⁷⁵ "RosUkrEnergo vidpravyla borh pered Rosiieiu za kordon," *Ukrainska Pravda*, 9 Liutoho 2008.

RUE until debts were paid and similar structures allowing for the Russian presence in Ukraine's domestic market were introduced.

On 12 February 2008, the presidents of Ukraine and Russia met to discuss the relations between the two states over the next several years. During these talks, and later evident from Yushchenko's directives to the cabinet, the presidents in Moscow agreed to eliminate RUE and UkrHazEnergo from the gas trade and set the following arrangements:

- create, if necessary, a new joint trader of Central Asian gas (Gazprom and Naftogaz) to Ukraine, which would replace RUE and during 2008 would supply gas to Ukraine at the price of \$179.5/mcm on the Ukrainian border;
- Naftogaz would regain its role as an importer of Central Asian gas;
- create, if necessary, a joint company with Gazprom to sell gas to Ukrainian consumers, by taking over the market share of UkrHazEnergo.⁴⁷⁶

Although during this period Moscow voiced its opposition to some of Yushchenko's policies regarding the role of the Ukrainian language, revision of Soviet history, attempts to receive a NATO membership perspective, existing evidence does not indicate that they influenced energy relationships between the two countries. Consequently, at least in this stage of the gas trade disagreements it was clearly a commercial dispute and not political.

March supply agreements: Naftogaz and Gazprom

The March 2008 gas dispute emerged due to the desire by Tymoshenko to remove RUE from domestic gas sales since the company was known to finance her political rivals and take away profits that could have been made by Naftogaz. However, she decided to make this move on her own initiative, without receiving presidential approval and without Gazprom. The emerging intra-executive conflict over policy preferences between Tymoshenko and the president and the PM's desire to single-handedly change the energy trading arrangements within Ukraine contributed to the emergence of the March dispute.

⁴⁷⁶ "Yushchenko zorsekretyv svoi derektyvy dlia Tymoshenko i svoi domovlenosti z Putinom," *Ukrainska Pravda*, 7 Bereznia 2008.

Despite the February presidential agreements which stipulated that Naftogaz had to firstly pay off its debts to RUE, UkrHazEnergo and consequently Gazprom, the latter accused Naftogaz of non-payment and failure to begin implementing presidential agreements.⁴⁷⁷ Thus, PM Tymoshenko was not fulfilling the presidential directives. At the same time the government accused Gazprom of not paying for gas transit.⁴⁷⁸ Gazprom responded by a warning of gas cut-offs and began reducing supplies by 25% on 3 March 2008.⁴⁷⁹ Tymoshenko wanted to negotiate with Gazprom on her own terms, irrespective of the presidential directives, while Gazprom sided with Yushchenko. Yushchenko warned Tymoshenko against starting a new gas war and intervened on 5 March by holding talks with President Putin, while the head of Naftogaz and Oleh Dubyna held talks with Gazprom.⁴⁸⁰ Following these talks, Gazprom returned its supply volumes to normal. However, even then Tymoshenko refused to accept both presidential preferences regarding gas policy and the implementation of presidential directives.⁴⁸¹ Instead the PM went to Moscow to attempt to negotiate immediate removal of RUE from the domestic market, as well as find a way to avoid paying debts to RUE and instead pay Gazprom directly.

When the agreements between Naftogaz and Gazprom were finally signed on 12 March, Yushchenko voiced his concerns over the reports of a gas price in 2008 of \$321/mcm.⁴⁸² However, upon returning from Moscow, Tymoshenko met with Yushchenko to discuss the newly signed agreements and the president confirmed that the

⁴⁷⁷ "U Gazpromi stverdzhuiut' shcho poky Tymoshenko pyshat'sia nema chym," *Ukrainska Pravda*, 27 Liutoho 2008; "Ukraina ne maie 'pidtverdzynykh' borhiv za haz," *Ukrainska Pravda*, 28 Liutoho 2008; "Gazprom na den' Valentyna zrobyv Ukraini propozytsiu, a vona movchyt'," *Ukrainska Pravda*, 2 Bereznia 2008.

⁴⁷⁸ "Turchynov zavdav Rosii kontrudar: Gazprom ne rozrakhuvavsia za transyt," *Ukrainska Pravda*, 3 Bereznia 2008; "U Gazpromi kazhyt' shcho ne platyat' za tranzyt cherez Naftogaz," *Ukrainska Pravda*, 3 Bereznia 2008.

⁴⁷⁹ "Gazprom pohrozhuie perekryty trubu z ponedilka," *Ukrainska Pravda*, 28 Liutoho 2008; "Gazprom urizav haz Ukraini shche na 10%," *Ukrainska Pravda*, 3 Bereznia 2008.

⁴⁸⁰ Fredholm, p. 32.

⁴⁸¹ "Tymoshenko dast' svoi derektyvy na hazovi perehovory," *Ukrainska Pravda*, 5 Bereznia 2008.

⁴⁸² "Yushchenka nastorozhuie \$321," *Ukrainska Pravda*, 13 Bereznia 2008.

memorandum was executed within the presidential directives.⁴⁸³ The new agreements amended the gas trade between Ukraine and Russia. According to the new contracts, Naftogaz would pay \$179.5/mcm for 2008, thus keeping the gas price the same. However, Naftogaz would pay \$315/mcm for gas supplied in January and February 2008, since this was Russian gas. In addition, the two sides agreed to eliminate UkrHazEnergo from the Ukrainian domestic market, but Tymoshenko did not manage to eliminate RUE's presence in gas trade completely. RUE was left as a trader of Central Asian, but now Naftogaz was its importer to Ukraine. In addition, Ukraine agreed to allow Gazprom to sell gas to the Ukrainian industrial consumers directly through Gazprom's subsidiary, Gazprom Sbyt Ukraine, thus gaining about 10% of the Ukrainian gas market.⁴⁸⁴ Although these accords were signed, Naftogaz failed to finalise them which prevented timely payments. This led to the situation where Ukraine was using gas without appropriate contracts and not paying for the gas used, while Gazprom, in turn, refused to pay for transit.⁴⁸⁵ Naftogaz continued holding negotiations and finally signed the contracts on 11 April 2008.⁴⁸⁶ On the insistence of Gazprom and the Russian government RUE remained as a trader of Central Asian and Russian gas until the end of the year and Naftogaz would continue to make its purchases on the Ukrainian-Russian border from them.⁴⁸⁷ This was in-line with the presidential agreements from February under which the removal of RUE was envisaged to occur gradually and negotiated to be part of the 2009 gas trading arrangements.

⁴⁸³ "Tymoshenko priamo v aeroporty vidpovila Yushchenko za haz," *Ukrainska Pravda*, 13 Bereznia 2008.

⁴⁸⁴ Fredholm, p. 32.

⁴⁸⁵ "Yushchenko rozpoviv Tymoshenko pro 'Kholodny viinu,'" *Ukrainska Pravda*, 7 Kvitnia 2008.

⁴⁸⁶ "RosUkrEnergo zalyshaietsia na Ukrainському rynku," *Ukrainska Pravda*, 11 Kvitnia 2008.

⁴⁸⁷ "Tymoshenko poiasnyla chomu zalyshyla RosUkrEnergo," *Ukrainska Pravda*, 14 Kvintia 2008.

The brief gas dispute between Naftogaz and Gazprom in March 2008 was a result of Tymoshenko's desire to single-handedly remove RUE from the domestic market, irrespective of Gazprom's position and President Yushchenko's directives which he agreed on with President Putin. It seems that Gazprom did not want to let go of its share of the Ukrainian market just yet, before alternative arrangements were finalised, and thus, the conflict was resolved when Gazprom's direct subsidiary, Gazprom Sbyt, was allowed to take on RUE's share.

Tymoshenko's desire to quickly remove RUE from the gas trade can be explained by the ties the company had within Ukraine, since one of its owners, Dmytro Firtash, was believed by Tymoshenko to finance her political opponents, Yurii Boyko (and the Party of Regions he was part of) and President Yushchenko.⁴⁸⁸ However, through this brief stand-off with Moscow, the Kremlin and Gazprom had likely understood that what Tymoshenko wanted most of all was to remove RUE and would do anything for that purpose, even go against the preferences of her president. Thus, when the time came in 2009 and her rift with Yushchenko became ever wider, PM Putin extended his personal deal to Tymoshenko – 'we remove RUE while you accommodate us.'

An alternative explanation of Tymoshenko's dedication to fighting RUE could be that she genuinely wanted to remove all intermediaries from the gas trade and transition into market-based operations. However, this explanation is incomplete when one considers that there is evidence to suggest that Tymoshenko wanted to introduce her own intermediary, Itera, back into the gas trade during the 2005-2006 crisis,⁴⁸⁹ and that

⁴⁸⁸ "Tymoshenko obvynuvatyla Firtasha, Boyka i Yushchenka v zryvi hazovykh perehovoriv," *Ukrainska Pravda*, 14 Sichnia 2009; Balmaceda, *Energy Dependency, Politics and Corruption in the former Soviet Union: Russia's Power, Oligarchs' Profits and Ukraine's Missing Energy Policy*, pp. 124-125, 128.

⁴⁸⁹ Protocol from questioning of the former President of Ukraine, Viktor Yushchenko during Tymoshenko trial, "Protocol doprosa Viktora Yushchenko po delu Timoshenko," *Ukrainska Pravda*, 15 Avgusta 2011; Interview with the former head of Naftogaz, Oleksii Ivchenko, Mustafa Naiem, *Ukrainska Pravda*, 12 Lystopada 2007.

the outcome of the January 2009 agreements was far from a market solution to Ukraine's re-occurring gas crises with Gazprom (as will be discussed further in the chapter).

