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Ministry of Foreign Affairs of the
Netherlands

MONITORING UKRAINE'S SECURITY GOVERNANCE CHALLENGES



PROCEEDINGS FROM THE SECOND INTERNATIONAL CONFERENCE
“SECURITY SECTOR GOVERNANCE:
THE ROLE OF DEMOCRATIC INSTITUTIONS
& INTERNATIONAL BEST PRACTICES”
16-17 MARCH 2016, KYIV, UKRAINE

KYIV-2017

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CONFERENCE



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**Proceedings from the Second International Conference
“Security Sector Governance:
The Role of Democratic Institutions
& International Best Practices”
16-17 March 2016, Kyiv, Ukraine**

KYIV-2017

Editors:

Philipp H. Fluri, Deputy Director, DCAF

Oleksiy Melnyk, Director, Foreign Relations and
International Security Programmes, Razumkov Centre

Copy Editor: Richard Steyne

Design and Layout: Tetyana Ovsyanyk, Oleksandr Shaptala

This publication offers the proceedings of the Conference II “Security Sector Governance: The Role of Democratic Institutions & International Best Practices”. Following the Conference I findings, participants elaborated current challenges related to the role of democratic institutions in the Ukrainian Security Sector Governance and worked out solutions based on possible accommodation of best international practices in Ukrainian realities.

This publication offers presentations of the key speakers and the summaries of the Working Group discussions.

General assessments, conclusions and proposals are those of the participants and do not necessarily coincide with the positions of DCAF, the Razumkov Centre or the official position of the Ministry of Foreign Affairs of the Netherlands.

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INTRODUCTION

The programme – ‘*Monitoring Ukraine’s Security Governance Challenges*’ – funded by the Kingdom of the Netherlands and jointly implemented by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Razumkov Centre, to which this publication owes its existence, aims at raising public awareness and facilitating discussion and communication on democratic oversight and good practices in regards to the management of the security sector of Ukraine. Over two years, the programme will contribute to a public discourse on and access to Ukrainian and international practices in security governance, while making information – in both the Ukrainian and English language – available in the form of printed publications and a dedicated website; as well as through activities held in regional centres throughout Ukraine. Moreover, one opinion poll has been conducted in Ukraine with the aim of establishing whether and to what degree democratic governance of the security sector is understood and implemented in Ukraine.

The Project’s website – ‘*Ukraine: Democratic Security Sector Governance*’ www.ukrainesecuritysector.com – aims to provide relevant stakeholders with knowledge and tools to address Ukraine’s Security Sector Governance issues, not only in regards to the results of the current project, but also to the outcomes of DCAF’s prior and on-going programmes in Ukraine, as well as the online library of best practices related to Security Sector Governance.

During the first conference, participants sought to identify, examine and document challenges to Ukrainian Security Sector Governance and Reform. Based on its findings and recommendations, the Second Conference explored the role of democratic institutions and international best practices concerning defence and security institution-building.

This publication presents the speeches of the participants and the summaries of the Working Group Discussions. The Working Groups were conducted under the Chatham House rules. Therefore, all statements, except those that were made with a clear and intentional connection to the authors, are presented anonymously.

Dr. Philipp H. Fluri,
Deputy Director,
DCAF

Oleksiy Melnyk,
Co-Director, Foreign Relations and International
Security Programmes, Razumkov Centre

SECURITY SECTOR GOVERNANCE: THE ROLE OF DEMOCRATIC INSTITUTIONS & INTERNATIONAL BEST PRACTICES

KEY MESSAGES AND OUTCOMES

**By James SHERR, Associate Fellow, Russia and Eurasia Programme,
Chatham House and Visiting Senior Fellow, Razumkov Centre**

I am unlikely to be the only person in this room who has the feeling of déjà vu. Today, we have had a high quality discussion. However, it has been a discussion of experts, former officials and serving officers – some of whom have been in their respective professions for twenty five years. Given this, it is not surprising that much of what we have said today has already been covered. Many of the contributions made today, with respect to intelligence and sincerity, repeat word by word and thought by thought what was said in 2006 or even in 1996. Why is that? Why, after so much time has passed, so much experience generated; after two revolutions have taken place and two years of war with a nuclear power, do we still find that Ukraine is a country in which systematic reforms have not taken place and in which many reforms have either been reversed or failed to be consolidated?

