

Presidential Succession-Soviet Style

Edward R. Brown

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In view of what we witnessed a week ago, I thought it useful to reflect on how other countries hand over or more precisely decline to hand over power. Recently, the British sovietologist, Simon Montefiore, wrote an op ed piece that began:

“SUCCESSION — the handover of power from one leader to another — is the moment of truth for a political system. The American presidential election, for all its magnificent hucksterism, was once again a confirmation of the messy but noble dynamism of democracy — America does its handover of power with dignity (barring a few dubious presidential pardons).

Yet in the 21st century there are three Great Powers, and two — Russia and China — boast authoritarian systems ruled by tiny cabals that decide the succession of political power through mysterious, invisible and almost magical rites.”

Montefiore continued:

“Having reached the old term limit last year, Mr. Putin chose and installed a trusted protégé, Mr. Medvedev, as successor. Now many expect the president to return the favor by resigning and permitting Mr. Putin’s return to office. In a contortion worthy of medieval Byzantium, Mr. Putin, having handed over power but actually not handed it over at all, may imminently be officially restored to it.”

Then Montefiore put the matter in context by quoting from the 19th century French travel writer, the Marquis of Custine, who bears a relationship to the Russian empire, by reason of his book, *Russia 1839*, similar to that which Alexis de Tocqueville bears to the USA:

“The view of de Custine about Russia in the mid-19th century,” Montefiore wrote, “could easily apply to the 21st: ‘I came here to see a country, but what I find is a theater ... In appearances, everything happens as it does everywhere else. There is no difference except in the very foundation of things.’”

I was in Belarus on business for several months in late 1996 and I had the same take on the political events swirling around me. Belarus, the most productive and educated of the former Soviet republics, located between Poland to the west, Ukraine to the south, Russia to the east and Lithuania to the north, is an independent nation today of about 10 million souls. I saw events as a theater there in 1996 and alas Belarus as a country without a true foundation, pretending to be a democracy. And so I wrote a play about what I saw. This is that play.

Minsk- November 1996

A Tragic Farce in Five Acts

Prologue

This is a play about a country in the heart of Europe, sliding into dictatorship. Belarus is the first European country since World War 2 to revert to dictatorship after becoming at least a semi democracy.

This is a play about decent, courageous men risking their careers, their liberty and even their lives in a vain effort against overwhelming odds to try to stop the slide. The principal characters are:

Alexander Lukashenko, the 42 year old charismatic president of Belarus who began his career as a manager of a collective farm. During the two or more years he has served as president, Lukashenko persuaded Ford Motor Company to invest and build a joint venture plant on the outskirts of Minsk for the production of autos. Under his tenure McDonald’s Food Service is set to open three restaurants in Minsk in December.

He has also harnessed the government controlled mass media to his political purposes so that the only independent sources of information are some independent biweekly newspapers published in nearby Vilnius, Lithuania, and smuggled into Minsk where they are sold only by independent vendors. The one other source of independent information is Russian Television, to the extent it is independent and to the extent it covers matters about Belarus.

As president this player holds some very high cards, specifically the backing of the Army and the local KGB, and control of 19 nuclear missiles which under existing agreements should have been dismantled and sent back to Russia some time ago.

The Belarusian Supreme Soviet or Parliament. This is one chamber legislature established under the 2004 Constitution. The Constitution contemplates 220 deputies but the election of each member requires an absolute majority in the member's district. Not enough runoff elections have been held to fill some seats where there are many candidates. There are actually only 190 deputies. Of these 190, 80 deputies are members of the faction supporting President Lukashenko, 75 are opponents of the president, and the rest are shifting depending on the issue. The chairman or speaker of the Parliament is Semen Sharetsky, who as this play begins tries to play a neutral role between the factions.

Parliament has designated November 24 as the date for election of the additional deputies to fill the 30 empty seats.

