Transforming the Security Sector in Ukraine: What are the Constraints? What is Possible?

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Key Points

* The Soviet legacy deformed Ukraine's security sector, and post-Soviet reality has added to the deformations

* 'Strengthening civil society' was identified as the first of 9 national security priorities in 1997, but the security sector remains an attractive vehicle for those who would weaken it

* Defence reform and armed forces' engagement with NATO are well advanced but other security structures proliferate, and international interests in their reform is more recent and less effective

* Shortage of finance has led to the 'privatisation' of state instruments for business and criminal use

* Yet Ukraine needs a well-developed security sector, given its geographical position and internal weaknesses

* Urgent changes of policy direction can be made without more money:
    depoliticisation – removing partisan bias
    legal reform – away from 'codified arbitrariness
    transparency – in assets and decisions
    democratic accountability – not just to the president
    force reductions – based on a thorough review

* To minimize corruption, should the security sector
    reduce numbers, pay more and outlaw other work
  or   allow legal part-time work to ensure a living wage
  until political will exists for real economic reform?

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In the first place it should be said that not everything is going wrong. Amongst the large number of professionals who serve in what the Ukrainian Constitution (Article 17) calls 'other [non-MOD] military formations' and 'law enforcement bodies' responsible for 'ensuring state security and protecting the state border', a growing number recognise that the Soviet legacy has been harmful to their own services, as well as the country. As testimony to this, the Ministry for Emergencies and Protection of the Population from the Consequences of the Chernobyl Accident (hereafter MChS) established working level ties with NATO even before Ukraine joined Partnership for Peace in February 1994. Since 2000, State Border Troops have welcomed EU assistance dedicated to modernising Ukraine's border management system and transforming this structure into a State Border Service on more Euro-Atlantic lines. After years of coolness towards NATO, individuals inside the Internal Troops (the MVS) have begun to express interest in how NATO concepts of transparency – rigorously applied in Ukraine's Defence Review – might help them measure their costs, capabilities and deficiencies. Since 4 September 2003, Ukraine's Security Service, the SBU, has been headed by a figure long associated with the Euro-Atlantic tendency, though given current political conditions, it might be unduly hopeful to say that his energies can be directed to establishing an 'American type intelligence community' in Ukraine.[1]

But if Gorbachevisms are still permissible, the fact remains that the Soviet legacy has 'deformed' Ukraine's security sector, and post-Soviet reality has added to these deformations.

It is not difficult to see what is at stake if this sector remains as it is. As far back as 1997, Ukraine officially identified 'strengthening civil society' as the first of nine national security priorities.[2] The totalitarian system which formally came to an end in 1991 was widely perceived as a system of war upon civil society. Many of the non-MOD security forces that Ukraine inherited from the USSR were instruments of this war. In the best of circumstances, transforming these structures – and, just as important, dissolving some of them – would have been a Herculean task. Ukraine has not been blessed with the best of circumstances, and today it is not blessed with the security forces that a state in its condition requires – let alone a state facing difficult neighbours and a multitude of unconventional threats. Today Ukraine's security sector is both a symbol and an embodiment of the divide between state and society. In its present form, it is more an instrument of state security than national security. In a post-Soviet world dominated by powerful trans-national networks and 'shadow structures', it is ill-equipped to strengthen the country's *samostyinist'* ('ability to stand') and provides an attractive vehicle for those who would weaken it.

The difficulties are seeing what should be done and, in foreseeable circumstances, what it might be possible to do. These difficulties are clarified but also sharpened

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by examining what others have done and why they have been able to do it. Even before the NATO accession process began, the Czech Republic and Estonia dismantled the greater part of their interior, security and intelligence services and proceeded to construct new ones very largely from scratch. Both of these countries had experienced a political as well as a national revolution, which removed the Communist *nomenklatura* from positions of power. Ukraine did not experience this. Czechoslovakia and the subsequent Czech Republic had the luxury of taking radical measures, because they faced no serious security threats in the post-independence period. Ukraine faced serious security threats in 1991, and it still faces them. Estonia also faced serious threats, but it had a motivated, cohesive civil society which provided an abundant pool of talent and which could mount guard over their state whilst new people were identified, recruited and laboriously turned into professionals. In Ukraine, there is a civic deficit. Finally, once the NATO accession process began, these countries and other candidates found their efforts underpinned by very powerful external allies, inducements and pressures. Between Ukraine and NATO, there is no accession process, only a 'distinctive partnership'. Yet this distinctive partnership has been influential in the one area where Ukraine has welcomed its influence: defence reform.

