

'A Door Neither Closed Nor Open':
Europe's Inconsistent Support for
Democratic Reform in Ukraine

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‘A Door Neither Closed Nor Open’:

EU Policy towards Ukraine during and since the Orange Revolution¹

Abstract

Ukraine provides evidence of very different CFSP negotiating dynamics. In the run up to the country’s Orange revolution significant differences persisted between member states over how the EU should support Ukraine’s democratic transition. A combination of normative entrapment and co-operative bargaining ensured that ‘maximalist’ and ‘minimalist’ member states united around a common position in support of the Orange revolution. In subsequent debates over whether the EU should offer Ukraine a membership prospect, however, lowest common denominator dynamics prevailed. This case additionally demonstrates that both before and after Ukraine’s democratic transition very specific external geo-strategic factors played an important role in conditioning EU policy outcomes.

Policy related to Ukraine's ‘Orange revolution’ is widely cited as one of the most notable recent successes in European foreign policy, in which member state governments and EU institutions acted in a united and concerted fashion in favour of democratic transition. This paper seeks to explain how such unity arose, when prior to the latter stages of the revolution significant differences had persisted within the EU over the appropriate role that Europe should play in relation to Ukraine’s political evolution. In line with the claims of Normative Institutionalism (Thomas 2008), it is suggested that a combination of ‘normative entrapment’ and ‘cooperative bargaining’ help us explain policy agreement in the case of Ukraine. The dynamics of rhetorical entrapment were particularly potent in explaining why a number of member states initially reluctant to back the Orange revolution did eventually do so. At the same time, it is pointed out that such dynamics were enabled by very specific circumstances and that unity was also facilitated by other exogenous factors; in this sense, policy also

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exhibited elements of cooperative bargaining and reaction to changing geostrategic factors.

Since 2004 member states have disagreed strongly over whether to offer Ukraine the prospect of membership. The Ukraine case can thus be divided into two separate analytical tests: one instance (the moment of democratic breakthrough) where agreement emerged; and one area of policy (the post-transition period) where the lowest common denominator has prevailed. In the aftermath of Ukraine's democratic breakthrough, a picture more akin to competitive bargaining has returned in relation to differences that persist between member states over whether Ukraine should be offered the prospect of EU accession. As Ukraine chartered serious political crisis through 2006 and 2007, this case study demonstrates both the validity of but also limits to normative institutionalism in explaining EU foreign policy.

Background to the Orange Revolution

Ukraine's Orange Revolution redressed the country's gradual slide into semi-authoritarianism. After his election in 1994, president Leonid Kuchma promised democratic reforms but in reality retained tight control over the political system. Ukraine became an emblematic case of elective authoritarianism. Elections were held, the formal institutional structures of democracy constructed and democratic guarantees built into the constitution, but in practice presidential powers increased and opposition was stifled. In 2002 social protests began to occur against Kuchma and Victor Yushchenko's Our Ukraine bloc emerged as a strong opposition force in parliamentary elections. Kuchma agreed not to stand for an unconstitutional third term in 2004, but his regime mobilized to manipulate the election run-off to declare victory for the president's pro-Russian placeman, Viktor Yanukovich. It was at this stage that half a

million protesters took to the streets and eventually forced the presidential election to be held again on December 26. Victor Yushchenko emerged victorious from this poll, in one of the most dramatic democratic breakthroughs of recent years.

Progress towards democratic consolidation was thereafter slow and tumultuous. The continuing influence of oligarchs within Yushchenko's government raised concerns over corruption, while far-reaching reform of the judiciary failed to materialize. Politics was increasingly dominated by disagreements within the Orange coalition, and after months of in-fighting related to re-privatization plans, Yushchenko removed his government in September 2005. Parliament then agreed a vote of no confidence against the new government in January 2006, after an unpopular and shady gas deal was signed with Russia that seemed to increase dependency on Moscow and entail a major step back from the European orientation promised by the Orange coalition. Reflecting a general sense of disappointment, Viktor Yanukovich's Regions of Ukraine party posted a strong showing at parliamentary elections in March 2006. After Yushchenko and fellow Orange leader, Julia Timoshenko failed to agree on the formation of a government, the president was forced into a humiliating and fractious (informal) coalition with his erstwhile opponent. This set the stage for the dramatic political crisis of 2007 that took the country back to the verge of unrest, after Yushchenko closed parliament and called new elections. While the Orange coalition was able to reform at the head of Ukraine's government after these September elections, the instability of 2007 had demonstrated that the country's institutions remained far from democratic consolidation.

Prior to the drama of late 2004, EU policy towards the Kuchma regime constituted a shifting balance between engagement and pressure for democratic reform. In formal terms, the EU as a whole committed itself to supporting Ukraine's

democratization. In practice, European efforts to press for political change were limited in the face of Kuchma's tightening hold on power. At the same time some member states preferred not to prioritize any significant deepening of relations with Ukraine. For France and Germany this was primarily due to the priority attached to relations with Russia. For states such as Spain and Italy it was due to a preference for deepening relations with the southern Mediterranean and a general paucity of interest in Ukraine.