Long awaited inter-governmental talks

Throughout April and May 2008 the relationship between Tymoshenko and Yushchenko degraded over policy-making functions and policy preferences and by the beginning of September their political coalition broke down with Yushchenko threatening new pre-term parliamentary elections. Due to these political upheavals, little was done in relation to carrying out serious negotiations with Moscow over the 2009 gas trade. Reasons for the breakdown in the political coalition and executive cooperation were both internal and external. The president, his Secretariat, and his political bloc in the parliament accused the PM of disregarding the policy platform, agreed at the formation of the coalition, while Tymoshenko accused the president and his supporters in the cabinet of interference in the running of the government and the blocking of its work.⁴⁹⁰

Especially acute were relations between the head of the Presidential Secretariat, Viktor Baloha, and Tymoshenko, who frequently exchanged accusations against each other, leading to a further degradation of the relations between the head of the cabinet and the president. Regarding policy disagreements, the president and the PM differed on privatisation, land sale, control of the State Property Fund and its policies, fiscal policy which was leading to rapid inflation, control over regional governors, local elections in Kyiv, the budget and by the end of the summer over foreign policy.⁴⁹¹

⁴⁹⁰ "BYU vymahaie Prezydenta prypynyty tz'kuvaty Tymoshenko," *Ukrainska Pravda*, 16 Kvitnia 2008; "Tymoshenko pohrozhuie Yushchenku zorluchenniam," *Ukrainska Pravda*, 13 Travnia 2008; "Tymoshenko zvynuvachuye Yushchenka v represiih," *Ukrainska Pravda*, 19 Travnia 2008; "RNBO poiasnyla Tymoshenko khto v domi hospodar," *Ukrainska Pravda*, 31 Travnia 2008; "Yushchenko radyt' Tymoshenko ne shukaty problem i prypynyty 'solo'," *Ukrainska Pravda*, 29 Travnia 2008.

⁴⁹¹ "Yushchenko znovu zaboronyv pryvatyzatsiu Odes'koho pryportovoho," *Ukrainska Pravda*, 25 Kvitnia 2008; "Yushchenko zablokuvav Tymoshenko i v zemel'nomu pytanni," *Ukrainska Pravda*, 25 Travnia 2008; Mustafa Naiem, "Fond derzhavnoi viiny," *Ukrainska Pravda*, 26 Kvitnia 2008; "Kabmin ne pidtrymuie znyzhennia kursu dolara,"

In the international arena Ukraine did not receive NATO's Membership Action Plan at the Bucharest summit in April 2008 as desired, but on the 16 May became a member of the WTO. During this period the president and the cabinet took a unified position on these issues as well as on the determination to end the lease of the Russian naval base in southern Ukraine beyond 2017. Moscow did not agree with these developments; however, none of these issues were tied to the energy dialogue between Ukraine and Russia. Instead, the issue of Ukraine's sovereignty over Crimea was raised by Russian officials as a tit-for-tat for Ukraine's membership of NATO.⁴⁹² However, as the relations between Tymoshenko and Yushchenko deteriorated, the PM went to Moscow on the 28 June at the election of the new Russian Prime Minister, Vladimir Putin. Her unofficial visit was not supported by Yushchenko, who later referred to these talks as 'whispering behind his back'.⁴⁹³ While there were no presidential directives for Tymoshenko regarding this visit and the exact nature of her talks is unknown, following these discussions Tymoshenko stopped cooperating fully with Yushchenko on foreign policy by failing to execute the directives of the President and of the NSDC during the Russo-Georgian war in August 2008. Firstly, independently of the President she made statements regarding NATO and the stationing of the Black Sea Fleet in Ukraine.⁴⁹⁴ Secondly, once the war in South Ossetia broke out, Tymoshenko was silent regarding her support for the President and his unequivocal backing of Georgia.⁴⁹⁵ Lastly, when Moscow dispatched ships from the Black Sea Fleet to fight in Georgia she protested, since this put Ukraine in the position

Ukrainska Pravda, 23 Travnia 2008; "Tymoshenko ide v nastyp na prezidents'ku vertykal'," *Ukrainska Pravda*, 2 Kvitnia 2008; "Tymoshenko zvyuvatyly Yushchenka v provali biudzhetu," *Ukrainska Pravda*, 12 Lypnia 2008;

⁴⁹² "Ukraina vymahaie vid Rosii prypynyty pohrozy," *Ukrainska Pravda*, 12 Kvitnia 2008; "Cherez svii flot Rosiia pohrozhuie povernutysia do pytannia Sevastopolia," *Ukrainska Pravda*, 21 Travnia 2008.

⁴⁹³ "Yushchenko vymahaie vid Tymoshenko prypynyty 'pereshiptuvatysia z Putynym,'" *Ukrainska Pravda*, 26 Veresnia 2008.

⁴⁹⁴ "Putin pohodyvsia z Tymoshenko shchodo NATO," *Ukrainska Pravda*, 28 Chervnia 2008; "Putin zachepyvsvia za solomyanko Tymoshenko dlia poriatunku flotu," *Ukrainska Pravda*, 28 Chervnia 2008.

⁴⁹⁵ "Tymoshenko movchyt' pro Hryziu shchob zaruchytys' pidtrymkoiu Rosii v 2010 rotsi?" *Ukrainska Pravda*, 13 Serpnia 2008.

where it aided a conflict by default without granting permission.⁴⁹⁶ Yushchenko wanted to limit Moscow's ability to move its ships to and from the base and together with the NSDC issued directives for the cabinet to cancel the simplified procedure for the movement of Russian military ships and planes on the territory of Ukraine (introduced to the cabinet before the outbreak of the Georgian-Russian war). Tymoshenko at first delayed implementing these procedures through the cabinet and in the end failed to implement them altogether.⁴⁹⁷ Intra-executive conflict over Georgia became the last straw for the coalition which collapsed by the beginning of September.⁴⁹⁸

In the gas arena, in May 2008 the president asked the cabinet to begin negotiations over the gas trade arrangements and prices for 2009 and beyond.⁴⁹⁹ In the meantime, Naftogaz finally paid off its payment arrears to Gazprom and hoped to conclude gas talks with Gazprom by the fall by signing a long-term supply and transit agreement without the presence of intermediaries.⁵⁰⁰

On 11 March the heads of the gas monopolies of Russia, Kazakhstan, Uzbekistan and Turkmenistan agreed that starting in 2009 they would sell gas at European market prices.⁵⁰¹ According to some estimates it meant that the price for Ukraine would have to increase to about \$300/mcm in 2009,⁵⁰² while Moscow said that price can rise to \$400/mcm.⁵⁰³ Due to the political conflicts within Ukraine and the war in Georgia, no serious talks took place between Russia and Ukraine until October, aside from preliminary

⁴⁹⁶ "Ukraina pohrozhuie ne pustyty CHF nazad do Krymu," *Ukrainska Pravda*, 10 Serpnia 2008.

⁴⁹⁷ Viktor Chervokunia, "Chornomorskii flot zahnav Tymoshenko v kut," *Ukrainska Pravda*, 28 Serpnia 2008.

⁴⁹⁸ "Yushchenko postaviv ultimatum," *Ukrainska Pravda*, 5 Veresnia 2008.

⁴⁹⁹ "Yushchenko doruchyv Tymoshenko za pivtora misiatsi domovytyś z Rosiieiu pro haz," *Ukrainska Pravda*, 16 Travnia 2008.

⁵⁰⁰ "Tymoshenko spodiyaetsia do oseni dotysnuty na haz," *Ukrainska Pravda*, 27 Bereznia 2008.

⁵⁰¹ Fredholm, p. 32.

⁵⁰² "Z pershoho sichnya haz dlia Ukrainy mozhe koshtuvaty maizhe \$300?" *Ukrainska Pravda*, 11 Kvitnia 2008.

⁵⁰³ "Rosii pohrozhuie Ukraini tsinoiu v \$400," *Ukrainska Pravda*, 27 Chervnia 2008.

negotiations between Naftogaz and Gazprom on the pricing formula.⁵⁰⁴ However, over the summer Naftogaz was again failing to pay RUE on time, thus debts began to accumulate⁵⁰⁵ and by September Naftogaz was near default.⁵⁰⁶ When the coalition finally broke down on 2 September 2008, the talks failed to restart as the efforts of the PM were turned to forming a basis for a new coalition with the Party of Regions or once again with Yushchenko's bloc.⁵⁰⁷ Thus, the intra-executive split between the President and the Prime-Minister over policy preferences and functions prevented the negotiations with Moscow in 2009 for supply and transit contracts.

Finally, upon Tymoshenko's reconciliation with Yushchenko on 1 October, presidential and NSDC resolutions were approved in the cabinet and the government delegation received its directives for immediate gas negotiations in Moscow.⁵⁰⁸ On 2 October Tymoshenko and Putin agreed on a memorandum of cooperation in the energy sphere, which included the following points:

- possible transition to long-term direct relations between Naftogaz and Gazprom starting 1 January 2009 without intermediaries (but would depend on Naftogaz's clearance of debts, timely payment for future deliveries and ability of Gazprom Sbyt to remain on the Ukrainian market beyond 2008 on the same terms);
- Ukraine would transit Russian gas to Europe without any interruption on a long-term basis;
- gradual, three year transition to the market, economically-based prices for gas to Ukraine and its transit tariff through Ukraine;
- gas pumped into Ukrainian storage facilities and not used during the fall/winter period could be jointly exported by Naftogaz and Gazprom, dividing profits equally;
- Naftogaz admitted debt owed to Gazprom without specifying its amounts.⁵⁰⁹

⁵⁰⁴ "Naftogaz ne domovliaietsia z Gazpromom pro tsinu," *Ukrainska Pravda*, 20 Chervnia 2008.

⁵⁰⁵ "U Naftogazi zaiavlyly shcho platyat' RUE u shtatnomu poraidku," *Ukrainska Pravda*, 8 Serpnia 2008.

⁵⁰⁶ "Yushchenko nakazav Tymoshenko nehaiivriiatuvaty Naftogaz vid defoltu," *Ukrainska Pravda*, 4 Veresnia 2008.

⁵⁰⁷ "Tymoshenko skazala shcho ii zaraz ne do hazu," *Ukrainska Pravda*, 19 Veresnia 2008.

⁵⁰⁸ "Tymoshenko ide do Putina shchob vykonaty nakaz Yushchenka," *Ukrainska Pravda*, 1 Zhovtnia 2008.

⁵⁰⁹ *National Security and Defence*, No. 8, p.29; Pirani et al., *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, p. 13.