In the main, two explanations are offered. The first is that the country's political class and elite have no interest in fundamental change because they perceive the possible transformation of the State and its institutions as threats to their wealth, power and status. And as we know, since 1991, wealth and power have tended to be synonymous.

The second explanation concerns the perceived inadequacy of the State and the people who work in it: the inheritance of working cultures that are neither efficient nor effective, the difficulty of attracting and retaining competent persons, the failure to grasp the purpose and 'spirit' of reforms and the inability to turn principle into practice.

Both of these explanations have merit – there is some truth in each of them. However, I wish to add a third: Much of the advice received from foreign experts is unsuited to context of Ukraine and hence often counterproductive. With the best will in the world, many blueprints for Ukrainian reform provided by Western experts do not chart a course of reform, taking into condition its specific social, economic and political context – rather, they present a picture of what Ukraine should look like *after* reform takes place. The real issue then, concerns how to reform the country *as*

it exists today, with the structures, people and mind-sets currently in place. I will risk saying the following: What is seen as best practice in a well-run state can produce incongruous and even negative results in a poorly run one.

Let us take two examples. The first is lustration. Lustration served its intended purpose in several states of the former Warsaw Pact, because, at the time, those countries were already in the hands of competent and democratically-minded elites. In Ukraine, lustration is more likely to be just another instrument of *chistka* – namely, a mechanism to remove opponents. We can all think of somebody who has been lustrated, not because of his corrupt activities, but rather because of the strength of his conviction in challenging the existing status quo. This category includes competent persons, desperately needed by Ukraine, but who today cannot work. Furthermore, we can think of overtly corrupt and incompetent officials who have avoided lustration because they serve a purpose for those already in power.

The second example concerns parliamentary oversight. What does this concept mean when deployed in a parliament where, even now, a considerable number of ‘People’s Deputies’ act as barons in a quasi-feudal State, rather than as representatives of the people who elected them? In this respect, however, today’s convocation of the Verkhovna Rada is far better than its predecessors. However, in many sense it still remains a ‘halfway house’. And when a halfway discredited institution conducts oversight over other halfway discredited institutions, that is a very questionable gain for democracy. Therefore, those who believe in Euro-Atlantic principles must be judicious and inventive when attempting to adopt them in Ukraine, rather than formalistic and imitative. This is especially true in a country that remains at war, that is partially occupied and that is under the constant threat of penetration, subversion and attack. It is a country, moreover, whose people are making sacrifices, where privation is a reality and where public trust and patience is finite. It is also a country with limited financial resources. The question, then, is not what has worked in Europe, nor what European officials class as ‘important’, but rather what works in the specific context of Ukraine; the specific context I have just laid out.

What Ukraine needs most is trusted and competent governance. It needs a president and government who follow through on their promises. They must have the capacity to do this, for which reason they and the country require effective and properly motivated institutions. Amongst the most important of these are defence and security institutions, which come together in the face of an external enemy or a national emergency and, who unlike other institutions, are not at war with themselves. Such a system must be properly financed.

There is truth in the cliché that Russia has a strong state and a weak civil society. By the same token, ‘Ukraine is not Russia’ – it is a country with a weak state and a strong civil society, that, in many respects, has acquired the attributes of a parallel state. Were it not for this parallel state, Ukraine would not have survived the onslaught during the winter and spring of 2014. By summer 2014, the parallel state had produced its own style of war-fighting, one that could not be defeated by

stealth. Although in many ways this parallel state ensured the survival of Ukraine, in the long-term, it is bad for the State: Ukraine needs a state that is both democratically-minded *and* effective.

At present, however, this is not what Ukraine has. The Ukrainian State is distrusted by its people and remains dysfunctional. It has difficulty attracting the people it needs. With some exceptions, it still is a state of bureaucratic mastodons, suffocating hierarchies and mindless routines in which obfuscation is as thick as the stagnant office air. What it requires, then, is a transformation to a state with well qualified and publicly spirited individuals, able to implement and oversee government policy in ways that maintain public trust. If these individuals are to remain publicly spirited and professional, they will need to be adequately paid, which entails a drastic reduction in the size of the state. Its powers must also be reduced: in Ukraine, power invariably means the power to interfere – the State needs to become a power that enables and protects.