The contrast between substantive change in the defence sector and a far more uneven process of change in the security sector also sheds light on the difficulties Ukraine faces. To be sure, the relationship with NATO has been very different in each case. The Partnership for Peace Framework Document of January 1994 spoke of 'ensuring democratic control of defence forces', but said nothing about security forces. The reason is not inexplicable. Although many democratic states possess gendarmeries, the militarisation of the state's security functions, not to say emergency services and taxation, is alien to the liberal, democratic tradition. Only after the July 1997 Madrid summit did NATO give serious attention to the security sectors of candidate countries. With the exception of the MChS, it was only in late 2000 that security sector reform become an official part of the NATO-Ukraine relationship. The EU has also become a significant player in this field – but again, later in Ukraine than in the former Warsaw Pact countries and on a more limited scale.

But the root of the discrepancy between the defence and security sectors in Ukraine is internal. The USSR Ministry of Defence was an all-Union structure without analogues at Union Republican level. Unlike the Soviet Armed Forces, the MVS was organised strictly on territorial (republican) lines, and the KGB USSR had centralised analogues in each of the Union Republics. In the case of the Armed Forces the Soviet collapse left behind 'ruins and debris'; in the latter cases, it left behind coherent structures. A second aspect of the Soviet legacy – 'divide and rule' – is also felt. Ukraine's Armed Forces, like their Soviet predecessors, still do not have the right to conduct their own counter-intelligence activity (which is performed by a department of the SBU, heir of the Third Chief Directorate KGB USSR). 'Divide and rule' is more conspicuously observed in the pronounced proliferation of security structures that has occurred since independence: a proliferation which the disbanding of the National Guard (December 1999) still has not finally checked. The Tax Police and the State Directorate for Struggle against Organised Crime (DUBOP) are not old structures, but new ones, as are several smaller specialist formations under MVS subordination and outside it.

Contemporary socio-political differences have compounded these historical ones. The roles of Ukraine's Armed Forces are to defend state sovereignty and territorial integrity, insulate the country from external conflicts and, in the worst case, defend

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the country against external opponents. In sum, they are not a component of internal political struggle. Yet the military and civilian components of the other structures (not to say *militsia*) are on the cutting edge of the relationship between state and society and subject to all of its strains and distortions. This difference of role and positioning makes the security sector more vulnerable to the one problem which both sectors face.

That problem is a chronic deficiency of state finance. In the post-Soviet world, it is not the state, but the state budget that has withered away. The determination to maintain a formidable apparatus of state power in conditions of state penury has an inevitable result: the partial privatisation of the state and the use of state instruments to realise subjective, covert and possibly harmful interests. Where security structures (or networks inside them) become instruments of these interests, the result is always damaging to democracy and usually damaging to security as well. Yet it stands to reason: if the state cannot fund *militsia,* border guards, customs officers and tax police, somebody else will. No one should be surprised when these professionals lose their professionalism and become entrepreneurial with the powers they have at their disposal.

That entrepreneurship exists in the Armed Forces cannot be doubted, and the current Minister of Defence is evidently concerned about it. Yet its effects on society and on military professionals themselves are rather different from what they are in several security structures – and particularly law enforcement. This is because the latter are in direct contact not only with society but, by virtue of their responsibilities, with business and with structures of crime. Military officers are not. Military officers who cannot live on their salaries leave the Armed Forces and go into business. They do not, as a rule, go into business inside the Armed Forces. Moreover, they often have businesses to go to – and often legitimate ones – because they are qualified and educated. This is not always the case for those who serve in the *militsia.*

Given the foregoing factors, any discussion of 'what should be done' should take account of two realities.