One of the cards that Parliament holds is the right by a minimum number of members, but less than a majority, to refer potential disputes with the President and other constitutional questions to the Constitutional Court for advice and decision. For instance, before the play begins parliament has referred to the Supreme Court the question of whether an "amendment" to the Belarusian Constitution proposed by the president has binding legal effect, if approved by a majority in a referendum, in view of certain claimed deficiencies in the referendum procedure. However, in certain other cases where there are referrals by parliament to the Constitutional Court, the decision by that court does not end the matter, but requires parliament to take further action. For instance, if parliament wants to refer a question respecting a violation of the constitution by an elected government official for determination as to whether such violation justifies impeachment, a decision by the constitutional court that the action does violate the constitution results in immediate suspension of the official from office, but Parliament must act further and convict the impeachable official by a two-thirds majority.

In part, because its members are so diffuse in view as well as for other reasons, parliament holds scattered cards that are very difficult to play.

The Constitutional Court

This court, unlike the US Supreme Court, can hear matters involving an interpretation of the 1994 Constitution when referred to it directly by various government officials and organs. Further, it can render advice as to the legality of a question before the occurrence that may involve such question has taken place.

The Constitutional court consists of 12 judges and is chaired by a presiding judge, Valery Tikhinya. As the play begins Judge Tikhinya has become a lightning rod for opposition to the president.

The hand held by the constitutional court, like the hand held by parliament, is weakened by the fact that the members of these groups have access to local Belarusian mass media only at the discretion of the president. Members of parliament and the constitutional court do give interviews to the foreign press and television, which can sometimes be seen by Belarusians. However, access to the mass media is primarily available to members of these organs when they are asked to participate in conferences in Belarus, sponsored by foreign nonprofit organizations.

Before the play begins, President Lukashenko has had some difficulties with the other players. To resolve these difficulties he has proposed an "amendment" to the 1994 constitution. The President's proposed amendment calls for a revision in the legislature by establishing two chambers, the lower chamber consisting of 110 persons elected by districts, and an upper chamber of 24 members, 12 appointed by the president and twelve appointed by organs controlled by the president. In addition, the president's proposed "amendment" provides for the president, without approval by the legislative branch, to appoint six of twelve judges to the constitutional court, including the presiding judge. The president has indicated that if the constitutional amendment passes, he will appoint 110 members to the lower chamber from among those already serving in parliament.

It does not take a constitutional scholar to discern that the president's proposal gives the president nearly absolute power over all organs of government. As Judge Tikhinya was later to say in an interview with one of the few remaining independent press reporters:

"The draft amendments under discussion, in essence, delegates to an individual dictator to establish a republic with all power residing with the president. The National Assembly becomes a marionette in the hands of the executive power. The constitutional court, after the proposed referendum turns, into a court in the pocket of the president with all the consequences resulting therefrom. There is not one civilized country in the world that has anything like this."

Some of the other questions to be answered in the president's proposed referendum are whether ownership of property without restriction is to be permitted and whether capital punishment is to be preserved.

Not surprisingly, the president's proposal has raised opposition in the other branches. In the face of this furor the president refuses to back down but postpones the referendum from November 7, the anniversary of the Great

October Revolution, to November 24, the date already set for by elections for the thirty vacant seats in parliament.

I arrive late, on November 3, and can only get a ticket in the last row after the play has already begun. But I can see pretty well with my new glasses and I can read the program, and some of the people sitting near me help me to understand better what is going on. I arrive as a representative of the American Bar Association to work with the Belarusian commercial or economic court to prepare and participate in a seminar on how bankruptcy trustees are supposed to operate under the new bankruptcy laws approved by the Belarusian parliament, but still awaiting signature by the president.

I notice, as I take my seat in the last row of the theater, that some of the theatergoers in the forward rows are getting ready to leave. The World Bank closes its office the first week after my arrival, leaving its \$20,000 for the trustees' seminar in the control of the commercial court. The European Parliamentary Assembly has decided to suspend Belarus' application to the Council of Europe and to suspend further negotiations that may have led to a trade agreement. In a resolution the European Parliamentary Assembly directs its chairman to address a message to the president of Belarus to the effect that the assembly "had hoped to see in the center of Europe a really democratic and civil society, which fully guarantees by the law respect for individual rights."