On 24 October the heads of Naftogaz, Oleh Dybyna, and Gazprom, as well as Alexei Miller signed an agreement that built on the governmental memorandum, where several points were clarified. Firstly, debts that Naftogaz owed to RUE would be owed to Gazprom. Secondly, volumes of gas to Europe would be of at least 120bcm/year. Secondly, Central Asian gas for November-December previously sold by Gazprom to RUE would be sold to Naftogaz directly (eliminating RUE from the gas trade immediately). Lastly, once these conditions were met the January 2006 agreements became void.⁵¹⁰ It seemed that despite both domestic and international tensions, agreement between Kyiv and Moscow over their gas arrangements was reached. All that was left was to fulfil these agreements and sign commercial contracts between Naftogaz and Gazprom. However, the events of the summer and indeed from the start of 2008 showed that when cooperation between Yushchenko and Tymoshenko existed, negotiations with Moscow over gas issues went smoothly, but when their disagreements increased over policy-making functions and policy preferences, negotiations halted.

Crisis

The period between October and end of December 2008 was perhaps the most turbulent time in Ukraine since the events of the early 1990s that followed independence. Tensions were high in the three most critical areas of any state's existence: political, economic/financial and international. In the political sphere despite an early reconciliation between Yushchenko and Tymoshenko, their blocs failed to orchestrate a coalition, thus the president issued a decree to hold another pre-term parliamentary election scheduled originally for 7 December 2008, but was later postponed due to the emerging economic and financial crisis in the country. By mid

⁵¹⁰ Pirani, at al, *ibid*, p. 14.

November PM Tymoshenko announced that she was officially in opposition to the president and refused to allocate money in the budget to finance the elections. In the economic sphere the unravelling global financial crisis finally hit Ukraine and the government found it more difficult to find credit abroad, while revenues shrank due to falling productivity. Internationally, tensions between Ukraine and Russia re-emerged regarding a number of issues including – Ukraine’s desire to achieve a NATO Membership Action Plan in the shortest possible time, Yushchenko’s policy in the information sphere which banned Russian channels from Ukraine, issues relating to the Soviet-made genocide in Ukraine during 1930s and the demarcation of the Ukrainian border in the Kerch strait. To top it all off the US presented a statement with Ukraine about strategic partnerships as a response to Russia’s hardening of its position regarding Ukraine.⁵¹¹ This further irked Moscow and its willingness to accommodate Ukraine reduced to a minimum. At the background of this Naftogaz failed to execute the October agreements regarding paying all of its debt on time, postponing all until the end of December, while Moscow’s tolerance to debt arrears grew thin due to its own reduction in revenues and fall in world energy prices and demand. However, all could have been solved at the last minute during 30-31 December, when the Ukrainian delegation went to Moscow to sign commercial contracts, having pre-paid for the gas it consumed in the last months of the year. Unexpectedly, final negotiations collapsed and Gazprom cut the supplies to Ukraine on the 1 January 2009. Undoubtedly Moscow’s motivations and calculations were important, but from the Ukrainian side the unmovable position of the executive and the

⁵¹¹ It appears that on 19 December 2008 the US and Ukraine concluded a new strategic partnership in light of the Georgian war and Russian talk of raising the issue of Crimea throughout the year. On 12 January Deputy Chairman of Gazprom, Aleksandr Medvedev talked about this agreement and said that it likely influenced gas negotiations between Ukraine and Russia. “SShA dast’ syhnal Ukraini,” *Ukrainska Pravda*, 19 Hrudnia 2009; “Gazprom skarzhytsia shcho na hazovu viinu vplyvaie SShA,” *Ukrainska Pravda*, 12 Sichnia 2009.

associated vested interests (who wanted to resist Moscow's economic pressure) during the negotiations seemed to have influenced the breakdown in talks. The conflict clearly moved from being a commercial dispute to being a political one.

Failure to execute

Naftogaz failed to fulfil the main condition made during the Dubyna-Miller talks which enabled the signing of the long-term contracts – repayment of debts by 30 October. Although Naftogaz did not owe Gazprom directly but to RUE, Gazprom demanded that Naftogaz pay them what it owed to RUE. Gazprom's position can probably be explained by Tymoshenko's acute opposition and persecution of RUE and had the Russian monopoly holders signed contracts with Ukraine despite these corporate debts, the government headed by Tymoshenko in 2009 would have likely refused to pay. Thus, the Ukrainian government did not identify payments to RUE as a priority area, hoping to move the repayment until the end of the year or restructure them with Gazprom. With the onset of another political crisis on 9 October, when the president announced pre-term elections, Ukraine finally felt the effects of the global financial meltdown.⁵¹² Ukrainian residents began to withdraw their money from banks, while the Ukrainian currency started to fall.⁵¹³ The government's loose fiscal policy throughout the year certainly played a role and Yushchenko accused the PM of having an inadequate economic policy.⁵¹⁴ She in turn blamed the NBU (under presidential control) for depreciating the currency. While the currency began to depreciate, the government was finding it difficult to meet its credit obligations (denominated in foreign currencies), including its payments to RUE and Gazprom. On 26 October the IMF extended a \$16.5bn

⁵¹² "Ekonomika Ukrainy padaie," *Ukrainska Pravda*, 10 Zhovtnia 2008.

⁵¹³ "Ukraintsi vzhe zabraly 6 milliardiv z bankiv," *Ukrainska Pravda*, 13 Zhovtnia 2008.

⁵¹⁴ "Yushchenko nazvav Tymoshenko neadekvatnoiu," *Ukrainska Pravda*, 15 Zhovtnia 2008.

stand-by loan to Ukraine to prevent the default, loosening up funds in the budget to repay gas debts to Russia. On 10 November the head of Naftogaz, Oleh Dubyna, was quoted saying that all of the principle issues were agreed with Gazprom and they expected to sign the contracts by the end of the month.⁵¹⁵

However, on 19 November Gazprom said that Naftogaz owed \$2.4bn for Russian gas in 2008 and proposed to pay for it with future gas transit at the fee of \$1.7/mcm for 100km, while freezing the transit tariff at this rate until 2011.⁵¹⁶ On the Ukrainian side, neither the PM nor the President were keen on the offer since they were committed to the notion that should the price for gas increase, transit would be raised as well, while the Russian offer de-linked the two. Following this on the 20 November the new Russian President Dmitri Medvedev ordered the head of Gazprom to extract all of the debt owed by Ukraine either involuntarily or in a forceful manner.⁵¹⁷ In addition, Alexei Miller, after his meeting with Medvedev, said that gas prices for the Ukraine for 2009 could be over \$400/mcm. The Ukrainian side responded that it only owed \$1.3bn and that was to RUE, not Gazprom, while prior agreements between the governments made clear that the transition to the market prices would be gradual, over three years and they expected the 2009 price to be at \$250-300/mcm.⁵¹⁸ Disagreements began to mount over the price for gas for 2009 and over corporate debts, issues which would shortly transform this dispute into a crisis. Thus, the execution of the October inter-governmental memorandum failed for two key reasons: the financial crisis and the intra-executive rift. The emergence of the financial crisis in Ukraine made it more difficult for Naftogaz to pay for gas debts on time and solicit international financing, while an alternative option required cooperation

⁵¹⁵ *National Security and Defence*, No. 8, p.29.

⁵¹⁶ "Gazprom proponuje pohasyty borh transytom," *Ukrainska Pravda*, 19 Lystopada 2008.

⁵¹⁷ "Medvedev nakazav Gazpromu stiahnuty borh z Ukrainy," *Ukrainska Pravda*, 20 Lystopada 2008.

⁵¹⁸ "Naftogaz vynen RosUkrEnergo maizhe \$1.3 milliardiv dollariv," *Ekonomichna Pravda*, 20 Lystopada 2008.

between Tymoshenko and the President. The re-ignition of the intra-executive split, however, made this option more difficult.

December talks

December talks failed due to four key reasons. Firstly, the intra-executive differences continued throughout November and December and without the executive cooperation Naftogaz had difficulty in accessing funds to pay its debts to RUE. Secondly, President Yushchenko and his team insisted on the October price for gas supplies and transit that were no longer acceptable to Moscow. Thirdly, RUE played an important role in derailing the negotiations by offering a higher price for Russian gas. Lastly, in the final stages of the negotiations between the presidents and the premiers of Ukraine and Russia, Moscow demanded a large increase in the price for gas supplies, indicating that they wanted to further escalate the conflict if Kyiv did not succumb to the conditions offered by the monopoly supplier.

With the increasing pressure from Gazprom who would not negotiate until debts were paid off, Naftogaz and Gazprom did not hold talks on the 2009 contract and prices until Kyiv started paying.⁵¹⁹ In addition to holding 2009 contract negotiations hostage to the repayment of debt, throughout November-December Gazprom threatened Kyiv that it would cut-off supplies if no contract was signed.⁵²⁰ However, at this time the Ukrainian government was experiencing an acute shortage of currency and large purchases on the market could have destabilised the Ukrainian financial situation even further. Naftogaz in

⁵¹⁹ "Rosiiia domoviatymetsia tilky pislia pohashennia borhu," *Ukrainska Pravda*, 22 Lystopada 2008.

⁵²⁰ "Gazprom pohrozhuie zalyshyty Ukrainu bez hazu," *Ukrainska Pravda*, 22 Lystopada 2008; "Putin pohrozhuie Ukraini skorotyty postachannia hazu," *Ukrainska Pravda*, 4 Hrudnia 2008; "Gazprom mozhe z 1 sichnia zalyshyty Ukrainu bez hazu," *Ukrainska Pravda*, 18 Hrudnia 2008; "Gazprom zнову pohrozhuie shcho Ukraina zustrine Novyi rik bez hazu," *Ukrainska Pravda*, 24 Hrudnia 2008.

cooperation with the President found a solution by increasing capital in a state savings bank and then borrowing from it to pay RUE.⁵²¹

By 30 November Gazprom reported that it had received a first tranche of money and was ready to negotiate starting early December.⁵²² Thus, a Ukrainian delegation, headed by Oleh Dubyna left for Moscow.⁵²³ However, little progress was made during talks since Naftogaz only paid arrears for September, but according to RUE and Gazprom they were supposed to pay for all gas used during October-December.⁵²⁴ This point requires clarification. The Ukrainian side insisted that it would make payments at the end of each month, thus for gas taken in October, it would pay during November, and so on. RUE and Gazprom disagreed and asked Naftogaz to pay for all contracted volumes that Ukraine pumped into its storages until the end of December, in a way pre-paying for the gas it would technically use later.