None of this can be done without a transformation of administrative culture. An effective state not only demands better vertical power relations, but also well-developed horizontal ones. Horizontal integration is needed in order to remove barriers between agencies and achieve synergies. It exists when officials from the Ministry of Defence treat their opposite numbers in the National Security and Defence Council not as adversaries, but rather as collaborators, whose knowledge and perspectives help them fulfil their own responsibilities. This is not easy in any system however, and as such, there exists no perfect examples of it. Nevertheless, the United Kingdom's approach to what we call 'complex emergencies' manages to achieve this synergy to a tangible level. The success of Britain's Security Service in foiling over 100 terrorist attacks since 9/11 is not simply the result of its own proficiency, but also of the relationships it has established with the armed forces, police, financial regulatory bodies and local government. Most of these structures, however, are miniscule in size compared to their opposite numbers in Ukraine.

On both the vertical and horizontal axes of administration, a properly run state requires feedback, consultation and candour. Ministers should be able to present the views of their departments (and their own) without inhibition or fear. Advisers should not be removed from their position for giving appropriate advice. In the British Army, for example, the successful formula is to communicate one level up, one level down, one level to the left and one level to the right. At the end of this process, orders are given. Although in the United Kingdom, armies are not democratic institutions, respective orders are better implemented because, when there is consultation and feedback, commanders and subordinates have enough information to know what they are doing and why they are doing it.

At the same time, Ukraine needs to wean itself of 'document-mania': its obsession with legislation and 'normative acts' is what any developed democracy regards as the normal prerogatives of government. Excessive bureaucracy in Ukraine also exposes administrative reforms to endless accommodations to special and pecuniary

interests, which often seek to undermine the reform itself. When Estonia and the Czech Republic rebuilt their security services, the executive authorities simply sat down and did it, as did Georgia when it finally decided to reform a segment of its law enforcement apparatus. British MPs have routinely questioned the wisdom of restructuring the Home Office, the UK Border Service, even (in at least one case) the *de facto* abolition of the small entity in the MOD in which I worked for over 15 years. While Select committees of the House of Commons routinely produce trenchant reports about the way government is run, they have no authority to micro-manage the government, and as such do not question its right to govern.

In Ukraine, 'Document-mania' not only encumbers government, but is also used as a substitute for action. The endless drafting of doctrines, programmes, concepts and laws create the illusion of action, while in reality, little changes. A plan without implementation is at best a monument to good intentions; at worst a piece of furniture.

For twenty-five years, the gap between the State and society has been the dominant theme of Ukrainian politics. It also remains Ukraine's greatest vulnerability. If it cannot be addressed in time of war, then when can it?

Over the years, Ukraine has built up an impressive body of knowledge and expertise concerning defence and security matters. A number of institutions in this area – governmental ones like National Institute for Strategic Studies and independent ones like the Razumkov Centre – are well established. The community of experts in Ukraine is of a high order, and by any standard, some of its members are persons of high distinction. However, as a *corpus* of experts, this community's potential is under-developed. Its insights and perspectives are often poorly communicated to determinant actors whose actions and policies have an impact on Ukraine's interests. Here, as in other areas, it is vital to raise the international profile of Ukrainian expertise.

One should not wait for the state or the wizards of 'strategic communication' to rise to this challenge. They cannot. The Ukrainian State will merely do what the Russian State does better: produce propaganda. What is required to reverse this trend is for Ukraine's independent scholars to organise themselves, work together and produce serious, readable and compelling work. They will also require the assistance of other experts (and funding) to translate, publish and market it. The Maidan has produced a number of individuals who have acquired the skills to do just this, with some being located at the Razumkov Centre. The West has others. The Razumkov Centre would be the perfect convenor for such a project.

Ukraine's cause would also be advanced if its defence and security experts periodically joined forces to provide balanced and truthful information about Ukraine, the challenges it faces and its accomplishments to date. A standing group of experts, with a core of permanent members and a range of outside contributors, could articulate a number of issues with clarity and authority. In Chatham House,

we have established a Ukraine Forum with a similar purpose. Its meetings and publications are designed, on the one hand, to provide impartial advice to relevant audiences in Ukraine and, on the other hand, to raise the level of knowledge in the West about Ukraine. In contrast to the Russia and Eurasia Programme, of which it is a part, its focus on Ukraine is in its own right, rather than in the context of Russia and the challenges it poses. For a standing group of experts in Ukraine, the relevant audiences would be:

- State institutions, armed and 'militarised' forces, the Ministry of Interior (MVS), SBU, government, parliament, defence and heavy industry, the energy sector;
- Civil society, including independent entrepreneurs;
- Decision-makers, opinion leaders and interested observers abroad.