First, Ukraine requires a well developed security sector, comprising several security structures, each aware of the 'big picture' but each part of a well articulated division of labour and suited to task. The borders of the big picture define Ukraine geopolitically: a state located between two emerging blocs (and two separate dynamics of integration), bordering seven states (some with dangerously porous borders) as well as the Black Sea (a strategic but vulnerable transit artery) and an unrecognised political entity, Pridnestrovia (Transnestria), in which the merger between the state, the security services, business and crime has reached pathological proportions. The interior of the picture depicts a country with assets, talents and a number of accomplishments, but also a number of vulnerabilities: a weak and negotiable legal order, a deficit of probity, responsibility and trust, a society that feels undefended and defenceless and too many networks of unrestrained power. Recent members of NATO (and old ones) provide a storehouse of expertise, experience and lessons for Ukraine, but no blueprints. The latter need to be provided by Ukrainians themselves.

Second, financial stringency will remain a fact of life for the foreseeable future. The imperative, then, is to devise schemes of modernisation and reform that are realisable with the resources available.   As the Czech Republic's then Prime

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Minister, Vaclav Klaus, stated in November 1995, 'it is simply not possible to have some exalted material conception and then to say that it is not financeable'.

The tension between the first imperative, a well-developed security sector, and the second, inadequate resources, is immense. But in the short to mid term, it is also unalterable. The first question is 'what can usefully be done during the time that this tension exists'? The second question is, 'what must be done today to relieve that tension in future'?

Five useful, indeed urgent, changes of direction can be instituted without additional financial resources:

1. *Depoliticisation.* This is not the same thing as 'neutrality'. In a well governed state, armed forces and security services are not politically neutral. They are the servants of a lawful civil power, and they are sworn to uphold the constitutional order. Between the constitutional order and the terrorist, armed conspirator and criminal syndicate, there can be no neutrality, any more than there can be neutrality between the fireman and the fire. What the services must not be is *partisan* – politically biased towards one faction or other, even when the faction concerned is the government in power. Between the authorities, their critics and their political opponents, security services and other arms of state administration must not only be neutral, but absent. It may require ideals, even courage, to de-politicise Ukraine's security services, but it does not require money.

2. *Legal Reform.* Ukraine is awash with laws, but bereft of the notion that a legal *system* is defined as 'the unity of primary and secondary rules' (H L A Hart). In Ukraine's Constitution and other legal documents, rights are no sooner defined than they are taken away by the omnipresent provision, 'except where prohibited by law'. Rights that exist 'except where prohibited by law' are not rights. If the law does not adhere to a consistent and well articulated body of principles, then like Soviet law, it is merely a 'system of codified arbitrariness' (Francoise Thom). Ukraine's Law on Counterintelligence (December 2002) continues the tradition of arbitrariness.[3]

3. *Transparency.* Can the senior staffs of Ukraine's security and law enforcement bodies be confident about where all the funds for their departments originate and whom they reach? Do they have an accurate inventory of the material assets within their departments' disposal, the condition of these assets, their security and value? Can they be confident that for every 'operation' carried out, a written instruction exists and the chain of command has been followed? And if they cannot be confident about these things, who in Ukraine can be? Without transparency, the ability to see, it is impossible to answer four questions central to national security: what decisions are made, where are decisions made, by whom and why? The measure of the security deficit in Ukraine is that insiders as well as outsiders often have difficulty answering these questions.

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4. *Democratic Accountability.* Ukraine's Armed Forces have been reluctant to accept the reality of democratic accountability and 'civilian democratic control', but they have long accepted the principle of it. In the security establishment, that is not the case. To many people in that establishment, 'civilian democratic control' means control by the President, and knowledge – on the part of government departments, the Rada, independent experts and the public – is treated as a threat to national security. This is not the case in the member states of NATO, and it is debateable whether these members are less proficient at protecting state secrets than Ukraine. Yet in all of them, the complex functions of oversight, supervision and accountability [*nabliudenie, nadzor i obespechenie podotchetnosti*] reside in a multiplicity of institutions - executive, legislative and judicial. Whilst none of these institutions are provided with unrestricted information about budgets, staffing levels, programmes and operations, they have sufficient information to perform these functions with knowledge and authority. The fiction that 'civilian democratic control' can be exercised by a single person will only perpetuate shadowy networks and intrigue throughout the state and undermine legitimacy in the one sphere where public trust is most essential, Absent serious change, it is unlikely, *pace* President Kuchma (1998), that the state will be able to 'rally together at a crucial moment'.