On 18 December, after a prior exchange of blame for the crisis between President Yushchenko and PM Tymoshenko, the emerging conflict with Gazprom brought the executive together and they jointly cooperated to make money available for Naftogaz to repay RUE in full.⁵²⁵ However, after the repayment mechanism was in place Tymoshenko announced that due to NBU's actions in devaluating the currency, she and her team were going into political opposition against the President and were postponing the necessary payments to RUE.⁵²⁶

Thus, the rift within the executive continued. In return for threatening to cut gas to Ukraine, Naftogaz sent a letter to Gazprom notifying them that should agreements not

⁵²¹ "Naftogaz vziav velykii kredyt v Oshchadbanku?" *Ukrainska Pravda*, 18 Hrudnia 2008.

⁵²² "Gazprom otrymav hroshi i hotovii rozmovliaty," *Ukrainska Pravda*, 30 Lystopada 2008.

⁵²³ "Naftogaz vidpravyv delegatsiiu v Moskvu," *Ukrainska Pravda*, 2 Hrudnia 2008.

⁵²⁴ "RosUkrEnergo skarzhytsia shcho Naftogaz zaplatyv tilky polovynu," *Ukrainska Pravda*, 2 Hrudnia 2008.

⁵²⁵ "Yushchenko: Ukraina pochala rozrahovuvatys' za haz," *Ukrainska Pravda*, 18 Hrudnia 2008.

⁵²⁶ "Tymoshenko publichno stala v opozytsiiu do Yushchenka," *Ukrainska Pravda*, 20 Hrudnia 2008.

be signed Naftogaz had legal reasons not to accept Russian transit gas into its transportation system, since the issue of technical gas was not resolved.⁵²⁷ Gazprom's extreme pressure on Naftogaz to repay for all gas that was pumped into Ukrainian gas storages by 1 January seemed to have been connected to trying to persuade Kyiv to use the 2009 transit revenues at 2008 tariff (\$1.7/mcm) and by such keeping transit prices at the same level while having more room to manoeuvre with the price increase for gas to Ukraine.⁵²⁸ However, Naftogaz refused this offer once again and PM Tymoshenko made a pledge that all money would be paid to RUE by 1 December.⁵²⁹ Gazprom clearly stated that it refused to negotiate 2009 contracts and would stop its gas deliveries to Ukraine if Kyiv failed to pay Gazprom for gas supplied during 2008. On 30 December President Yushchenko announced that Kyiv had paid RUE in full and on 31 December Naftogaz announced that it had a SWIFT confirmation that all of the money was transferred to RUE.⁵³⁰ Gazprom however denied that it received the money in full.⁵³¹ This contestation in public seems to have been driven by the breakdown of the negotiations on price between governments, and subsequently between Gazprom and Naftogaz, following which the head of Naftogaz left Moscow. The alleged lack of a full payment from RUE to Gazprom could now be used as a reason to halt gas supplies starting 1 January and impose fines on Ukraine for a failure to receive the payment in time, which Gazprom did shortly after. Thus, it appears that RUE, in agreement with Gazprom, reduced payments to Gazprom, so as to create the official reason to halt gas supplies for Ukraine. Officially, slow financial

⁵²⁷ Under Ukrainian legislation, Naftogaz can only use import gas to fuel its transportation system, but without contracts for 2009 where the price for fuel gas would be agreed and provided by Gazprom they would have to subtract fuel gas from transit volumes to Europe. "Opublikovano lyst Naftogaza z 'shantazhem' Gazpromu," *Ukrainska Pravda*, 2 Sichnia 2009.

⁵²⁸ "Gazprom spodivaietsia vyrishyty pytannia borhiv Ukrainy bez hroshei," *Ukrainska Pravda*, 27 Hrudnia 2008.

⁵²⁹ "Naftogaz ne bude oplachuvaty hazovyi borh za rakhunok tranzytu," *Ukrainska Pravda*, 30 Hrudnia 2008; "Naftogaz zaplatyt' Rosii 2mlrd borhu za haz. Tymoshenko harantuie," *Ukrainska Pravda*, 30 Hrudnia 2008.

⁵³⁰ "U Yushchenka oholosyly pro povne pohashennia borhu za haz," *Ukrainska Pravda*, 30 Hrudnia 2008; "Naftogaz pererahuvav RosUkrEnergo 1.5miliarda," *Ukrainska Pravda*, 31 Hrudnia 2008.

⁵³¹ "Gazprom tak i ne pobachyv hroshei i zvyuvachuie Naftogaz v destruktyvi," *Ukrainska Pravda*, 31 Hrudnia 2008.

processing was cited by Gazprom, who said that they expected full payment to reach them on 11 January and Ukraine would incur a penalty of \$614m that it had to pay in order to negotiate further.⁵³²

Negotiations in Moscow during 27-31 December collapsed for three reasons. Firstly, the commitment by President Yushchenko and his team to keep PM Putin to the agreements on price made by him in October indicated that Ukraine did not want to accept any offer from Moscow because of economic pressure. Secondly, the intermediary, RUE, played a key part in the failure of the negotiations when during talks it offered a higher price to Gazprom (it is difficult to believe that Gazprom had no involvement in this since four of senior Gazprom's executives were also top managers at RUE). Lastly, Moscow's sudden ultimatum on price hikes from \$250 to \$320/mcm on 31 December following phone conversations between the presidents and premiers of Ukraine and Russia indicated that Moscow now wanted an escalation, turning this into a political conflict between the two countries.

During the last days of December the Naftogaz delegation was in Moscow ready to negotiate prices for gas, transit and volumes for 2009. The delegation acted in its talks based on presidential and cabinet directives.⁵³³ The head of Naftogaz, Oleh Dubyna, kept both the President and the PM informed about the developments, and on 28 December a phone conversation took place between Dubyna and the President. Dubyna informed Yushchenko that Gazprom was ready to sign the contract with the gas price of \$250/mcm and transit fee of \$1.8/mcm for 100km. The president reacted by saying that his team

⁵³² "Gazprom: Ukraina vynna shche 614mln dolariv," *Ukrainska Pravda*, 2 Sichnia 2009.

⁵³³ Questioning of former PM Yuriy Yekhanurov during Tymoshenko trial, Mustafa Naiem, "Sud Yulii Tymoshenko: bytva pomaranchevykh premieriv," *Ukrainska Pravda*, 3 Serpnia 2011; Protocol from questioning of the former head of Naftogaz, Oleh Dubyna, during Tymoshenko trial, "Dopyt Dubyny u spravi Tymoshenko," *Ukrainska Pravda*, 18 Travnia 2008.

calculated that under these conditions Ukraine would be incurring a \$500m loss on transit and asked Dubyna to see if the price could be lowered. On 30 December Gazprom agreed to a gas price of \$235/mcm, transit of \$1.8/mcm for 100km and a contracted volume for 2009 of 40bcm. It appears that Yushchenko still thought that in the existing market conditions the price was too high, demanding that if the price is increased by 30% then transit had to rise by 30%, thus according to Dubyna the President verbally prohibited him from signing the contracts with these conditions.⁵³⁴ During this time RUE also intervened in the negotiating process and offered to Gazprom to pay gas for Ukraine at \$285/mcm.⁵³⁵ It is not clear why RUE (partially owned by Gazprom) was allowed to intervene considering that at the start of the year the presidents of Russia and Ukraine agreed on eliminating intermediaries from the gas trade and on negotiating contacts directly. Following phone conversations between the presidents and premiers of Ukraine and Russia, Gazprom gave a new price to Naftogaz – \$320/mcm. Dubyna considered this to be too high a political price and left Moscow without the signing of the contracts before the start of 2009.⁵³⁶

On 1 January the Ukrainian Foreign Ministry reported that it had informed Moscow that Kyiv was ready to continue gas trade on 2008 conditions until 2009 contracts were signed.⁵³⁷ Following this Yushchenko and Tymoshenko made a joint statement that they wanted to keep on negotiating based on the October memorandum, according to which prices for gas should be around \$201/mcm while transit should not be

⁵³⁴ "Dopyt Dubyny u spravi Tymoshenko," *Ukrainska Pravda*, 18 Travnia 2008; Serhii Leshchenko, "Sprava Tymoshenko. Nevidomi podrobytsi," *Ukrainska Pravda*, 3 Lypnia 2011.

⁵³⁵ As reported by head of Gazprom, Alexei Miller, "RosUkrEnergo zryvalo perehovory Gazpromu i Naftogazu – Miller," *Ukrainska Pravda*, 20 Sichnia 2009.

⁵³⁶ "Dopyt Dubyny u spravi Tymoshenko," *Ukrainska Pravda*, 18 Travnia 2008.

⁵³⁷ "Ukraina do novykh kontraktiv hoche braty haz za starymy tsinamy," *Ukrainska Pravda*, 1 Sichnia 2009.

lower than \$2/mcm for 100km.⁵³⁸ Gazprom cut off gas supplies to Ukraine starting at 9am (Kyiv time) on January 1st, while continuing transit to Europe.⁵³⁹ Consequently, it is evident that four main factors influenced the December negotiations: continued intra-executive conflict that prevented Naftogaz from timely payments, the unwillingness of President Yushchenko to agree to a new price increase by Moscow that did not conform to the October agreements, the influence of RUE on negotiations (with the permission of Gazprom) and Moscow's desire to further escalate the conflict in hopes of achieving a more accommodating position from Kyiv under the pressure of a gas cut-off.

All negotiations come to a halt

From that point onwards all corporate negotiations with Gazprom were halted. RUE started arbitration proceedings against Naftogaz at the Stockholm court for blocking the transit of its gas, while political tensions between Putin and Yushchenko began to surface with the Russian president blaming Yushchenko for the breakdown in the December talks.⁵⁴⁰ The executive branch began active communication with European leaders, trying to involve them in mediating what they saw as a political conflict with Moscow. It seems that Kyiv's refusal to back down on the price and Gazprom's allegations of a new debt due to penalties is what prevented Naftogaz and Gazprom from resuming talks.

Because Ukraine had some 17bcm of gas in its storages (enough to satisfy domestic demand until at least the end of February) Naftogaz did not hurry to sign contracts under Moscow's pressure. However, Naftogaz announced that it would take out 21mmcm of gas per day from Russian supplies to Europe as a fuel gas. It seems that

⁵³⁸ "Zaiava Yushchenka i Tymoshenko shchodo postachannia tranzytu rosiis'koho hazy," *Ukrainska Pravda*, 1 Sichnia 2009.

⁵³⁹ "Gazprom zaiavliaie, shcho perekryv haz," *Ukrainska Pravda*, 1 Sichnia 2009.