The EU signed a Partnership and Cooperation Agreement (PCA) with Ukraine in 1994, which included a commitment to support the development of democratic norms. This commitment was reiterated and made more explicit in the EU's Common Strategy on Ukraine, adopted in 1999 (European Council 1999). A number of political reform projects were funded under the EU's TACIS aid program and a 'legislative approximation scoreboard' guided a program of cooperation aimed at harmonizing a swathe of Ukrainian legislation to EU norms and standards. In 2002, Ukraine adopted a formal 'national program of approximation' with EU legislation.

Such reform initiatives pursued through the European Commission appeared instrumentally to leave scope for national diplomacy that was in some cases more oriented towards maintaining alliances with Kuchma. While European states generally supported Yushchenko's appointment as prime minister, in view of his apparent commitment to reform, they were not highly critical of Kuchma's semi-authoritarianism. Whether correctly or not, Kuchma continued to be seen by several European governments as providing a useful bridge to Moscow (Kubicek 2003, p.155). The caution exhibited by these governments was reflected in the balanced nature of overall EU policy. A membership prospect was not offered to Ukraine at the crucial meeting of the European Council in Helsinki in December 1999, when other central and east European states were formally recognized as candidates. EU documents and

statements from the early 1990s routinely suggested that Ukraine was making progress towards democratic consolidation, when events on the ground suggested that Kuchma's commitment to reform was increasingly doubtful. Kuchma himself was scathing of the EU's limited offer to Ukraine, as he wanted a Europe Agreement and FTA (Solonenko 2006, p.45).

European impatience with Kuchma's stalling of long-promised reforms did increase, especially after it emerged that Kuchma had been implicated in the murder of critical journalist Goergyi Gongadze. However, the EU did not support the popular demonstrations that erupted in 2000. Nor did it offer material support for the democratic opposition that took shape in organized and systematic fashion after 2001. European governments also declined to respond in specific fashion to Yushchenko's 2001 ousting as prime-minister. Indeed, at this stage most European states actually encouraged Ukrainian reformists still to focus on trying to join the government and gain moderate change from within the parameters of the regime – this even as Kuchma had begun tightening controls on the media and the judiciary and making it clearer than ever that he would seek to block such 'reform from within', and even as the Ukrainian parliament itself launched ominous investigations into civil society activity. At the 2002 elections, no EU support was forthcoming for reformers; the latter were outmaneuvered by Kuchma for positions and representation after the poll.

Rather, changes in European policy were more nuanced. By 2001, EU declarations became more critical, expressing 'profound concerns' over the tightening of political space and the intimidation of journalists, while suggesting that progress on economic and political reform was 'a prerequisite for a deeper relationship with the EU' (Kubicek 2003, p.162) At the same time, European governments sought strategically to respond to shifting alliances and trends within Ukraine. The 2002 elections, in which

the opposition recorded a strong showing, had a notable impact on European calculations. High level visits reduced: only Gerhard Schröder met with Kuchma in 2003, and by early 2004, contacts at the most senior level had dried up.

While so much focus was later centred on the dramatic events surrounding the elections in autumn 2004, underlying political conditions had begun shifting earlier that year. And, it was here that European responses were slow and cautious. By spring 2004, popular rumour in Kiev was already predicting that Yushchenko would emerge victorious from the presidential elections with a small majority, which would then be stolen by the Kuchma-backed Yanukovich camp. Pora, the influential student group that led the civic action in the autumn, was formed in March 2004, but attracted no open European governmental support. Even as the crucial defections accelerated of Kuchma's supporters and state and security service insiders, some in the EU remained wedded to a strategy of encouraging 'reform from within' - long after most informed observers in Ukraine thought this was at all likely. Western training programs remained non-partisan, and the Yushchenko campaign was funded entirely by Ukrainians (Karatnycky 2006, p.40). Manipulation in a key mayoral election in March 2004 caused a growing stir, just at the moment when the EU seemed obviously to be concluding its ENP Action Plan with Kuchma.

Despite all the EU's rhetorical commitments in favour of Ukrainian democracy, as events gathered pace in the autumn of 2004 the EU initially appeared indecisive and reluctant to intervene. The EU was largely silent in response to pre-election intimidation – that included the episode of Yushchenko's disfiguring poisoning and threats made to students that they would lose their accommodation if they voted for Yushchenko (Karatnycky 2005). Indeed, it was at this moment, when Ukrainian democrats were emphasizing the motivating force of their European vocation, that European

Commission President Romano Prodi suggested that Ukraine had as much chance of joining the EU as New Zealand. Some liberal reformers complained bitterly at Europe's reluctance to intervene as tensions deepened early in the autumn of 2004. Even as democracy protests erupted and the scale of electoral manipulation was revealed, one diplomat acknowledged that several EU member states remained reluctant to be seen supporting reformists 'for Russia-handling reasons.'

Nevertheless, as indicated above, the EU did eventually throw its weight clearly behind Ukraine's democratic transition, calling for a rerun of the elections and making clear that future relations depended on the Kuchma regime standing aside to allow the Orange coalition to assume power. So, how did agreement over such support come about?