A key purpose of this standing group would be to raise questions and present practical proposals for defence and Security Sector Reform. The challenge would be to do so in such a way that would entice state officials away from their routines and encourage them to confront awkward but fundamental questions. To raise but one: who in the MOD, MVS and SBU knows what these entities actually own and what they actually cost? How are budget allocations distributed across various departments and tasks? What mechanisms are in place to monitor non-budgetary sources of finance and identify unauthorised revenue streams? While some in the 'higher organisation of defence' might regard these as outrageous questions, in most NATO countries, they are routine, and the answers are provided to government, parliament and, within the limits of national security, the public. Yet, after the first Maidan in 2004-5, the new reform-minded leadership of the Ukrainian MOD swiftly realised that they had no means of answering these questions definitively. In an attempt to resolve this, they took membership of PARP (NATO's Planning and Review Process) to bring together an inventory of what the MOD in Ukraine owned and managed, including property, infrastructure and facilities, as well as assessing what the MODs running costs actually were and establishing where the money was coming from and where it was going. Is the Rada Commission of Defence and Security asking such questions today and, if so, what answers have they received? If on the other hand, they are not asking such questions, then why? The issue at stake is not transparency for transparency's sake, but economy, effectiveness and national security, because if you cannot 'follow the money', how can you know who is living inside your system?

Goethe wisely observed that 'genius is knowing where to stop'. Over half a century later, Oscar Wilde countered, 'genius is knowing where to stop and going one step further'. In Ukraine, as in other domains, one must act within the art of the 'possible'. However, one must also expand the concept of the 'possible' for, even now, questions that are routine in NATO countries are viewed as radical inside Ukraine. In reality, though, Ukraine is confronting far greater dangers than re-defining what is possible', and that fact makes radical thinking essential and even patriotic.

WELCOME AND INTRODUCTION



Oleksiy MELNYK, Co-Director, Foreign Relations and International Security Programmes, Razumkov Centre

We are happy to welcome participants to the International Conference entitled ‘Security Sector Governance: the Role of Democratic Institutions and International Best Practices’. This Conference is the second public event in the framework of the joint project between the Razumkov Centre and the Geneva Centre for Democratic Control of Armed Forces (DCAF) entitled ‘Monitoring Ukraine’s Security Governance Challenges’, implemented with financial support from the Kingdom of the Netherlands.

The primarily goals of the first conference, ‘Monitoring Ukraine’s Security Governance Challenges – Status and Needs’, which took place on 21-22 January 2016, were to identify its key challenges and priorities, create an agenda for finding solutions in the areas of concern, define priorities, topics of following events, mechanisms for creating various additional opportunities to facilitate reforms in Ukraine, inform society and stimulate a broad public discussion on issues concerning democratic governance in the security and defence sector of Ukraine.

During the first conference, participants stressed different aspects regarding the present stage of reforms in Ukraine. On the one hand, Ukraine, a country at de facto war and going through a grave socio-political and economic crisis, is facing extraordinary challenges, while on the other, it exhibits clear opportunities for reforms in terms of motivation and clearly defined priorities. Extensive experience, especially

in the last two years, and significant resources in the form of international advice and financial and technical assistance, create additional prospects for the implementation of far-reaching reforms in the security sector.

Considerable attention was paid to discussing international experience and best practices, opportunities and the suitability of their application to Ukraine. The main conclusion reached was that, despite the absence of a common model or one that could be «copy-pasted» to Ukraine, there are time-tested democratic principles, governance standards, institutional procedures and legislative frameworks, which together should be used as the universal reference for effective security governance in Ukraine.

Panellists stressed the importance of broad parliamentary and social support and oversight to ensure the work of executive authorities, including security agencies, is effective. Along with this, it was noted that explicit legal regulations are not enough to ensure effective parliamentary control. Rather, genuine commitment of the Verkhovna Rada is required, both in general and on the level of parliamentary committees and deputies, as well as professional competence, willingness and the possibility to attract assistance from foreign experts.

The goal of the Second Conference is to analyse the role of democratic institutions in building and strengthening effective governance in the security and defence sector.

During discussions in the working groups, we will consider ways and means of cooperation between different institutions and groups to ensure development and implementation of transparent and accountable security policy. Foremost, attention will be given to discussing specific means for sustained democratic control over the security sector.