⁵⁴⁰ "Putin zvynuvachuie Yushchenka u zryvi hazovyykh perehovoriv," *Ukrainska Pravda*, 8 Sichnia 2009.

Moscow's attempt to pressure Ukraine into accepting its terms of gas supply for 2009 was failing. To increase the pressure Moscow reduced all transit supplies through Ukraine starting 4 January, stating that Kyiv was 'stealing' European gas (daily 21mmcm of technical gas Kyiv was using to enable transit).⁵⁴¹ Domestically, the cut-off initially united the President and the PM on how to deal with Moscow during this crisis. However, beginning 10 January Yushchenko and Tymoshenko began to drift apart again with the Presidential Secretariat accusing the PM of silence and inaction in relation to the full gas halt.⁵⁴²

Throughout this period Moscow launched an extensive anti-Ukraine information campaign: accusing Kyiv of preventing the transit of gas to southern European states who began to see large reductions in gas supplies, naming Ukraine as an unreliable partner for European gas transit and calling for a quicker construction of gas pipelines bypassing Ukraine. Clearly this was aimed at discrediting Ukraine's reputation as a reliable transitor and encouraging Europeans to seek trilateral management of the Ukrainian transportation system, reviving the gas consortium idea from 2002. It is true that Ukraine was taking out some daily volumes for the transit of gas to Europe, but these amounts were small compared to the total daily transit of around 300mmcm, and in a commercial sense not worth compromising Gazprom's European deliveries of \$100m a day plus penalties.⁵⁴³ In addition, Kyiv stated that it would pay for the gas it took out as fuel once 2009 agreements were signed.

To prevent Ukraine's economic collapse and the freezing of its own population in the east and south of the country, Naftogaz, for the first time since the construction of

⁵⁴¹ "Dopyt Dubyny u spravi Tymoshenko," *Ukrainska Pravda*, 18 Travnia 2008.

⁵⁴² "U Yushchenka pobachyly shcho reketyry z Kremlia hraiut' na koryst' Tymoshenko," *Ukrainska Pravda*, 10 Sichnia 2009.

⁵⁴³ Pirani et al, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, p. 33.

Ukraine's gas transportation network, reversed the flow in most of its pipelines, pumping gas in storages from west to east. In addition, Kyiv daily supplied Moldova with gas from its own storage since Chisinau was fully dependent on Russian gas supplies.⁵⁴⁴ After a few days, to enable an uninterrupted transit to Europe throughout the period of the crisis, Moscow proposed to have a 'trial' and used this same reversed part of the Ukrainian gas transportation network to restart pumping Russian gas to southern Europe. The Ukrainian side refused since it would mean keeping its own population in the south and east of the country in the cold.⁵⁴⁵

Resolution

The decision by PM Tymoshenko to split from the unified executive position on continuing to withstand the Russian pressure until Moscow negotiated on economic principles is what both resolved this immediate gas conflict and broke her cooperation with the President. To resolve the gas dispute Tymoshenko opted for private talks and negotiations with the Russian PM Putin, and found ways to force the head of Naftogaz into signing the 2009 contracts that did not have either the President's or cabinet's approval. Although it is not clear whether Tymoshenko had the right to independently order the Naftogaz leadership to sign these contracts under the 2004 constitutional amendments, it is evident that in this gamble she succumbed to Russian pressure despite the possible alternative options of conflict resolution that were before her, which could have contributed to a greater consistency of the Ukrainian position regarding the gas issue with Moscow.

⁵⁴⁴ James Sherr, "Chas rasplaty," *Zerkalo Nedeli*, 24 Ianvaria 2009.

⁵⁴⁵ Interview with Raisa Bohatyriova, Secretary of the NSDC, "Haz stav politychnym instrumentom," *Ukrainska Pravda*, 14 Sichnia 2009.

Tymoshenko in charge

The stalemate in the negotiations between Ukraine and Russia made it clear to President Yushchenko that the only way the political dispute between Moscow and Kyiv could be resolved was through the involvement of the European Union. Ukrainian delegations had stayed in Brussels throughout this crisis, while Yushchenko held phone conversations with EU leaders on a daily basis. The EU agreed to mediate in the conflict and stood by Ukraine in helping to set a formula-based price for its gas supply and transit with Gazprom.⁵⁴⁶ President Yushchenko proposed to hold leaders' talks regarding this at the European gas conference in Prague (the Czech Republic was at the head of the European Presidency at the time). President Medvedev, on the other hand, proposed to hold the conference of gas-consuming countries in Moscow and invited Yushchenko to it.⁵⁴⁷ On 15 January Yushchenko telephoned the PM and asked her not to go to Moscow as it would be a conference of experts and not senior leadership, telling her that neither Mirek Topolánek, the President of the European Council, nor Manuel Barroso, the President of the European Commission intended to go. Instead he encouraged the PM to send experts of Naftogaz and its leadership.⁵⁴⁸ Tymoshenko at first agreed not to go, but within 30-40 minutes after this conversation she was on the phone with PM Putin, discussing coming to Moscow. Why Tymoshenko decided to break with the executive position and, despite the presidential preferences, to go to Moscow on 17 January to carry out inter-governmental negotiations and participate in the gas conference is not

⁵⁴⁶ Interview with Viktor Yushchenko, Mustafa Naiem i Serhii Leshchenko, "Haslo 'dva iozhyka-odna strana' tse dlya lohiv," *Ukrainska Pravda*, 8 Lypnia 2011.

⁵⁴⁷ "Medvedev zaprosyv Yushchenka i zrobyv propozytsiiu," *Ukrainska Pravda*, 15 Sichnia 2009.

⁵⁴⁸ Protocol from questioning of the former President of Ukraine, Viktor Yushchenko during Tymoshenko trial, "Protocol doprosa Viktora Yushchenko po delu Timoshenko," *Ukrainska Pravda*, 15 Serpnia 2011; Interview with Viktor Yushchenko, *Ukrainska Pravda*, 8 Lypnia 2011.

known.⁵⁴⁹ President Yushchenko alleged that his conversation with the PM was tapped by the Kremlin, since this would explain the timing of Putin's telephone call.⁵⁵⁰ Vladimir Putin suggested Tymoshenko come and hold talks tête à tête and without confirming and liaising with Yushchenko she left for Moscow to carry out negotiations with Putin.⁵⁵¹

On 17 January Tymoshenko and Putin (without witnesses) held talks that continued into the night and at 2:00 o'clock in the morning of the next day she made Putin hold a press conference with the Ukrainian journalists and announced that an inter-governmental agreement had been made, paving the way for Gazprom and Naftogaz to sign the supply and transit contracts.⁵⁵²

The PM's agreements with Putin were made without the involvement of the Minister of Fuel and Energy, Yurii Prodan, or the head of Naftogaz, both of whom were part of the delegation but were kept outside of the negotiating room. Following this Tymoshenko left for Kyiv where together with the President and two of his advisors, Bogdan Sokolovskii and Olenksandr Shlapak, she held a meeting regarding the agreements with Putin. Upon the insistence of Yushchenko and his team to reveal the terms of the agreement, Tymoshenko replied that the price for gas would be 'good' and left the same day for Moscow with Prodan and Dubyna.⁵⁵³ All that was left was to have the head of Naftogaz, Dubyna, or his deputy, Ihor Didenko, sign the commercial contacts with Gazprom. Under the usual governmental protocol Dubyna needed to receive directives from the cabinet to sign such contracts. However, to pass the directives

⁵⁴⁹ "Tymoshenko pohovoryla z Putynym ta iide do Moskvu," *Ukrainska Pravda*, 15 Sichnia 2009.

⁵⁵⁰ "Yushchenko natiaknuv shcho ioho rozmovy z Tymoshenko perehopliuvaly rosiiany," *Ukrainska Pravda*, 8 Lypnia 2011.

⁵⁵¹ Protocol from questioning of the former President of Ukraine, Viktor Yushchenko during Tymoshenko trial, "Protocol doprosa Viktora Yushchenko po delu Timoshenko," *Ukrainska Pravda*, 15 Avgusta 2011.

⁵⁵² Serhii Leshchenko, "Sprava Tymoshenko. Nevidomi podrobytsi," *Ukrainska Pravda*, 3 Lypnia 2011; "Tymoshenko obitsiala Yushchenku shcho tsina bude 'harna'. A potim spetsluzhby nadislaly fax," *Ukrainska Pravda*, 17 Serpnia 2011.

⁵⁵³ "Dopyt Dubyny u spravi Tymoshenko," *Ukrainska Pravda*, 18 Travnia 2008.

through the cabinet meeting, they firstly needed to go through the approval of the specialised ministries, which would have taken at least several days. Alternatively, the Minister of Fuel and Energy, Yurii Prodan (to whom Naftogaz was subordinated) could have issued such directives to Dubyna. None of these were forthcoming, and Dubyna refused to sign the contracts on terms dictated by Moscow and only on the PM's preferences, without a higher approval.

On 19 January, when Tymoshenko was already in Moscow, her deputy, Oleksandr Turchynov, held a two-hour meeting with the Cabinet of Ministers, where he attempted to pass the directives with the Cabinet's approval, but seeing that there was little support for them amongst the ministers, he removed the question from the agenda.⁵⁵⁴

On 19 January the head of Naftogaz (Dubyna) and PM Tymoshenko held a meeting in the office of President Medvedev and later in the government building. On the way to the meeting with Putin, Dubyna said that he refused to sign the contracts without the decision of the cabinet as he neither agreed with the base price for gas of \$450/mcm, nor endorsed the lack of an equivalent increase in the transit fee. Tymoshenko responded that such directives would be procured. In a few hours Tymoshenko provided Dubyna with directives that had her signature and the stamp of the Cabinet of Ministers of Ukraine and the Minister of Fuel and Energy, Prodan, also put his signature on the directives. Dubyna took these documents to be official directives of the Cabinet of Ministers, but he made a last attempt not to sign the contracts by telephoning President Yushchenko and asking him to recall him from the talks.⁵⁵⁵ However, formally the President had no right to do this and did not want to violate the procedures. It was now

⁵⁵⁴ Ibid; copy of the directives and the protocol from the cabinet's meeting were leaked in Viktor Chervokunia, "Hazovi dyrektyvy. Zarady znyshchennia Firtasha Tymoshenko porushyla zakon?" *Ukrainska Pravda*, 21 Sichnia 2009.