Act One- First Week- Warning Signals

On Nov. 4, the constitutional court renders a decision on the reference by Parliament as to the legally binding effect of the proposed "amendments" to the constitution and other questions proposed by the President for referendum. The basis for the court's decision is that there has not been a mechanism for discussion of the proposed amendments at this point and full text of the: amendments" has not been publicized. The ruling of the court means that the referendum can go forward with the by elections, but unlike the by elections the results of the referendum will only constitute a sampling of public opinion to be consultative in nature.

On November 5, the president issues a decree declaring that notwithstanding the court's decision, the results of the referendum will be legally binding. On November 7, the president issues a supplemental decree declaring that any person who in any way interferes with the conduct of the referendum scheduled for November 24 is subject to dismissal and to liability under the criminal law. The Presiding Judge of the Constitutional Court addresses a letter to the general procuror stating that certain officials have been applying pressure on members of the court in connection with their work and asks the procuror to take appropriate measures to protect the members of the court. In an interview during this first week Judge Tikhinya advises that up to this point he has received no response from the procuror.

On November 12, after the constitutional “amendments “ proposed by the President are at last finalized, four million copies are printed and distributed to voters for the first time. Parliament has also proposed its constitutional amendments, which the Presiding Judge of the Constitutional Court describes as conforming to established constitutional principles. Whether the parliament’s proposed amendments are ever published or distributed remains doubtful.

Act Two- Week Two- An Euphoric Interlude

(I get to meet some of the Players)

Week two is the big event of 1996 in Minsk of the American sponsoring organization, the American Bar Association’s Central and Eastern European Initiative or ABA CEELI, a symposium on human rights. Also sponsoring this event are The Council of Europe and the German Foundation for International Legal Cooperation. The presenters at this symposium are “liberal” Belarusian judges, judges from the European Human Rights Commission and the European Court of Human Rights, and one US federal judge. The attendees are lawyers and law students from all over Belarus.

Importantly, the symposium offers a forum for the judges on the Belarusian constitutional court to explain the basis of their decision regarding the referendum as their decision is otherwise not reported in the mass media. The Symposium also offers an opportunity for parliamentary deputies to express their views as to how President Lukashenko has exceeded his constitutional powers.

The symposium is opened by Semen Sharetsky, speaker of the parliament, and the US and German Ambassadors. Both Constitutional Court Judge Tikhinya and US Circuit court Judge Darmuld O’Scanlon have a chance to speak and O’Scanlon talks about US v. Nixon and the decision that clipped the wings of a US president exceeding his powers.

Since I have been invited to a reception after the symposium, I figure I had better attend at least in the afternoon so that I can have something to say at the reception.

After the formal presentations, the symposium chairman offers anyone a chance to step forward. Three of the members of the constitutional court, including Tikhinya, step forward and justify their decision of a few days earlier to the effect that the president’s proposed amendments will not have a binding effect. “This is not Bangladesh or Pakistan where the president is upheld by 99% of the voters,” one of the associate judges remarks. “We are a European country where we debate issues in a reasoned, civilized manner.” The judge then mocks the president’s last minute attempts to distribute four million copies of the proposed amendments to Belarusian voters.

After the judges and plenty of others have had their say, and the symposium ends for the day, I step up to shake the hand of Judge Tikhinya. "You are a very brave judge", I say. I am thinking of our own unfortunate affair with NY District judge Harold Baer, who in April 1996 reversed his ruling granting a motion to suppress after Presidential candidate Bob Dole called for him to resign as a result of his previous ruling granting the motion to suppress, and the other candidate, Bill Clinton, hinted he might agree that the judge should resign. Judge Tikhinya's responded: "Your remarks mean more to me than you can ever believe."