Following this work, we expect to prepare targeted recommendations for using best international practices in Ukraine, as well as create additional possibilities for attracting foreign expert assistance to solve the identified problems on both national and local levels.

Dr. Philipp FLURI, Deputy Director, DCAF

It is a great pleasure to be here at the Natsionalny Hotel for the second instalment of our on-going discussion in the framework of the two-year project on Security Sector Reform and governance. There is, I think, great value in what we are doing; the recommendations of the First Conference testify to that.

There is great multitude of conferences on this subject taking place in Ukraine. However, there is only one such a process, which leads to permanent dialogue with the public and which produces recommendations to be presented for the authorities. That is how I justify the value of this process and the on-going conferences. Both the Razumkov Centre and DCAF are greatly thankful to the Netherland's Ministry of Foreign Affairs for the financial support provided.

In this conference, we would like to look into four topics that were not elaborated properly during the First Conference in January 2016. These topics are:



1. The Role of Parliament and Ombuds Institution in Security Sector Governance;
2. Defence, Law Enforcement and Intelligence Institutions and Security Governance;
3. Civil Society and Media and Security Sector Governance;
4. Gender and Human Rights and the Security Sector Governance.

These are the topics we did not have to invent: they are the necessary ingredients for effective Security Sector Reform. If a country wants to go down the road of the Security Sector Reform, it cannot do without such elements. Security Sector Reform is not just about reforms of power agencies. Other elements, which have been less known and even neglected in the past, need to be integrated if we want to engender comprehensive and genuine reform.

No one can and will force the Ukrainians to accept solutions which are not theirs; which have not been grown on Ukrainian soil. There may be some things Ukraine can learn from international experience, but how these then become part of the Ukrainian experience is to be defined only by Ukrainians themselves. I think this current process, and similar ones throughout Ukraine, offer an opportunity for just such dialog, hopefully leading to the creation of suitable blueprints for Ukraine which offer genuine solutions.

We appreciate your active participation and we can assure you that everything been said will not be lost. It will be made available for the authorities and to the public as well.

**Iryna FRIZ, Chair of the Subcommittee for Security of Public Information Systems,
Committee on National Security and Defence of the Verkhovna Rada of Ukraine**

Taking this opportunity, I would like to express my gratitude to the organisers for their extremely important undertaking which will undoubtedly contribute towards effective Security Sector Reform in Ukraine.

I am very pleased to inform you of the first concrete results of the January Conference. Thanks to the initiative put forward during the First Conference, we have made a decision to create the International Expert Group on Defence Sector Reform under the Verkhovna Rada of Ukraine (IEG). The main mission of the IEG is to reduce the distance between the development of recommendations and their implementation into national legislation. We have already reached an agreement to establish a permanent secretariat in order to coordinate the IEG activities and to summarise its recommendations.

The main task of the International Expert Group on Defence Sector Reform is to conduct an independent assessment of security sector legislation in Ukraine, in terms of its effectiveness and efficiency and its correspondence to democratic standards and the best international practices.

We expect that the IEG will assist us in the cases when principal disagreements occur between different parliamentary initiatives, or between parliamentary proposals and the conclusions of the Main Expert Department of the Verkhovna Rada. It is extremely important to obtain an independent and alternative point of view based on best international practices and on examples of the implementation of similar initiatives in other countries. The IEG is not to duplicate the Main Expert Department or to control and substitute state experts. Rather, the establishment of the IEG aims to enrich the results garnered from state experts by supplementing them with external professional assessments and recommendations.

Another task of the IEG is to make an assessment of how existing legislation in Ukraine affects activities of the security sector and its related components, and to make proposals regarding its effective application.

In order to make the work of the IEG more efficient, we plan to involve representatives of State power structures, NLO in Ukraine and non-governmental think-tanks with at least five-year experience in the area of national security. The Razumkov Centre, DCAF and NLO have already confirmed their interest in participating. We also expect to reach an agreement with experts from the National Institute for Strategic Studies and the National Security and Defence Apparatus, which would allow us to start our work as soon as possible. First of all, we would like to conduct an expert review of pending draft laws and their correspondence to NATO and EU standards.

To conclude, I would like to confirm our readiness for cooperation with both national and international experts.

SESSION ONE. SECURITY SECTOR GOVERNANCE: BEST PRACTICES



Chair: Dr. Philipp FLURI, Deputy Director, DCAF

This session was held to expand on the initial presentations made at the first conference, focusing on the key elements of Security Sector Governance, while also incorporating Ukrainian perspectives on challenges to Security Sector Governance.