⁵⁵⁵ "Dopyt Dubyny u spravi Tymoshenko," *Ukrainska Pravda*, 18 Travnia 2008.

up to Dubyna to either sign the contracts under pressure from the PM, or refuse to do so and be relieved of his duties, since Tymoshenko threatened him with dismissal.⁵⁵⁶ Dubyna signed the contracts, following which Tymoshenko stayed in Moscow to continue her talks with Putin until 3 o'clock on 20 January.⁵⁵⁷ Following the signing of these agreements, Gazprom received an order to restart its gas supplies to Ukraine and transit to Europe.⁵⁵⁸

January agreements: "European price, without European principles"

Despite the talk of the European price and market relations in the gas sphere that Ukraine and Russia were supposedly establishing, very little of this was accomplished in the 2009 contracts. Tymoshenko agreed to practically all of Moscow's demands on the price of gas, transit tariffs, volumes and presence on the Ukrainian market, in return for one demand – the removal of intermediaries from the Ukrainian gas trade. However, although RUE was ousted, Tymoshenko further entrenched Ukraine's dependency on Russian gas and helped the Russian monopoly to extend its presence on the Ukrainian domestic market. In addition, evidence suggests that an alternative option existed at the time of involving the EU in negotiations with Moscow. If the EU was involved it is likely that Ukraine would have achieved a truly market-based formula both for the supply of gas and its transit, enabling a market-based restructuring of the Ukrainian gas sector. Instead, as noted by Yurii Vitrenko, former chief advisor to the Chairman of the Board of Naftogaz, during the 2009 crisis Ukrainian officials were "thoughtlessly using European prices and not European principles" in the gas negotiations.⁵⁵⁹

⁵⁵⁶ Serhii Leshchenko, "Sprava proty Tymoshenko. Nevidomi podrobytsi. Chastyna 2," *Ukrainska Pravda*, 4 Lypnia 2011.

⁵⁵⁷ Ibid.

⁵⁵⁸ "Putin skomanduvav Gazpromu pustyty haz. Ukraina hotova pryniaty," *Ukrainska Pravda*, 19 Sichnia 2009.

⁵⁵⁹ See Yurii Vitrenko, "Gazovyi konflikt 2009: obiektyvnie prychyny i prognozy," *Zerkalo Nedeli*, 17 Ianvaria 2009, translation mine.

Under the 2009 agreement Naftogaz would transition from the previous practice of a 'set price' for transit and supply to a 'formula-based' one. Despite popular proclamations that this was a 'European' practice, the base price for the formula as well as the formula itself was determined by Moscow. Under its provisions Ukrainian gas prices would be partially indexed, with a starting base price of \$450/mcm and a variable rate of crude oil and gasoil, which is traded on the markets. However, the base price of \$450/mcm was not arrived at using calculations that reflected the situation on the oil market (since the gas price is tied to the price of oil), but instead was given to Ukraine by Gazprom as a non-negotiable ultimatum. In addition, the formula tied Ukraine to the price of gas oil, which is not used in Ukraine but is consumed widely in the surrounding European countries.

Because the logic of the formation of the price is to use this set number as an 'energy alternative' for the country in question, it would have been more appropriate to use export prices for coal (widely used in Ukraine as an oil and gas alternative). None of these principles were set in the price-formation, and in fact both the base price and the formula itself gave maximum revenues for Gazprom.⁵⁶⁰ This formula was set for 10 years, while in 2009 Ukraine received a 20% discount on the total gas price and less expensive technical gas Gazprom sold to Naftogaz (gas belonging to RUE in the Ukrainian storages, which in 2010 had to be returned to RUE with a fine after the Stockholm arbitration procedures). This brought down the gas price for 2009 to about \$228/mcm, which was immediately advantageous to the Tymoshenko government, but set up the following governments for serious difficulty in paying this 'market' price. In addition, a critical

⁵⁶⁰ For a more detailed review of gas price formation in Ukraine and formula agreed under the 19 January contracts see Vitrenko, *Zerkalo Nedeli*, 17 Ianvaria 2009; Yuri Vitrenko, "Formula tseny na gaz i tranzit: chto podpisala Ukraina i chto delat' dal'she," *Zerkalo Nedeli*, 31 Ianvaria 2009.

stipulation of the supply agreement was that 80% of volume purchases were under a 'take or pay' provision. Thus, Ukraine had to yearly take out 52bcm of gas (40bcm for 2009) or pay for the volume it could not purchase.

However, high prices for the gas would not have been such a great disadvantage if the rise in price and the hardening of the conditions on volumes were symmetrical to the rise in transit fees (based on a market formula) and guaranteed volumes of transit. This was not the case. Instead, transit fees for 2009 were frozen at \$1.7/mcm for 100km for 2009, and would minimally increase every year and be adjusted for inflation. This formula for the transit tariff was not a market one since neither amortisation of the pipeline nor the cost of capital, required in the market-based calculations for gas transportation tariffs, were included. If they had been included, Ukrainian transit fees would have stood anywhere from \$5 to \$13/mcm for 100km.⁵⁶¹ The contract did not include the essential 'transit or pay' provision, which did not make it obligatory for Gazprom to transport 110bcn (120bcm in 2009) through Ukraine.

Amongst other key provisions of the contract was that starting in 2009, Gazprom would sell directly to Naftogaz without intermediaries, while Ukraine increased the stake of Gazprom's share of the Ukrainian market to 25% (annually 10bcm in 2009, and 13bcm from 2010) to be sold by a 100% Gazprom-owned subsidiary, Gazprom Sbyt Ukraine.⁵⁶² Consequently, with the conclusions of the January agreements some improvement in the gas trade was achieved, since opaque intermediaries were eliminated from the gas trade between Ukraine and Russia. However, the agreements failed to establish market

⁵⁶¹ For a detailed explanation of the transit tariff calculations and tariff conditions under the 19 January accords see Yurii Vitrenko, "Ekonomicheskoe obosnovanie rascheta stavki transita i gaza i stoimosti importnogo gaza," *Zerkalo Nedeli*, 19 Ianvaria 2008; Vitrenko, "Zerkalo Nedeli, 17 Ianvaria 2009; Vitrenko, *Zerkalo Nedeli*, 31 Ianvaria 2009.

⁵⁶² Pirani et al, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, pp. 26-30. Copy of the agreements were leaked in *Ukrainska Pravda* and can be found at "Kontrakt po transytu rosiiskoho hazu + dodatкова uhoda pro avans Gazpromu," *Ukrainska Pravda*, 22 Sichnia 2009; "Hazova uhoda Tymoshenko-Putina. Povnyi tekst," *Ukrainska Pravda*, 22 Sichnia 2009.

relations between the two countries and instead fully accommodated Russian demands as well as extending Russian control not only over gas imports to Ukraine but within the Ukrainian domestic gas market as well. This however was accomplished by PM Tymoshenko despite significant opposition from within her own cabinet and President Yushchenko, and despite an alternative option of dealing with Moscow's pressure through EU involvement. Kyiv, after all, was a signatory to the European Energy Charter. A likely explanation for Tymoshenko's actions was that her fight with RUE and the political forces that Firtash supported in Ukraine became more important than an economically feasible, long-term gas supply and transit agreement with Gazprom, especially in light of the looming parliamentary and presidential elections which she hoped to win.

Conclusion

This chapter has argued that policy inconsistency during the 2006-2009 gas disputes was mainly driven by two domestic factors – the intra-executive conflict between President Yushchenko and PM Tymoshenko and the influence of domestic and foreign lobby groups (connected to UralTransGas, RUE, and Gazprom) on policy-making. The intra-executive competition over policies and policy-making powers had arisen in early 2008 and it began to play a more dominant role in influencing foreign policy in the fall of the same year. The divergent political and economic preferences of the President and the Prime-Minister became a key factor in contributing to policy instability at the time and also for future instability of the gas supply relationship with Russia, since the January agreements were later amended in April 2010 under the new President Yanukovich⁵⁶³ and contributed to the present-day prosecution of Tymoshenko.⁵⁶⁴

⁵⁶³ Simon Pirani, Jonathan Stern and Katja Yafimava, *The April 2010 Russo-Ukrainian Gas Agreement and Its Implications for Europe* (Oxford: The Oxford Institute for Energy Studies, June 2010), pp. 4-11.

Competing dynamics within the foreign policy executive contributed the most to the re-occurring policy inconsistency throughout this case. While the constitutional changes made the legal delineation of functions and powers between the president and the prime-minister more uncertain, divergent policy preferences and ensuing political competition defined their relations in the conduct of the gas trade policy with Gazprom and the Russian government. Divergent preferences (based on different beliefs about Ukraine's national interest in the negotiations with Gazprom), leadership styles and approaches to decision-making all heightened the inconsistency of the executive behaviour during this case.

The preferences of President Yushchenko and PM Tymoshenko were to remove RUE from the Ukrainian-Russian gas trade, and to gradually transition into market-based prices for the transit and supply of gas. However, Tymoshenko's desire to conduct independent policy regarding the gas trade and remove RUE and its domestic company UkrHazEnergo, by refusing to conclude technical agreements with it and pay for its intermediary services contributed to the episodes of inconsistent executive policy during the March dispute and December and January 2009 negotiations. Tymoshenko's preferences were to remove RUE from the gas trade in the shortest possible amount of time and at any cost (even if it meant giving in to Russian pressure) likely due to political concerns, since one of the official owners of RUE, Dmytro Firtash, was financing Tymoshenko's political opponents: Yurii Boyko and the Party of Regions he was part of

⁵⁶⁴ The criminal case against Former Prime Minister Yulia Tymoshenko was opened on 10 April 2011 for allegedly abusing her executive powers while concluding the January 2009 agreements with Russia, as a consequence of which the country was saddled with a great financial and economic burden. She was officially charged with the alleged crime on 24 May 2011. Observers have noted that a successful trial might make the agreements 'unconstitutional' and open the possibility for the government to reopen negotiations on supply and transit with Gazprom on legal grounds. "U sudi oholosyly choho hochut' vid Tymoshenko," *Ukrainska Pravda*, 15 Lypnia 2011; "Azarov dumaie chy ne rozirvaty uhodu z Rosieiu cherez sud," *Ukrainska Pravda*, 5 Serpnia 2011.

and also allegedly President Yushchenko and his political team. President Yushchenko believed that it was important to remove RUE, but in a timely manner, allowing the company to play the intermediary role until alternative relations with Gazprom could be negotiated without a rapid increase in the price of gas imports for Ukraine. During the 2009 crisis this difference in the initial preferences would translate into Yushchenko's desire to involve the European Union in the negotiations with Moscow and as such not succumbing to the pressure from the Kremlin, while Tymoshenko was ready to accommodate Moscow, so long as her preference on the immediate ousting of RUE was satisfied.