5. *Force Reductions.* The principle, 'quantity has a quality of its own', does not work in post-Soviet conditions where *militsionery* are paid starvation wages and the highest authority in the country is money. To these realities, the Leninist principle, 'better fewer but better' and the military principle of concentration of force are more suited. Yet this demands more than imposing algebraic formulas of reductions – halving the forces and doubling per capita expenditure – because if allocations for training, infrastructure and wages are dangerously low, the result is likely to be a sharp decline in quantity for very marginal qualitative gain. What is needed is a security sector review – and various departmental reviews – analogous to the Defence Review nearing completion in the Armed Forces. To produce results, such a review must involve inputs and insights from other disciplines and departments – and, without compromise to security, professionals from other countries that have gone through an analogous process.

Even in the mid-to-long term, the illicit and unauthorised [*neustavniye*] relationships, criminal influences and opaque, conspiratorial networks crudely termed 'corruption' will need to be examined soberly and on the basis of the axiom that 'the best is the enemy of the good'. If it is impossible to 'rid the country of corruption' in Britain – and it *is* impossible – then it will be impossible to do so in Ukraine. What is possible is the establishment of a state of affairs where corruption is a matter of choice, where criminality can be left to criminals and where others can realistically aspire to live and live decently. In order to reach this state of affairs, it will not only be necessary to carry out some resolute actions, but conduct some difficult discussions. Should a firm line be drawn between the commercial

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and the official sector? Ideally yes, but how? If *militsionery* are ordered to live on wages that cannot support life, it is inevitable that they will cheat rather than die. Would it be better to reduce staffing levels until wages become adequate, or would it be better to define, codify and regulate *legalised* part-time work in commercial structures? If expert, highly trained senior officers and officials are told to live on salaries inferior to taxi drivers, it is inevitable that many will cheat or leave state service for greener pastures. Would it be better to have them 'declare outside interests' and income – as British MPs do – or would it be better to prohibit outside interests and have them proliferate undeclared? These are not rhetorical questions with obvious answers, but questions that deserve full, searching and public debate.

In the long-term the only solution to the problem of finance and the socio-political ills that accompany it is in-depth economic reform. Today, Ukraine's real GDP is probably twice the declared figure, but it is only declared (or discovered) income that is taxable. Who will declare income or pay taxes so long as the laws of the country discourage legal business, local bureaucracy strangles independent entrepreneurship, tax inspectors are at the beck and call of politicians and judges consider themselves 'practically defenceless'? The answer to the question is simple. But solving the problem is not simple, because it depends upon political will. Experts have no advice to offer about how to create political will. People either have it, or they don't. Who has it and who does not is, perhaps, a good question to pose in an election year.

ENDNOTES

[1]   Valentyn Badrak, <u>Defence Express</u> website, 5 September 2003.
[2]   <u>National Security Concept of Ukraine</u>, January 1997.
[3]   See 'New Documents on Ukraine's Security Policy: A Sound Basis for Action?', Conflict Studies Research Centre, G121, July 2003, http://www.da.mod.uk/csrc.

Want to Know More ...?

See: "National Security & Defence", No 4, May 2004, Ukrainian Centre for Economic & Political Studies, Kyiv

James Sherr, *New Documents on Ukraine's Security Policy: A Sound Basis For Action?*, Conflict Studies Research Centre, G121, June 2003, http://www.da.mod.uk/csrc

James Sherr, *Democracy in the Black Sea Region: The Missing Link in Regional Security*, Conflict Studies Research Centre, G113, July 2002, http://www.da.mod.uk/csrc

James Sherr, *Ukraine's Defence Reform: An Update*, Conflict Studies Research Centre, G112, July 2002, http://www.da.mod.uk/csrc

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