At the reception, I see a group of matronly ladies chattering in Russian and I wade in to follow up on some questions raised earlier in the day by the chief judge of the Belarusian Supreme Court. What is administrative detention in Belarus? How are advocates paid for defending indigents? Where does Belarus stand on the question of capital punishment in view of its pending application for admission to the Council of Europe, which requires abolition as a condition of membership? Only a few days later am I informed that I had been talking to the two members of the constitutional court and to the president of the Belarusian College of Advocates.

I also have the good fortune to dine in the evenings with the European delegates to the symposium, as we are all staying at the Oktyabskaya Hotel on the corner of Karl Marx and Frederich Engels streets. We have some interesting discussions together about the European Court of Human rights and about the American legal system as the murder trial of O.J. Simpson has just concluded. Their attitude towards the American system is pretty negative.

By the end of the week I am thinking that with the Europeans and Americans working together, just maybe we can turn things around in Belarus. No one has been arrested for saying his piece and the auditorium in the president's convention has not been shut down. Only later do I learn that the president charges hefty rentals to western organizations financing conferences at his facilities and applied the proceeds from such rentals to his personal fund for "good works among his people."

Act Three- Road to Climax

On Monday November 18, as I begin the Seminar on Belarusian trustees, some people in attendance are distraught. The word is out that the President has removed the chairman of the election commission appointed by parliament. This seems to signal that the President is going to put through this referendum by whatever means.

The former banker and prime minister serving the president for the last two years, Mikhail Chigir, has resigned with a formal notice to the president which protests the country's foreign and domestic policies, especially as they reflect moving away from a course of economic reform. Chigir then states relative to the proposed referendum:

“I categorically object to proceeding with the November 24 referendum as in connection for the preparation of this there have been tolerated many, many blatant violations of law, not even including the violation of the right of free expression by the people.”

On Monday and Tuesday parliament convenes to discuss a petition to the constitutional court as the first step in the impeachment of the president. The president detains the 80 deputies of the presidential faction at the presidential palace in order to thwart the presence of a quorum in parliament to act on the impeachment petition. But the remainder of deputies remain in parliament and some previous hesitators now sign the petition. The total signing is 75, five more than required. Upon receipt of the petition the presiding judge of the constitutional court announces that open hearings will be held on Friday.

Tuesday night after the court’s announcement of public hearings on the impeachment petition, the president’s aides telephone the families of the petition signers and “invite the signers to a meeting at the presidential palace the next day. Whatever may have gone on at the palace- and the signers complain of undue pressure- the signers hold firm.

At this point the alarm spreads to Belarus’ neighbors. The presidents of Poland, Lithuania, and Ukraine address a joint letter to the president in the dispute calling for a peaceful resolution of the constitutional standoff “adhering to the rights of individuals and citizens of Belarus, according to accepted international norms and principles of democracy.”

Russia’s then prime minister, Viktor Chernomyrdin, and a representative from the Duma, Gennady Seleznev, and a representative from Federated Council, Yegor Stroeve, have flown to Smolensk, near the eastern border of Belarus, to be available for negotiations.

On Friday the president announces on television that the presiding judge of the constitutional court has invited the Russians to Minsk that day to try to help resolve the conflict and that the court is temporarily postponing the Friday hearing on the impeachment petition. The president will attend the meeting with the Russians.

Later in the day the Russians obtain an agreement from the three sides which includes temporary withdrawal of the impeachment petition, proceeding with the referendum on an advisory basis only without its becoming legally binding, establishment of a constitutional convention, half of whose delegates will be appointed by the president and the other half from parliament in accordance with the proportional representation of the various factions, including the president’s faction, in parliament.

Clearly, the compromise favors the president. He will be able to run the referendum with his own election commission chairman and while he still controls the mass media; he will go into the constitutional convention with the

psychological momentum of a decisive election victory; and a decisive majority of the convention delegates will be in his camp, those that he appoints and those from his faction in parliament. Why then do parliament's speaker and the presiding judge of the constitutional court agree to the compromise? Perhaps, because they know they hold a weak hand, need to buy time, and hope to marshal international opinion to influence the deliberations of the convention. Or perhaps, because the president has been able to create such an atmosphere of fear and tension during the week that, coupled with pressure from neighboring countries to resolve the conflict, the two are willing to grasp at anything as a way out of the impasse. Or perhaps both.