Vested interests in this case were represented by the intermediary company, RUE (previously UralTransGas), which supplied Turkmen and Russian gas to Ukraine, Naftogaz and Gazprom. The economic and political activities and ties of RUE became the reason for its removal from the gas trading scheme and also a major factor that led to the 2006 gas crisis. RUE, a Swiss-registered company, Naftogaz and Gazprom had strong links with power-holders in Ukraine and in Russia. Through their proximity to decision-making circles they were able to capture policy-making regarding energy issues in these states by incorporating and rewarding key office holders in Ukraine and Russia for patronage. As a consequence, domestic and international energy policy incentives of the Ukrainian government were not designed to create a market that would provide security of energy supply to Ukrainian consumers at the least cost, but to benefit monopoly providers – RUE, Gazprom and in some instances Naftogaz. When political forces in Ukraine, especially PM Tymosheko and to a lesser extent President Yushchenko, attempted to challenge these arrangements they encountered opposition from RUE, Gazprom and the

Russian government which usually resulted in a lowering of gas volumes (as occurred during the March 2008 dispute) or a threat of a cut-off (which happened during the breakdown of the negotiations at the end of December 2008).

The geopolitical strain between Russia and the West due to the expansionist tactics of the latter within the territories of Moscow's near neighbours contributed to a greater desire by the Kremlin to defend its geopolitical interests in the region, which led to the securitisation of the economic and energy sphere by Moscow in asking Ukraine to pay a 'market' price for gas. It became more willing to use its energy supplies as tools of political and economic coercion. The global economic crisis of 2008 and sharp decline in energy prices and world demand, on the other hand, were pushing Moscow towards seeking advantageous, more market-based energy relations with its former republics. Domestically within Ukraine, continuing political instability due to the breakdown of elite cooperation, ensuing intra-executive split and constitutional amendments made foreign policy making difficult since little agreement could be reached on what those policies should be and who should be in charge of policy-making. Divergent economic policies within the executive not only contributed to the sharpening of the political instability, but also created fiscal conditions that made it difficult for the government to pay its gas debt arrears for Russian gas supplies in light of falling GDP and high inflation.

The discussion of this case supports both hypotheses on the sources of inconsistency in Ukraine's foreign policy. The role of inter-executive conflict in the context of divergent policy preferences and unclear division of functions was perhaps the most visible factor especially during the emergence and resolution of the 2009 gas crisis, suggesting that unclear divisions of power and abrupt changes in preferences result in

foreign policy inconsistency. Similarly, the influence of energy lobby groups on decision-making in relation to the energy sphere in Ukraine and in Russia was a significant factor driving the disputatious relationships between Ukraine and Russia and contributing to policy inconsistency.

The discussion of the gas crises also illustrated the conditions under which external, especially Russian, pressure would yield results. Moscow's pressure achieved successful results as a consequence of the intra-executive conflicts in Ukraine and by being able to offer one of the sides particular benefits in return for their accommodating stance. Consequently, in light of the Yushchenko-Tymoshenko competition, Moscow and Gazprom were able to take advantage of the situation and use the well-known tactic of 'divide and conquer' to achieve the desired result: maximum beneficial trade commitments for Gazprom (high gas import volumes and price, low transit tariff and a share of the Ukrainian domestic market) while giving to Tymoshenko what it was willing to give all along- that is the removal of RUE from its trade arrangements.

Conclusion SIX

This dissertation set out to explain the inconsistency of Ukraine's foreign policy from independence to 2009. In order to analyse the empirical puzzle of the inconsistency of executive decisions regarding foreign policy issues, I selected four key case-studies of Ukraine's policy towards Russia from 1991 to 2009. The cases were: Ukraine's decision to renounce nuclear weapons, the negotiations regarding the status and the division of the Black Sea Fleet, the reversal of the Odesa-Brody pipeline and the gas crises of 2006 and 2009. In all of these cases some degree of policy inconsistency was present. The policy of the Ukrainian authorities to renounce nuclear weapons was the most consistent of the three examples, marked by a rather high degree of executive unity regarding the non-nuclear option. Two episodes, the halt of TNWs transfer and partial ratification of START I (which also de-linked NPT ratification from START I), were interpreted by many as Kyiv's wavering on its executive commitments. But as my examination showed that they were attempts by the Ukrainian executive to withstand external pressure, not to revise its earlier commitments. It was only during the attempts by the executive to ratify the NPT treaty in the light of parliament's opposition to President Kravchuk that policy change became evident.

In the case regarding the status of the BSF, the executive position was relatively consistent during 1991-1997, with the exception of one incident. During personal negotiations between Presidents Kravchuk and Yeltsin, the Ukrainian President abruptly changed his preferences and in a protocol format agreed to pass Ukraine's 50% share of the BSF and infrastructure to Russian ownership in return for energy debt cancellation. This episode of inconsistency reflected and increased intra-executive disagreement

between the President, the Minister of Defence and the parliament which then called for impeachment of the President for his unilateral commitment to pass the fleet into Russian ownership. In addition, the presence of national and international vested interests complicated decision-making regarding this issue.

Policy inconsistency was highest in the cases of the Odesa-Brody pipeline and the 2006-2009 gas disputes where both key factors associated with policy inconsistency were present. During the attempts by the executive to commercialise the pipeline to transport non-Russian oil in a northern direction, the preferences of the president and several individuals in the state energy companies changed. The cabinet initially disregarded these changes and in February 2004 committed to the northern option of the pipeline's utilisation. However, due to continuing pressure from President Kuchma, PM Yanukovich conceded and the direction of the pipeline was reversed to ship Russian oil south five months later. Two factors were most prominent in contributing to policy inconsistency. First, there was a conflict over policy preferences between the President and the state energy company, Naftogaz, on the one hand, and the cabinet on the other. Second, domestic and foreign vested interests (both state and private) made a major contribution to policy inconsistency. The proximity of groups and individuals to President Kuchma was pivotal in the successful reversal of the pipeline flow.

In the case of the 2006-2009 gas disputes, three episodes of policy inconsistency stood out: the attempts by PM Tymoshenko to revise gas trading arrangements with Moscow in March 2008; the December 2009 negotiations when the PM and Naftogaz failed to implement the October inter-governmental commitments; and 17-19 January 2009 when the PM personally resolved the gas crises despite the different preferences of President Yushchenko, much of the cabinet and the head of Naftogaz. Two factors

seemed to contribute most to policy inconsistency in these years: intra-executive conflict and the competition that emerged between President Yushchenko and PM Tymoshenko; and, to a lesser extent, between the government and vested economic interests such as the intermediary company RUE and the Russian energy major Gazprom.

All these cases highlighted the causal significance of two domestic factors shaping policy consistency/inconsistency: intra-executive relations in the context of divergent policy preferences and political competition and the impact of both domestic and external interest groups. Our empirical analysis confirmed the validity of both hypotheses posed at the beginning of this study. A key factor which contributed to policy inconsistency was an unclear distribution of functions and powers within the executive which, in the context of divergent policy preferences, fostered intra-executive conflict. And it was particularly in such conditions that groups and lobbies with vested policy interests were able to make use of their access to decision-makers to exercise influence over foreign policy outputs. The unclear distribution of functions and powers within the executive both *de jure* and *de facto* mattered most when a preferred policy choice lacked unanimity, especially when there were serious differences between the president and the prime minister. Vested interests proved to be most important where economic issues were at stake, as in the Odesa-Brody and the 2006-2009 gas disputes and when key members of divided executives had considerable scope for leadership action.

The role of intra-executive relations was significant in shaping both policy consistency and inconsistency; this role varied with the nature of the issue and its domestic political salience. When considering the option to renounce nuclear weapons, President Kravchuk did not independently determine policy; instead, the executive

(composed of the President, the cabinet and the senior leadership of the parliament) acted as a group in both devising a policy option and executing it. During the negotiations over the status and the division of the Black Sea Fleet, policy remained consistent until President Kravchuk's preferences changed at Massandra and he attempted to unilaterally alter state policy regarding this question. His position was opposed by the Minister of Defence and by the deputies in the parliament, which led to the failure of the President to implement these protocol agreements. While President Kuchma's preferences changed in relation to the direction of the Odesa-Brody pipeline, he was unable to immediately change executive policy due to significant opposition within the cabinet. Only after most of the individuals within the cabinet who opposed the reversal had been relieved of their duties did the President convince PM Yanukovich to issue a decree enabling the reversal. Intra-executive differences became even more influential following the 2006 constitutional amendment which subordinated part of the cabinet to the parliament; this development affected gas policy in 2006-2009. A clear dual-executive system emerged in Ukraine. Although PM Tymoshenko was not authorised to make foreign policy decisions, the lack of clarity in the distribution of functions and intense political competition between Tymoshenko and President Yushchenko made Tymoshenko more willing to challenge the President even on the issues of foreign policy. The nature of the political structure, and in particular the division of powers within the executive, was important in creating conditions favourable to foreign policy consistency/inconsistency.

The influence of domestic and international vested interests on policy inconsistency was most evident during the decision to reverse the Odesa-Brody pipeline, during the 2006-2009 gas disputes and to a lesser degree in the division of the Black Sea Fleet. In the case of the pipeline, domestic and foreign groups with vested interests in the

issue lobbied Ukrainian officials and offered them personal inducements. The role played by these groups affected the decision-making process, moving it away from official institutions such as the Ministry of Fuel and Energy and the cabinet, to the backrooms of the presidential administration and state energy companies. Vested interests in the Odesa-Brody case included: groups led by Yurii Boyko, the head of Naftogaz, Stanislav Vasylenko, the head of Ukrtransnafta, Viktor Pinchuk, an Ukrainian oligarch close to President Kuchma (also associated with the 'family' and Dnipropetrovsk clan), TNK-BP and the Russian pipeline monopoly, Transneft. These groups were influential in changing the policy preferences of President Kuchma and in subverting the realisation of the pipeline in the European direction. It is important to note that the distinction between an interest group and the government cannot be clearly made in Ukraine, since state officials like Boyko and Vasylenko were also acting as lobbyists for TNK-BP. Due to a lack of separation between business and political office in Ukraine, government posts were frequently used by the authorities to extract private benefits for themselves and those close to them.