Internal EU Dynamics: From Contestation to Agreement

When the Orange Revolution occurred, Europe's support was widely seen as crucial and firm. It seemed a fairly straightforward case of European governments backing democracy, when presented with one option clearly consistent with its own commitment to democratic norms and another option starkly at odds with those norms. In fact, the EU's decision to back the Orange Revolution was not taken without considerable internal debate. A number of states held preferences that were at a minimum highly ambivalent, until a very late stage in Ukraine's democratic transition. With some risk of simplification, a group of 'maximalist' states (Poland, Lithuania, other new member states, with some backing from the Nordics and UK) fought for the EU to push harder for Ukrainian democratisation against a group of 'minimalist' states (including France, Germany, Spain and Italy).

Beyond a united European expression of concern over the direction of events in Ukraine, member states' advocated very different responses. A number of member states argued that the EU should respond to the changing conditions by offering Ukraine a deeper and democracy-conditioned partnership, as a means of bolstering reformists. In 2002, the United Kingdom and Sweden first proposed offering Ukraine a further reaching set of relations, through what became the European Neighborhood Policy (ENP). Indeed, the ENP was seen by these states as a way of dealing specifically with 'the Ukraine problem' (Smith 2005, p.768). At the bilateral level, in 2002 Lithuania signed a new Strategic Partnership with Ukraine, also with a focus on political reform. Poland pressed for the EU to change its 'Russia first' policy to a 'Ukraine first' policy. The Polish government argued strongly that the EU had been guilty of neglecting Ukraine for fear of incurring Russia's wrath, and that current policy risked failing to halt Ukraine's slide into Belarus-like isolation. For these states the ENP was seen as a means of tying down Kuchma to reform commitments, as trust between the EU and Ukraine seemed increasingly brittle.

By mid-2004, as the dynamics of the transition took shape, internal European differences became most evident. Some states wanted to 'help give events a push'. Others cautioned that a more hands off approach was desirable and, according to many diplomats, fretted that support for reform was still not widespread enough to off-set the risks of being perceived as 'interfering' in Ukraine's internal politics. Slovakia advocated a stronger 'push' in favour of regime change, with Slovakian civil society organizations finding in Ukraine's predicament an echo of their own experience with president Meciar in Slovakia's 1998 elections. The Poles pushed even harder at this stage for firmer conditionality, linked as quid pro quo to more generous EU incentives for Ukraine if democratic reform were allowed.

At the other end of the spectrum were the southern EU member states. Crucially, Germany also remained cautious over a deeper engagement aimed at pushing political reform issues in Ukraine (Emerson 2005, p.18). German officials asserted that on-the-ground funding initiatives for Ukrainian democrats were hampered by the high-level politics of the Berlin-Moscow relationship. It was reported that Poland worked hard at pushing a reluctant German government into agreeing to offer Ukraine a deeper range of engagement, and was frustrated at its lack of significant success (Gromadzki, Lopata and Raik, 2005, pp.31-32).

Formal EU positions continued to balance and accommodate these differing national perspectives. The Commission's Neighborhood Policy Country Report on Ukraine, adopted in May 2004, warned that given the irregularities witnessed in the 2002 elections, the EU would monitor the 2004 poll more closely; but it also asserted that Ukraine was making a 'progressive transition to democracy' (Commission 2004, p. 6 and p.9) As stated, the EU did conclude negotiations for a Neighborhood Action Plan with the Kuchma government. The text of the Action Plan alluded to the priority of 'Ensuring the democratic conduct of presidential (2004) and parliamentary (2006) elections in Ukraine in accordance with OSCE standards.' And immediate implementation of the plan was halted in the run up to the presidential elections.

It was at this stage that the most prominent role was adopted by Poland and Lithuania. These two states pressed for a more positive signal to be given towards Ukraine's potential membership to the EU and for a tougher line towards Russian influence in Ukraine. In the autumn of 2004, Lithuania took the lead in initiating Council discussions on offering stronger relations with Ukraine. It was backed by six other new central and eastern European member states, the Nordic countries and Austria (Emerson 2005, p.17). This group of member states met frequently on an ad hoc basis

immediately prior to the elections. Already in early November the Polish foreign minister switched a planned visit to Kuchma and prime minister Yanukovich to meet Yushchenko instead (Sushko and Prystayko, 2006, p.131).

In the midst of Ukraine's brewing crisis, reports from insiders in Brussels indicated that EU foreign policy representative, Javier Solana, was initially reluctant to get involved. The more activist states complained at Solana's passivity; Solana's team were concerned that they lacked a clear mandate supported by all EU governments. One civil society representative lamented that Solana focused on events in Ukraine only after being pushed hard by Poland and when he belatedly saw 'history being written'. A triumvirate was eventually assembled of Solana, Aleksander Kwasniewski and Valdas Adamkus, the Polish and Lithuanian presidents, respectively. There was general agreement that it was Kwasniewski who served as the crucial interlocutor, based on a long-standing mutual confidence with Kuchma. Solana was generally recognized as having played a valuable mediating role, while maintaining a line of, 'we do not meddle, or take sides'. He actually called for demonstrators not to impede the working of government ministries – a call that was unceremoniously ignored by the crowd! ((Sushko and Prystayko, 2006, p.140).