- Opening presentation: Democratic Security Sector Governance: An Overview
Mans Hanssen, Folke Bernadotte Academy
- The Concept of Ukraine's Security and Defence Sector Reform
Oleksandr Lytvynenko, Deputy Secretary, National Security and Defence Council of Ukraine
- Democratic Control in the Process of National Security Policy Making & Implementation
Mykola Sungurovsky, Military Programmes Director, Razumkov Centre
- The Governance Role of Democratic and Independent Oversight Institutions
Simon Lunn, former Secretary General, NATO Parliamentary Assembly

OPENING PRESENTATION: DEMOCRATIC SECURITY SECTOR GOVERNANCE: AN OVERVIEW

Mans HANSSEN,
Folke Bernadotte Academy, Sweden



The FBA Security Sector Reform (SSR) programme is currently working in three different fields: policy development, education and training, and operational support.

In respect of policy development, primarily, we are currently assisting the UN, the EU and the OSCE. For education and training, I have just arrived from the EU HQ in Brussels, where we conducted the ESDC course on SSR for delegations' staff in the surrounding neighbourhood. On addition, we provide regular week-long courses twice a year.

In respect of operational support, one of our main countries of focus in the last two years has been Ukraine. During the second half of 2015 we conducted a SSR needs assessment and worked out the recommendations on behalf of the Swedish Government, giving us a comparative advantage in supporting SSR in Ukraine. We submitted the report to the Government of Ukraine on November 30, 2015. Currently, we are waiting for a decision to be made on the recommendations submitted.

We are also developing bilateral strategies with a number of countries on which we are focused – including The Democratic Republic of Congo and Liberia. We are also waiting for a strategy for Columbia to be passed.

This is a brief overview of where we have secondments and bilateral projects. We have wide-spread activities throughout the world.

Both the Mapping and the Report we submitted to the Swedish Government were based on a thorough collection of information regarding the different international supporters of SSR in Ukraine. We identified about 244 different projects, a considerable amount. In order to respond to the information given to us by different actors and donors in Ukraine, we took the opportunity to translate these into English,

publish them, and share them with you accordingly. It is our sincere hope that we can provide input into current efforts of cooperation and coordination of the SSR in Ukraine, while also assisting in analysing gaps and overlaps in regards to international support. Of course, this is a collection of on-going projects, which as such do not necessarily analyse the needs of Ukraine. However, to be here today provides us with just such an opportunity, that is, to explore what the needs are and how they correspond to the mapping of international support we conducted.

Moving on to what we discussed last time and some developments since then, I am aware that 1325 National Action Plan has recently been passed and I believe it is absolutely vital in terms advancing gender equality in the security sector of Ukraine. I am thus looking forward to today's process and how this work is planned to be implemented.

In terms of democratic governance and oversight, some of the general conclusions from the first conference relate to the support that should be given to existing institutional structures. There was a general consensus within the working group, which I was facilitating, that supporting existing structures, rather than designing new ones, is preferable. Consensus was also reached that supporting civil society to better interact with state structures and create a more constructive dialogue between the two remains essential. Civil society is not only a watchdog, but also a partner to government. As such, their capacity to interact with other actors is extremely important.

Recently, a report was released by the European Parliament and Needs Assessment Mission by Pat Kox, entitled 'Report and Roadmap on Internal Reform and Capacity-Building for the Verkhovna Rada of Ukraine'. Following the needs assessment, this report contained detailed information both on the status of parliamentary reform in Ukraine, as well as a specific roadmap for the implementation of reforms which directly relate to the discussions on parliamentary oversight of the security sector conducted at the last working group.

Now turning to the question of implementation I can say the following: in the working groups we discussed four different points – professional staffing for secretariats; the need for training programmes for Members of Parliament on specific areas that relate to their competence and position in committees; the establishment of an independent research function within the secretariat; and strategic communication, not only in a framework of parliament, but also in the executive power, namely the Cabinet of Ministers, ministries and the President.

I would like to repeat some of the key points. Democratic oversight does not only concern the parliament and civil society. Rather, it involves a range of different actors fulfilling their mandates and obligations in an effective way. Of course, a difference exists between external oversight and internal oversight. What we traditionally view as democratic oversight is essentially external oversight conducted

by the parliament, over the executive and civil society over a state structure or by international actors in terms of the EU or International Criminal Courts. However, mechanisms for internal oversight, such as oversight councils, codes of conduct etc., also exist. In this sense, the judiciary plays a vital role in terms of ensuring that all the actors in a country follow the rule of law. That place courts in quite a specific position in terms of their independence.