In the case of the gas crises, vested interests consisted mainly of RosUkrEnergo (RUE), Naftogaz, and Gazprom, with RUE playing a dominant role. RUE, which was brought into the energy trade between Ukraine, Russia, and the Central Asian republics in early 2000s, became a source of policy differences between President Yushchenko and PM Tymoshenko. While the President favoured a more tolerant approach to RUE (it was also rumoured that one of RUE's owners, Dmytro Firtash, was financing Yushchenko's political bloc) PM Tymoshenko fought to eliminate this company from Ukraine's energy trade. Thus, starting with her premiership in 2005 and again in late 2007, PM Yulia Tymoshenko and her team waged a campaign against this intermediary. Energy crises with Gazprom and Russia throughout 2006-2009 emerged mainly out of the attempts by

Tymoshenko to change these trading arrangements and remove RUE (which suggests that it was in the interest of Gazprom and officials in the Kremlin to keep RUE in the trading arrangements since they were willing to heighten tensions by threatening cut-offs). As a more concrete example of influence, during the December 2008 negotiations of the gas supply and transit agreements between Naftogaz and Gazprom, RUE was seen to interfere in the negotiations (in fact they were present at them) and bid a higher price for Gazprom's gas, thereby derailing the talks.

Lastly, national and international vested interests played a role during the negotiations over the status and the division of the Black Sea Fleet and in this way have contributed to policy inconsistency, albeit to a lesser extent than in the other cases. During the early 1990s many Ukrainian enterprises accumulated debts to Gazprom for energy use, but instead of classifying these as corporate debts (which Russia had done), the Ukrainian government assumed these arrears as state debts. These debt obligations were later used by Russian President Yeltsin to settle the question of the Black Sea Fleet during the Massandra talks, where President Kravchuk agreed to swap the debt obligations in return for the sale of the fleet and for the lease of bases in the Crimea by Russia. Commenting on such an unusual transaction Ukraine's Deputy Foreign Minister at the time noted: "Ukraine was giving its property in exchange for the repayment of the non-existing state debt."⁵⁶⁵

The inconsistency of executive decisions analysed here suggests a few conclusions about the general wavering in Ukraine's foreign policy over time. The wavering in Ukraine's foreign policy between its 'pro-Western' and 'pro-Russian' vectors was a result of contradictory decisions by the Ukrainian authorities usually made because of the

⁵⁶⁵ Author's interview with Borys Tarasiuk, Kyiv, Ukraine 25 August 2009.

inability of leaders to effectively manage domestic and international pressures and constraints and also their inability to act as a single unit at the state level. Corruption, domestic political constraints and Russian pressure forced politicians to maintain the status quo, rather than seek fundamental reforms which were necessary for membership of the European Union which the Ukrainian leadership claimed to be its goal. Thus, the leaders did not take radical steps – neither fully integrating with the EU, nor breaking their economic and political ties with the states of the former Soviet Union and especially Russia. Pressures faced by the Ukrainian leaders might well have been more successfully managed had domestic political consensus been built around the necessary reforms, by engaging the EU in mediating against the Russian pressure and by developing professional bureaucratic and policy-making institutions that are more resistant to political changes.

The findings from the cases also provide a few conclusions regarding the role of external pressure on Ukraine's foreign policy. The renunciation of the nuclear weapons was an illustrative case of the Ukrainian executive resisting external constraints when the combined political and economic pressure of Russia and the US attempted to cajole Kiev to denuclearise. The ability of the executive to formulate a united policy regarding the weapons and then use parliament to extract maximum benefits from the position of the external actors showed that even under the conditions of severe international pressure the Ukrainian executive was able to derive economic and political advantages from its accommodative decision to give up nuclear weapons. On the other hand external factors (the influence of foreign political and commercial interests) were able to change the position of the Ukrainian authorities when the executive was divided, when top political leaders stood to benefit from foreign deals and when vested interests through which additional pressure could be applied were close to decision-making circles.

Finally, the case study findings have implications for external policy makers' understanding of Ukraine and of the dynamics in the region more broadly. In the introductory chapter of this study, I raised two questions that could be of interest to policy-makers outside of Ukraine: How to make sense of Ukraine's frequent wavering between Russia and the West? What role does Russia play in influencing Ukraine's domestic and international choices? In relation to the first question, Ukraine's' wavering has been the result of decisions made by the Ukrainian leaders in response to changing pressures. They made contradictory decisions in order to satisfy their domestic constituencies and those vested interests helped them to remain in power, while in the process sacrificing the long-term interests of the state. This short-term thinking by Ukrainian policy-makers was fostered in part by the democratisation of the political system and the electoral pressures this placed on leaders.

As for Russia's influence and in particular its role of exerting direct pressure on decision-making, Moscow seems to have been successful under certain specific domestic conditions in Ukraine. The only way that one can counter Moscow's monopolising economic influence on the political preferences of Ukrainian leaders is to help change those conditions within Ukraine that are vulnerable to this pressure. Recent efforts of the international community seem to follow in the direction of helping to provide funds for: economic development in Crimea, improvements in the energy-saving sector and energy development projects within Ukraine that can lessen dependency on Russian supplies. Despite political upheavals in Ukraine the on-going intermingling of its businesses, elites and populations with Western institutions, funding and norms (especially those of the EU) could help to make Ukraine's economy less vulnerable to Russian economic pressures. In time this might result in a greater pluralism of interests within Ukraine's political system.

The study of Ukraine's foreign policy is still in its infancy. Only a handful of works attempt to analyse patterns emerging from the behaviour of the Ukrainian decision-makers and attempt to review the sources of Ukraine's foreign policy decisions and specifically the factors contributing to both its changes and its continuity. Empirically, my study adds to our understanding of the sources of frequent policy changes (here conceptualised as inconsistency) in the decisions of the Ukrainian executive. Using a broad range of primary sources such as archives, official documents, parliamentary stenograms, elite interviews, mass media reports and secondary accounts I have argued that domestic sources best explain this inconsistency. This conclusion differs from existing interpretations that typically view external, systemic factors as more influential in Ukraine's foreign policy. My approach attempted to understand the balance between the role of domestic and international factors and to highlight those domestic conditions under which external factors come to play a role in foreign policy-making. However, although this approach was adequate in answering the particular question of Ukraine's foreign policy inconsistency over the past two decades, it also has its limitations. Key among them is the inability to capture structural and cognitive forces that have shaped the policy choices of Ukrainian decision-makers. In other words, intra-executive conflict and the influence of vested interests can also be seen as consequences of particular national economic institutional developments, international political economic conditions and of certain mental maps and beliefs that guide decision-makers.

In addition, as I mentioned in the introduction, the number of cases that I chose to review was limited to four key areas but nevertheless these provided good comparative analyses. For future research purposes it would be beneficial to examine more cases of

Ukrainian decision-making that spanned across other countries, time-spans and issues and then to compare these with the work I have completed in this study. Additional cases that could be analysed might include foreign policy decisions in relation to Ukraine's non-strategic partners like Azerbaijan or Iran or cultural and religious issues within different sectors and groupings in Ukraine. This expansion of cases would be an ideal avenue for further research on this subject. However, considering how little is known about the nature of foreign policy making in Ukraine other research should be encouraged, especially in the areas of: the institutional organisation of decision-making; personnel policy and its effects on policy stability; and information quality, flows and effects on decision-making.

My findings add to the growing literature within the field of International Relations (in which authors of all persuasions attempt to understand how domestic arrangements within a particular state – ideational, institutional, social, and material – interact and come to shape state action) and these findings should help scholars further understand the variation of state responses to international stimuli. Thus, for example the most recent and authoritative volume in the newly emerging neoclassical realist school seeks to understand conditions under which states will be best able to extract “material and human resources of their societies” and direct them into “measurable economic and military power in the pursuit of national security objectives”.⁵⁶⁶ In other words why are some states both willing and able to engage and actively compete in the international system and others are not? The existing literature on Ukraine makes clear

⁵⁶⁶ Jefferey W. Taliaferro, Steven E. Lobell, and Norrin M. Ripsman, “Introduction: Neoclassical realism, the state, and foreign policy,” in Steven E. Lobell at all, *Neoclassical Realism, the State, and Foreign Policy* (Cambridge: Cambridge University Press, 2009), pp. 37-38.

that thus far Ukraine as a state has not been able to successfully capitalise on its material, geographic, human and social resources so as to be able to project power and influence in the international system. I attempted to tackle this problem when I analysed how domestic sources have influenced Ukraine's policy-making in relation to Russia. The importance of two factors became clearer as my research progressed, namely, the unclear distribution of functions and powers within the executive and the influence of domestic and foreign interest groups on foreign policy-making. These contribute to the 'weakness' of the Ukrainian state, making it unable to capitalise on its resources and conduct effective state action internationally - actions which could be effective both for the state (delivering long-term benefits such as sovereignty and security) and for its citizens (delivering benefits such as prosperity, development and freedom of movement). Instead, most policies have tended to bring short-term benefits for the immediate regime in power and the interests that serve it. In this sense the policy inconsistency that is observed in the Ukrainian case and analysed in this study is a symptom of state weakness and underdevelopment.

Ukraine, however, is not alone in facing these constraints. States in transition and development all over the world face the problem of weak institutions, unfavourable structural conditions and poor leadership in varying degrees. Thus, what the study has shown is that foreign policies of states undergoing transition are less stable, leadership tends to be more inconsistent in its decision-making and the process of foreign policy and decision making is more haphazard than in well-established states. Although my work is not pioneering in examining foreign policy-making in states undergoing transition, it is one amongst few to address the particular issue of policy inconsistency. More research

needs to be done in order both to understand the problems of foreign policy-making in transitioning societies and to better attune international efforts in overcoming them.

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All stenograms can be found at www.rada.gov.ua . The list of stenograms below includes those cited in the chapters as well as all those where the issues of nuclear weapons or the Black Sea Fleet were discussed. This list of selected stenograms should aid future researchers who would be interested in these subjects.

On Nuclear Weapons (1990-1995)

Parliamentary Stenogram, 12 June 1990.

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On the Status of BSF (1990-1997)

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