It is now well known that the observation mission for the rerun second round of the poll in December was the largest assembled in history. But in the first round, the number of EU observers was limited, with only Poland and Slovakia sending significant numbers. Even after the first round, the Poles complained of German resistance to the idea of the EU intervening against Russia's overt backing for Yanukovich. Joschka Fischer was the only German cabinet member immediately to demand a re-run. The French foreign minister placed his stress on the risks of destabilizing change spreading through the region more than on celebrating the events that had led Ukraine to the cusp

of democratic breakthrough (Youngs 2006). Indeed, interviews uncovered that the French government was particularly ambivalent and tardy in backing protestors' claims that the second round results were fraudulent (Guillermoles 2005, p.132). As one prominent Ukrainian activist railed: 'Chirac was our worst enemy, worse even than Putin.' While the British, Dutch and Swedish governments joined the US in funding exit polls, party training (offered on a bipartisan basis but taken up only by the opposition) and some indirect logistical support in-kind for pro-democracy protestors, Germany, Spain and France eschewed directly political aid projects in the run up to or in the wake of the first round. The role of quasi-independent party foundations such as the Westminster Foundation for Democracy, the German Stiftungen or the Dutch Alfred Mözer Foundation represented the more notable aspect of European political assistance.

Despite all these differences, the EU did hammer out a common position in defence of free and fair elections and an effective change of regime. Despite their misgivings, the EU's reluctant member states did eventually support an EU call for the elections to be re-run and monitored, which effectively handed power to the Orange coalition and ousted the *ancien regime*. After the contested and blatantly manipulated second round the EU did, according to one account, 'change to a stick approach' and threaten 'serious consequences' (Sushko and Prystayko 2006, p.132). Ukrainian experts indeed contrast this evolution in the EU stance with what was a clearer US backing for reformers from far earlier on in the process of democratic transition. France and Germany did send observers to the OSCE mission that monitored the re-run of the election, and began to suggest that the future of Ukraine's relations with the EU would depend on a democratic outcome to the impasse. One network of NGOs opined favourably that these moves 'demonstrated that the European Union really is capable of formulating and implementing a common foreign policy' (ICPS 2005).

The EU united behind support for a ‘pacted’ solution, based on Yushchenko agreeing to cede some presidential powers to the parliament in order to placate Kuchma’s allies who would thus retain influence. Somewhat contrary to subsequent impressions, European efforts focused more on such elite mediation rather than proactive support for the Orange coalition. The most tangible backing for democracy activists came not from Western official initiatives, but through links between Pora and its Serbian counterpart, Otpor (Pora was too high profile to receive either European or US funding) (Kuzio 2005, p.127).

Explaining EU Agreement towards the Orange Revolution

So how do we explain the fact that apparently firm differences gave way to agreement between member states at the moment of Ukraine’s democratic transition? The period running up to the Orange revolution in 2004 provides much convincing evidence of normative entrapment. What was deemed to be appropriate behaviour had been conditioned by the EU’s series of pro-democracy commitments. The EU institutional setting itself militated in favour of eventually unified member state support for Ukraine’s democratic transition. At the same time, caveats and nuances to this strong case of normative institutionalism must not be overlooked.

To some extent echoing policy deliberations in the case of Turkey, the discourse of democracy served as a convenient pretext: a number of European governments played up the importance of democracy-related criteria at a stage when these served to rebut Kuchma’s call for the EU to make clearer commitments towards Ukraine. This position was for the decade following Ukraine’s independence apparently able to reconcile a relatively non-specific aspiration in principle to assist political liberalization, with the strategic desire to play Ukraine as a bridge between Europe and Russia - as

opposed to the country becoming a source of tension between Moscow and the West. For the EU the democracy commitment was both pull and push, serving to calibrate what was deemed the desirable mix between these competing dynamics. As the internal tensions of Ukraine's 'soft authoritarianism' increasingly bubbled to the surface, however, the test became more actual of whether the EU would indeed proceed consistently with its many years of rhetorical commitment to Ukraine's democratization.

The impact of normative entrapment was made greater in the case of Ukraine due to the fact that the process of democratic transition here reached a very dramatic, 'make or break' denouement. While the Orange revolution was the outcome of underlying changes some years in the making, the very form of Ukraine's 'elective authoritarianism' eventually focused attention on one crucial juncture when international actors would be forced to make a relatively binary, 'either/or' decision. With the Ukrainian constitution providing for free elections and other institutional aspects of democracy, the massive fraud that determined the officially proclaimed outcome of the initial run-off between Yanukovich and Yushchenko forced a clear moment of reckoning with the country's own formal constitutional guarantees. The very decisiveness of this moment de-legitimized, and breached the limits of, the 'reform from within' line favoured by the more cautious EU member states, Javier Solana and some parts of the European Commission. It ensured that the dynamics of normative entrapment were strong enough to over-ride strategic pre-occupations vis-à-vis relations with Russia.

One illustrative example of this was seen in the case of German positions: Russian energy giant Gazprom was channeling huge amounts of funds into backing Yanukovich at the very moment when it was negotiating a gas deal with Berlin (Petrov

and Ryabov 2006, p.150); if this sheds light on Germany's initial reluctance unambiguously or actively to back Ukraine's democrats, it also highlights that the Schröder government did eventually feel obliged to support democratic norms in a way that risked being uncomfortable for its short-term material interests. The null hypothesis would suggest that such factors would have pulled overall EU policy towards a lowest common denominator of studied ambivalence; yet, when Ukraine did reach its crisis point this did not happen.