A range of special actors have specified mechanisms at their disposal. For example, the executive performs certain types of oversight over authorities under their control. It also has the authority to appoint senior officials.

The legislature has a vital function. As for other independent bodies in Ukraine, these include the Anticorruption Bureau and the Verkhovna Rada Committee for Human Rights, amongst others. Security sector institutions have proactive internal accountability procedures to ensure that all staff are well-trained, equipped and follow the codes of conduct.

On the international level, different mechanisms exist to ensure that member states and different organisations follow commonly agreed rules. One example is the OSCE Code of Conduct for Political Military Affairs.

In terms of the more specific functions of parliament, I will describe five that relate specifically to democratic oversight. I would like to emphasize that democratic oversight is not only about passing legislation. It is also about controlling the budget of the executive – only approving what parliament deems adequate. There are also monitoring and verification functions that we discussed earlier in the Working Groups in terms of public hearings or calling officials to answer different cases. Next, a significant role of parliament exists with regards to approving senior positions within the executive. The Commander-in-Chief of the armed forces often needs the approved of parliament to be appointed. Therefore, parliament needs a thorough inside the knowledge of different topics to be able to appoint the right. Of course, parliament serves as a direct conduit for the population to ensure their voices are heard. There some criticism to dealing with the issues concerning national security and defence as in many countries, the parliament is seen as slow acting organism that takes too much time to get a decision. However, it should be stressed that adequate time is vital for effective democratic oversight: hasty decisions taken without the support of the parliament, the necessary quorum and therefore the support of the electorate are of little use.

The direct connection between parliament and the electorate it represents is precisely what makes parliament such a prominent organisation in terms of democratic oversight. This is important to keep in mind when comparing parliament to other institutions whose members are not directly elected.

THE CONCEPT OF UKRAINE'S SECURITY AND DEFENCE SECTOR REFORM

**Oleksandr LYTVYENKO, Deputy Secretary,
National Security and Defence Council of Ukraine**



My report will feature a presentation from the Concept of Development of Ukraine's Security and Defence Sector, recently approved by the President of Ukraine and to be released shortly. The Strategy of Cyber Security – another important document for security sector development – is also pending publication.

Before exploring content of the Concept, we will briefly dwell upon the place of this document in the structure of strategic planning. As we know, in April, 2014, a presidential Decree initiated a Comprehensive Review of the Security and Defence Sector. Following the Review, new versions of the National Security Strategy and the Military Doctrine (Military Strategy) of Ukraine were drafted. The Concept of Development of Ukraine's Security and Defence Sector is a document that – for the first time in Ukrainian history – presents a consolidated vision regarding the development of the security and defence sector as an integral system, not just a set of components. A comprehensive approach to security sector development becomes especially topical, given the need to respond to the challenges of a hybrid war, which requires well thought-out and fully staffed security and defence structures, as well as other state institutions.

The Concept sets out a system for the development of Ukraine's security and defence capabilities in the mid-term, shaped on the conclusions of an assessment of the security environment and financial-economic capabilities of the State, made within the framework of the comprehensive review of Ukraine's security and defence sector.

The goal of the Concept is provide methods to ensure and improve the national security and defence capabilities of Ukraine, enabling:

- **The restoration of the territorial integrity of Ukraine** within internationally recognised state borders;
- The guarantee of a peaceful future for Ukraine as a sovereign, independent and democratic state, governed by the rule of law;

- The creation of a national system for response to crises, timely detection, prevention and neutralisation of external and internal threats, guarantees of personal safety, constitutional human rights and freedoms;
- The provision of effective cyber security policies;
- The prompt (joint) response to crises and emergency situations.

The primary efforts regarding security and defence sector development will focus on a gradual and coordinated build-up of operational capabilities of security and defence forces and the level of their readiness to immediately respond to challenges and threats to the national security of Ukraine.

Key problem/issues to be resolved:

- Creation of an efficient system of governance over the security and defence sector as an integral functional system;
- Pooling the operational capabilities of the security and defence sector to ensure a prompt and adequate response to ongoing and future crises;
- Permanent maintenance of security and defence forces who are assigned to perform specific tasks;
- Improvement of the security and defence sector planning system and the rational use of state resources.