Act Four- The Climax- End of the Third week

Parliament meets Friday night to debate the compromise agreement. Early in the evening the President appears before parliament and demands not only that Parliament consent to the agreement in principle, but that it adopt a proposed law implementing every term of the agreement. The President gives parliament one day to accomplish this and leaves.

The President's faction moves that approval be declared by a two-thirds majority instead of a simple majority. The two-thirds proposal is voted down and Parliament returns to the original question. When the question is called for a vote, it is noted that many of the electronic lights from where the deputies of the President's faction are seated do not flash on to indicate their support of the proposal. The question does not carry. The Russian Federated Council representative and negotiator, Yegor Stroeve, phones the Belarus Parliament speaker, Semen Sharetsky, and shortly thereafter, Sharetsky returns to parliament and pleads with the President's faction to respect the wishes of the Russians and support the compromise agreement.

President Lukashenko again appears before parliament and again announces that if the compromise and implementing law are not adopted forthwith without a single change, everything will return to the status before the compromise was reached. But parliament adjourns without reaching an agreement.

On Saturday morning Lukashenko goes on television and announces that parliament was the one who has broken its commitment under the agreement, and that he is no longer bound by the compromise and that the results of the referendum will be legally binding.

Also Saturday morning the Parliament speaker, Semen Sharetsky, holds an untelevised press conference, and makes these points:

- 1) condemns the provocations of the President intended to disrupt the ratification by parliament of the Russian brokered compromise;
- 2) accuses the president of applying undue pressure on the deputies who have signed the petition for referral of the impeachment question to the

constitutional court with the purpose of forcing them to withdraw their names, and announces that having remained neutral up to now, he will sign the petition;

- 3) announces that in his opinion that the president has used the cover of the negotiations with the Russians to continue the country on its slide to dictatorship.

Saturday morning the constitutional court meets to consider the impeachment petition of the 75 members of parliament. As soon as the court convenes there appears Mikhail Tesovets, the head of the president's security administration along with other presidential representatives. Tesovets announces to the guard in foyer that he has come to check the places of the reporters. All journalists are ejected and the entrance to the constitutional court building is blocked to the public.

The court postpones further hearing on the matter until the following Tuesday.

Act Five- Denouement

The referendum goes forward on Sunday as scheduled without any western observers and with the expected results. Semen Sharetsky calls the election a farce and says that there have occurred so many violation of law that the results cannot be accepted as valid. Sergei Kalyakin, the head of the Communist faction in parliament, asserts that not more then 40% of the voters have voted for the president's proposed constitutional amendments. The official count in favor is 77%.

The election results evidence some strange circumstances. The number of ballots printed on the issue of the President's proposed amendments reportedly far exceeds the expected turnout. The percentage of turn out reported is exceptionally high: 80 to 90% in most districts, 70% in Minsk. But in Minsk, for instance those voting in the by election of the unelected members of the old parliament is only 7%. While there are observers from Ukraine and Russia on hand, 25% of the ballots are reported caste before the election begins and 25% are caste in the evening when the observers are no longer present at the polling stations.

At a polling station in Brest an incident is reported involving a scuffle and the pulling up of part of a table cloth at one polling station by an outside observer under which some blank ballots are found. Five observers are placed under house arrest in their hotel rooms and their belongings are searched. Three of the five are bound over to answer criminal charges.

On Tuesday, November 26 the constitutional court dismissed the parliament's petition for a determination of the violation of the constitution by the president on the grounds that some deputies have withdrawn their signatures and the number is now below the minimum required 70 signatures.