In fact, the importance of this context-dependency might be pushed a step further to argue that normative entrapment in this case only functioned against a background of shifting *strategic* calculation. Diplomats acknowledge that the crucial factor in the case of Ukraine in late 2004 was how fast and radically conditions changed on the ground. The unexpected scale and success of the Maidan protests left Western governments looking highly reactive in their policies, and clearly ran counter to the predictions of many EU member states. French and German positions (only) changed at the point when Russia itself concluded that defeat for the incumbent regime was inevitable, and when prudent self-interest required less hesitant backing for the likely next president, Viktor Yushchenko.

Moreover, and in similar vein, even as normative entrapment appeared to have 'done its work', some degree of 'diluting' compromise was still necessary, in the form of the EU backing the mediated solution between Yushchenko and the Kuchma regime. Views on the deal struck with Kuchma/Yanukovich differed. Some saw it as both necessary and a means of guaranteeing against an over-bearing presidency in the future. But many civil society activists in Ukraine lamented that the EU 'gave too much away' in December 2004 to the Yanukovich camp, with reformists judging that it did so specifically in order to reach a negotiated position between France and Germany, on the

one hand, and the new member states, the Nordics and the UK, on the other hand. European diplomats protested that in practice negotiations were not so clear-cut, with the speed of events representing the overwhelming factor in November and December 2004 and with even the more enthusiastic European backers of the Orange Revolution accepting that some form of deal had to be struck.

These negotiations provided a good example of cooperative bargaining: member states were not here negotiating 'to the death' over matters of direct and immediate self-interest, but did seek to have reflected their own different positions on the precise way in which Ukraine's transition should be supported. A median line resulted, that both ensured Yushenko assumed the presidency but under a quasi-pacted arrangement that some member states saw as necessary to 'stabilise' the process of democratization.

All this suggests the need to add some precision to the theoretical framework offered in the opening chapter: in the case of EU policy towards the Orange revolution normative entrapment was itself assisted by 'strategic *de*-entrapment'. It did not flow simply from a conveyor-belt of incrementally accumulated EU commitments to democratic reform, but rather found expression when calculations of a more strategic nature began at least to some extent themselves to point in a similar direction. It is this latter element that cannot be satisfactorily captured solely by what are now seen as the mainstream dynamics in studies of CFSP, that is of constructivist identity-formation, communicative deliberation, incremental Europeanisation, policy isomorphism etc (Wong 2005, p.151). The case of Ukraine reveals that while these perspectives provide necessary parts of the explanatory equation, it is also important to be attentive to how diplomacy evolves 'in the real world' against specific, shifting political backdrops. A dynamic applied of what might be termed strategically-conditioned normativism (Youngs 2004).

Post-Revolution: Ukraine's accession perspective

Debates since the Orange Revolution have been dominated by the question of whether the EU should offer Ukraine the perspective of eventual membership to the European Union. In a speech to the European Parliament, in February 2005, president Yushchenko indicated his intention to apply for EU membership at some point in 2006. One of Yushchenko's first measures as president was a new program to adjust 500 Ukrainian laws to EU norms. No conversation with Ukrainian officials or civil society representatives takes place without the over-riding importance of this question being stressed. For members of the Orange movement, the possibility of EU membership was both their motivation and after 2004 represented the necessary anchor for Ukraine's new, fragile democracy. As one activist pointed out, the centrality of this issue was symbolized in the ubiquity of EU flags on the Maidan square in central Kyiv during the Orange revolution. However, on the question of Ukraine's membership there has been no convergence of views within the EU; indeed, differences between member states have, if anything, widened since the Orange revolution.

A similar line-up of maximalists and minimalists took shape. Poland, Hungary, Slovakia and Lithuania advocated that offer of membership be made immediately after December 2004, and argued that this was vital to underwrite Ukraine's new democracy. A sizeable majority in the European Parliament also expressed itself in favour of offering Ukraine a membership prospect. In contrast, Germany, Spain, France, Belgium and the Netherlands opposed offering Ukraine even a distant prospect of membership (Stefan Batory Foundation 2005, p.13). These states were also cool towards Ukraine's interest in NATO membership. Interestingly, the EP's Spanish president Josep Borrell

chose to reflect his country's negative position rather than his institution's advocacy of Ukrainian membership (Hansen, p.28).

Formal EU policy awkwardly bridged these contrasting positions. The Commission warned Yushchenko against lodging as formal application in the short term, so as to avoid a likely rebuff that might prejudice Ukraine's longer term membership chances. The standard line became that 'the door is neither closed nor open' – the logical impossibility of this metaphor reflecting the extent of internal EU divergence. Ukraine's Neighbourhood Action Plan also offered a master class in opacity, to the extent that it 'acknowledges Ukraine's European aspirations and welcomes Ukraine's European choice', without specifying whether this constituted a 'yes' or a 'no' to the question of whether the offer of eventual membership would be put on the negotiating table.

In view of sharp differences over the membership question, the European Commission presented itself a neutral arbiter and focused on means of strengthening the partnership with Ukraine, short of a membership offer. In February 2005 the Action Plan negotiated with Kuchma was supplemented with an additional 'ten point plan' offering enhanced cooperation on foreign and security policy, a free trade agreement feasibility study, technical assistance related to Ukraine's access to the World Trade Organization (WTO), visa facilitation, private sector development and energy policy. Plans were announced to increase TACIS funds from 70 million euros in 2004 to 88 million in 2005, and 100 million in 2006.

The Ukrainian government complained that such measures were no substitute for an accession perspective. It argued that the range of EU cooperation now on offer was still not significantly greater than that which had been offered to Kuchma. From their perspective the European Neighborhood Policy was more of an affront than a fillip

to democratic consolidation. Ukrainians came routinely to ask, 'Why, as a European state and thus eligible to apply for EU membership, have we been lumped together with non-European states that have neither the possibility nor the vocation to seek accession?' A commonly heard comparison was, 'In terms of stability and democratic development we are well ahead of the Balkan states, and yet it is they and not us who have been offered membership.' Government spokesmen summarized their puzzlement: 'We are *in* Europe, not a neighbour to it'. Ukraine's focus was on 2008, when the PCA was due to expire: by then, officials argued, the EU must have made its mind up whether in a new agreement it could offer the prospect of membership.

During the course of 2006, differences became increasingly acute, however, and lively debate resurfaced. Most dramatically, the rejection of the draft EU constitution by French and Dutch voters was attributed by many European politicians – in fact, without incontrovertible evidence and in some cases self-servingly – to a popular hostility to any further enlargement. In this sense, differences reflected contrasting interpretations of what the lessons actually were of the French and Dutch 'no' votes. Dutch representatives highlighted their struggle in coming to terms with the aftermath of the referendum and the extent to which the latter engendered greater introspection in foreign policy deliberations. Even prior to the referendum on the constitution, in March 2005 France had already changed its constitution to stipulate that enlargements after those involving Romania, Bulgaria and Croatia would require approval by referendum in France. As of 2006, the Netherlands, a potential swing state in-between the two poles of internal EU opinion, no longer saw Ukraine's potential membership as being on the agenda. A French government representative opined that after the events of 2005 the EU could only offer Ukraine very general, long-term economic support, rather than any kind of political commitment. Presidential candidate Nicolas Sarkozy ruled out

accepting any more new members after the Balkan states. By the end of 2006, opinion polls across the EU showed growing concerns over further enlargement, and the December 2006 European Council confirmed that stricter conditions would be imposed on future candidates. These new conditions left the EU able to refuse future applicants on grounds of concerns over its own (ill-defined) ‘absorption capacity’.

In addition, member states’ respective readings were very different of how the EU should respond to Ukraine’s increasingly faltering democratic consolidation. In the run-up to and in the aftermath of the March 2006 presidential elections, responses differed to the rise of Yanukovich’s Party of the Regions. Yanukovich’s return to power triggered firmer and more outspoken advocacy from eastern European member states for the EU now to offer membership. These states argued that the travails of Ukraine’s democratic consolidation had been aggravated by the weakness of EU policy since the end of 2004. Crucially, the UK also began to press in far stronger fashion in favour of the membership option – although in terms of an ‘open door’ being offered to Ukraine rather than a firm timetable being set for accession. One EU diplomat defined this as ‘a crucial shift’, bringing the first ‘old member state’ firmly into a leading role in pressing for a membership offer.

In direct contrast, the new German government of Angela Merkel expressed a firmer opposition to Ukraine’s membership. Instead, Germany sought to deflect pressure for further enlargement by devising a new ‘Neighbourhood Policy plus’ framework of intensified cooperation for Ukraine and other eastern European states. German foreign minister, Frank-Walter Steinmeier, explained: ‘In the EU we need attractive and credible offers for our neighbours.’ (EU Observer 2006). The new proposal was based on Ukraine being offered some EU aquis, under the banner of a ‘Partnership of Modernisation.’ This was presented as a ‘New Ostpolitik’, that would

crucially involve Russia as a partner in managing these eastern states – rather than as a ‘target’ state as proposed under the original ENP. It would preclude EU accession, now seen by Germany as, for all intents and purposes, off the agenda: as of late 2006, other details of the ‘ENP plus’ proposal remained vague.

This represented a middle position between the advocates of Ukrainian membership, on the one hand, and southern European states, on the other hand. The latter, led in particular by France and Spain, opposed any enhanced partnership for Ukraine, arguing that the Arab states of the southern Mediterranean merited greater priority for European foreign policy. Both ends of the spectrum complained at Germany’s unilateral presentation of its new initiative, in the run up to the country’s EU presidency. Conversely, Germany joined with France and Spain to reject pressure from the Poland and Lithuania for a new European Foundation for Democracy to focus specifically on supporting democrats in Ukraine and Belarus. Lithuania complained that even beyond the question of accession, other member states were increasingly cautious in offering Ukraine a deeper political partnership, in direct contrast to Russia’s concerted re-engagement with the country’s political elite.