In the days after the official results of the referendum are announced a rump of the old parliament continues to meet in the oval chambers while a new parliament convenes in temporary quarters on Karl Marx Street. The rump continues to meet to “show their faith in law and the constitution,” one soon to be defunct independent paper editorializes. Finally, Thursday evening, November 28, the police arrive at the oval chamber and advises that the place is closing down for renovation to comply with general European standards. The remaining deputies gather their belongings and leave quietly.

The president asks members of his own faction, the Communist faction, and the Agrarian faction to serve in the 110 member chamber of representatives of the new National Assembly. There are reports that the president is having difficulty finding enough people to serve. At the suggestion of the president, Anatoly Malofeev, head of the Communist faction in the form parliament and former Secretary of the Communist Party of Belarus is elected speaker in place of Semen Sharetsky, Sharetsky being no long a deputy.

Epilogue 1

Monday evening, just after the referendum, I finally connect with one Irina to deliver some articles from a friend in London for whom I had agreed to act as a courier. As agreed, I meet Irina and her husband Nikolai, a former opposition member of the old parliament, near my apartment building and hand them a brief case. The exchange of pleasantries leads to my inquiring about their impression of last week’s events and how they felt about those who were opposing the president. “half of the deputies are honorable men,” Nikolai replies. “But Tikhinya betrayed us. The president bought him with a combination of pressure and promises if he would put off the impeachment hearing and request intervention from the Russians. He probably promised Tikhinya safe passage out of the country and a deal has been cut with the US embassy to grant him asylum.” he reports.

“Could we meet this weekend and talk more?” I ask.

“We probably will have fled the country by this weekend,” Nikolai replies. “I am too well known as a member of the opposition to the president. We have to leave as soon as possible.”

Wednesday evening I am asked to attend yet another ABA sponsored reception, this one following the conduct of a mock jury trial. That afternoon I served as a mock witness and was cross examined by then US Attorney Janet Napolitano, now Secretary of Home Security in the Obama administration. I embarrassed her on a point of Soviet culture during the examination and while she is annoyed with me for this, the I have become immediately popular with the Belarusians in the audience.

Again, at the reception I try to mix it up with the non-English speakers. I spot a tall, handsome Belarusian woman with straight black hair and sad dark

eyes (all Belarusian women are handsome). My new acquaintance teaches the history of law of foreign countries at four different Minsk law faculties, and has served as one of the experts at the constitutional court's hearing on the legal effectiveness of the president's proposed amendments. "We are going back to the dark ages", she says, and "it will be a long time before the renaissance, at least five years," "But we will survive as we have always survived before." Then she explains that it will be the Russians who lead Belarus out of the dark ages, because the Russians have vision and a perspective on the future.

"But don't you think the Russians last week came too late and with too little?" I asked. "But what else could they do?" she responded.

Feeling that I had pressed far enough, I changed the subject. "And tell me," I asked. "Is life here better now than it was before, Perestroika?"

"No, it was better before Perestroika," she answered emphatically. "Then we did not know what a democracy was. Now we have had a taste of it, and so it so much more difficult to go backwards," she said.

Epilogue 2

AS a result of the 1996 referendum, the president's term of was extended until 2001. In 2001 Lukashenko won again with 75.65% of the vote. The OSCE (Organization for Security and Cooperation in Europe) declared the election failed to meet international standards. President Putin phoned Lukashenko and offered his congratulations.

In March 2006 another election was held. Again the OSCE declared the election did not meet international standards while the Russian foreign ministry said it was in accordance with generally accepted standards. This time the opposition refused to recognize the results and continued to demonstrate in the central square of Minsk for another ten nights until cold and the KGB drove them away. While one of the opponents gave up; another Alexander Kozulin, former rector of the Belarusian state university, was arrested for hooliganism after he tried to lead the demonstrators to the jail where political opponents had been incarcerated before the election. Kozulin sat in jail for another 30 months until EU and US pressure brought his release, on August 16, 2008.

In September 2008 another parliamentary election was held. This time there were no opposition members elected to parliament. But the West and Belarus continue to grope towards a rapprochement as Belarus has refused to recognize Abkhazia and South Ossetia as independent republics in the Georgia/Russia conflict.