The Commission, insisting that it lacked any defined political objective of its own, continued to try to circumvent these internal differences by focusing on concrete forms of current cooperation. On 12 September 2006 the Commission proposed negotiating directives for a new ‘enhanced agreement’ with Ukraine that would include free trade and a deepening of thematic cooperation; it also accelerated work on a visa facilitation agreement. 494 million euros of aid were promised from the Commission for 2007-2010, an average of 123 million per year compared to 70 million a year during 2004-2006. But Ukrainian civil society groups complained that the EU had lost an opportunity to raise the prospect of membership prior to the March 2006 elections in a

way that would have undercut support for the anti-Orange parties. The EU's prevarication was used to good effect by Yanukovich in the elections, as he stressed a message to the electorate that: 'You trusted the EU and they let you down.'

Germany, France and Spain even expressed a degree of relief in Yanukovich's victory. Yanukovich returned Ukraine to the 'two vectors' foreign policy of the Kuchma era, in which relations with Europe would be balanced by a renewed strengthening of relations with Russia. The new prime minister argued that Ukraine must move from 'Euro-romanticism' to 'Euro-pragmatism'. This would not involve a complete abandoning of Ukraine's aim to join the EU (the Party of the Regions including a relatively pro-European strand of business oligarchs), but would reduce pressure for this option in the short to medium term.

One diplomat revealed that these positions caused a palpable sense of relief amongst those states who wanted the membership debate 'kicked into the long grass'. The change in perspectives was most succinctly epitomized in the statements of Commission president, José Manuel Barroso: in October 2005, Barroso had told the Ukrainian prime minister that 'our door remains open. The future of Ukraine is in Europe' (Hansen p.124) one year later, at the annual EU-Ukraine meeting in Finland on 27 October 2006, he dealt Yushchenko his most explicit rebuff to date, insisting that 'Ukraine is not ready, and we are not ready [for discussions on enlargement]' (EU Observer 27 October 2005). One French diplomat admitted that France even diluted the extent of free trade on offer in 2006 and that Paris was instrumental in preventing more ENPI funds going to Ukraine, as opposed to North Africa (Lefebvre 2006 pp.18-22). Arguing a diametrically opposed logic, Poland pushed for better balancing between south and east in terms of ENPI allocations and was critical that the EU did not even offer the status of 'association', leaving the impression that after 2004 Ukraine was still

ranked even behind the Arab states (Buras and Pomorska 2006, p.39). Polish diplomats admit that they failed in their attempt to boost EU offers to Ukraine and were angrily disappointed with other member states, this linking in to what became a broader clash between an assertive new Poland and some of the existing member states.

Internal differences deepened as Ukraine's political crisis became more acute and dramatic during 2007. Yushchenko's decision to recall parliament in April unleashed a bitter struggle with Yanukovich. The actions of both sides demonstrated the persisting limits to Ukrainian democracy, with key institutions such as the Supreme Court and parliament being 'colonised' by the two sides (ICPS 10 April 2006; Valasek 2007). Barroso warned Yushchenko in Brussels that the new enhanced agreement could now be delayed (EU Observer 17 April 2007). But no firm responses were delineated for different possible outcomes to the crisis, due to divergence between member states. General admonishments were made only, exhorting compromise and solutions mutually acceptable to both sides. In early 2008 the French government proposed a 'privileged partnership' for Ukraine, which it presented as a more positive turn in its approach, but which was widely interpreted as a more definitive alternative to accession. At the NATO summit in Bucharest in April 2008 France and Germany blocked the offer of a Membership Action Plan to Ukraine; conversely the fact that they did agree to language stating that 'Ukraine will become a member of NATO' threw into sharper relief their refusal to accept the same in relation to EU membership. By mid-2008 the focus was on negotiations for the EU-Ukraine 'enhanced agreement' with the question of accession indeed kicked firmly into the long grass.

Explaining Disunity on Accession

In the light of this disunity, the Ukraine demonstrates that rhetorical entrapment can be expected to function in relation to very tightly delineated issues and in very specific circumstances. Agreement between national preferences is more likely to occur where commitments have a clear normative imperative in terms of policy outcome; and where policy implications have previously been clearly spelled out. In the case of Ukraine's membership prospect, these conditions did not pertain. Unlike in relation to other prospective candidates, the EU had since 1991 avoided making any concrete promise of membership, regardless of Ukraine's future political evolution. And the promise to support the country's democratization was sufficiently non-specific for France, Germany, Spain and other skeptical states to argue that this pledge was not necessarily betrayed by withholding the offer of accession. It was also an issue where there was no fashioning of convergence-facilitating trade offs – something that might in particular have bought Spain's acquiescence to Ukrainian accession.

As such imprecision weakened the foundations for rhetorical entrapment on this issue, policy remained determined by calculations of a more strategic nature. In particular, in the aftermath of the Orange Revolution considerations relating to Russia reasserted themselves as the prominent influence over European policies. One EU spokesman recognized that policy towards Ukraine was increasingly 'caught up in debates over the best way to deal with Russia'. Most obviously, France and Germany were increasingly unwilling to collide with Vladimir Putin, keen to cement their Iraq-related alliance and with energy security considerations increasingly of concern. One Ukrainian civil society activist complained, in late 2006, that some states in the EU 'still see Ukraine as a kind of extension of Russia' and this 'has contributed to the recent negative developments in the country'. One Commission director admitted that concern

over Russian energy supplies was the key reason why several member states were ‘slowing down’ on relations with Ukraine. The perception was widespread and strong amongst civil society groups that Germany was blocking a membership offer to Ukraine in the wake of its signing a bilateral deal with Russia for the development of the North European gas pipeline. One expert even argued that the setback of the March 2006 elections could prove positive if it taught Western states to approach Ukraine anew, with Russia more firmly in mind (Lieven 2006). Another analyst suggested that, compounding energy considerations, some member states feared that if the EU admitted Ukraine it would be harder to refuse Russia eventual entry (should Moscow one day seek this) (Larrabee 2006). It was striking that amidst Ukraine’s 2007 crisis, many in the EU favoured a ‘negotiated’ solution between the three principals. French prime-minister Francois Fillon explained his government’s position at the April 2008 NATO summit pointing out that Ukraine’s NATO membership would disturb the balance of power between Russia and Europe (CEPS 2008 p.1).

Other member states were equally exercised with Russia, but argued that such concerns had exactly the opposite implication for policy towards Ukraine. The positions of the new central and east European member states might have reflected an ideational association with Ukraine’s democrats (Hansen p.125); however, while these states deployed the ‘values’ argument they also insisted in increasingly strategic terms that the EU needed to prize Ukraine away from Russia’s sphere of influence (Dannreuther 2006). To the extent that this had not unequivocally happened solely as a result of the Orange revolution, they argued, the offer of EU membership was increasingly desirable and urgent. Indeed, for new member states the choice firmly to back the Orange revolution was as much about ‘standing up to Russia’ and president Putin as it was about Ukrainian democracy itself (Sushko and Prystayko p. 130). Indeed, some experts

detected that such strategic impulses behind the advocacy of Ukrainian membership were set to become increasingly strong (Garton Ash 2005, p.2). This strand of reasoning was nourished by Yushchenko intimating that a membership perspective would come hand in hand with firmer Ukrainian backing for independent (ie from Russia) gas pipelines from Central Asia into Poland and Austria. Eastern European member states pointed to the inconsistency in French positions: Paris had insisted on a January 2007 entry date for its client, Romania, *regardless* of the latter's record on reform; this revealed how France's new keenness to focus on Ukraine's democratic imperfections as a barrier to accession was more to do with geopolitics than 'constructed' normative purity.

Lastly, if strategically-rooted discordance appeared to be deepening by 2007, post-Orange revolution Ukraine also revealed the potentially divergent impact of *internal* EU dynamics. The above account highlights the extent to which the crisis over the European constitution conditioned debates on policy towards enlargement, including the specific case of Ukraine. One EU diplomat acknowledged, in a sentiment shared widely amongst policy-makers: 'If the Orange revolution had occurred five or six years earlier, Ukraine would be a member by now'. Polls conducted after the French and Dutch referendums showed that in France a strong majority existed against Ukrainian accession, while in many other member states a clear majority favoured the EU making an accession offer to Kyiv (Pew 2006). One diplomat suggested that the issue of accession was 'symbolically' important for the 'sceptics' and 'enthusiasts' in apparently irreconcilable terms: for eastern European member states and Ukraine the importance was in the symbolism of a membership offer being made, as a spur to Ukrainian democrats; for the sceptical states, the symbolic importance vis-à-vis their own publics was in *not* making further accession promises. In short, debates over this specific case

were increasingly caught up in the broader, thorny relationship between the EU's internal and external legitimacy. Diplomats agreed that by 2007 internal conditioners were as potent as external factors.

Conclusion

In short, the case of Ukraine's democratic transition offers a mixed picture in terms of the hypotheses that this volume has set out to explore. The two analytical test cases that have been separated out here – the moment of transition versus the post-transition period – offer different conclusions. Together they suggest that the pertinence of normative institutionalism can vary even within a single area of policy and depends on the nature of the decision(s) being contemplated. In the moment of transition much normative entrapment was in evidence, mixed with a dose of cooperative bargaining over the details of exactly how Europe would support the difficult process of regime change. This was normative entrapment, as explained, in the sense that many member states had constantly made a rhetorical commitment to support Ukraine's democratisation without ever contemplating that this would involve proactive EU action in a moment of dramatic revolutionary change. The nature of the decision was a dramatic one, and not easily fudged. In the wake of the Orange revolution, outcomes tending more towards the lowest common denominators associated with more competitive inter-state bargaining have been present in EU policy towards Ukraine, mainly in relation to the issue of Ukraine's membership prospects. The normative dimensions of the accession question are far more open to contestation as to what would really be a 'normative' EU response, and thus so far reluctant member states have avoided being 'entrapped'. In addition, this chapter shows that both at and after the moment of democratic transition broader geostrategic factors provided additional

variables that set the context within which the dynamics of normative institutionalism were – or were not - played out. Ukraine might be summed up as a case towards which normative institutionalism can explain much, but not the entirety of internal EU bargaining and negotiation.

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