Main tasks of the security and defence sector:

- Defence of Ukraine, its sovereignty, territorial integrity and inviolability;
- Protection of the state border of Ukraine;
- Protection of the constitutional system, economic, scientific, technological and defence potential of Ukraine, as well as the legitimate interests of the State and rights of its citizens;
- Prevention, detection, termination and resolution of crimes against the peace and humanity, as well as other illegal acts which pose a direct threat to the core interests of Ukraine;
- Fighting terrorism, corruption and organised crime in the government and economy;
- Protection of information and providing effective cyber-security;
- Assistance to executive authorities and the local self-government in the prevention and liquidation of the aftermaths of natural, technical and military emergencies, as well as the development of international cooperation in this field;
- Participation in the maintenance of international stability and security.

Another important element of this document is presented in a separate section devoted to civilian democratic control, containing a provision concerning the need of institutional support for effective parliamentary control.

In this section, a new approach is proposed, which aims to create joint capacities of security agencies in such sectors as education, training, logistics, procurement, medical support.

The drafting of the Concept involved international experts and advisers, including the staff of NATO Liaison Office in Ukraine, EUAM Ukraine and experts from the RAND Corporation.

Moving on, I will now explore the main tasks of reform for related structures in Ukraine.

Ministry of Defence of Ukraine and Armed Forces of Ukraine

Main objectives of the reforms include the:

- Optimisation of the structure and strength of the Armed Forces of Ukraine;
- Restoration of the availability of arms, military and special equipment, and the modernisation and replenishment of its stocks;
- Improvement of the system for training troops (forces);
- Reorganisation of the system of operational (combat) support, logistics and maintenance;
- Ensuring compatibility with other components of the security and defence sector in cases of joint action under the specified scenarios;
- Gradual harmonisation of the Armed Forces of Ukraine with NATO standards in terms of training, technical equipment and all-round support.

Ministry of Internal Affairs of Ukraine

At the present stage, the development of the Ministry of Internal Affairs of Ukraine aims at establishing it as the main entity within the system of central executive bodies, pursuing State policies related to the:

- Protection of human rights and freedoms, the interests of society and the State, fighting crime, maintaining public security and order, as well as effective policing;
- Protection of the state border and sovereign rights of Ukraine in its exclusive (sea) economic zone;
- Civil defence, protection and prevention of the population and territories of Ukraine from emergencies, as well as ensuring effective emergency responses, rescue operations, fire-fighting services, fire and technical safety and hydro-meteorological services;
- Migration (immigration and emigration), including countering illegal (unlawful) migration; citizenship; registration of individuals, refugees and other categories of migrants, as provided by the Law.

The aforementioned aims to facilitate the creation of a truly civilian ministry, which, as envisaged by the Law, is responsible for home policy. The ministry will also include State executive bodies.

National Guard of Ukraine

In line with best European practices, the National Guard of Ukraine will fall under the jurisdiction of the Ministry of Internal Affairs of Ukraine as a military formation with law-enforcement functions.

Upon a declaration of martial law – and in accordance with the Law of Ukraine “On Legal Procedures of Martial Law” – the National Guard of Ukraine is empowered to perform defence tasks under the command of the Ministry of Defence of Ukraine.

National Police of Ukraine

The National Police of Ukraine, as a central executive body, serves society by protecting human rights and freedoms, fighting crime and maintaining public security and order.

The main tasks of the National Police is to provide police services in the fields of:

- Public security and order;
- Human rights and freedoms, as well as interests of society and the State;
- Fighting crime;
- Support to persons who, for personal, economic or social reasons or due to an unforeseen emergency, require assistance, within the limits provided by the Law.

State Border Service of Ukraine

The development of the State Border Service of Ukraine aims to ensure the efficient protection of the state borders of Ukraine, as well as the defence of Ukraine's sovereign rights in its exclusive (sea) economic zone, and after joining the European Union – the readiness of the State to guard its external borders in the east, north and south.

When under increased threat or working in dangerous regions, the State Border Service of Ukraine is reinforced with troops from the National Guard and the Armed Forces of Ukraine.

From the outset it should be made clear that the formation of three ‘armies’ in Ukraine is not planned. Rather, the Armed Forces will be reinforced by the National Guard on an ad-hoc basis, while the State Border Service of Ukraine is tasked to control and guard, but not defend, the state border.

State Migration Service of Ukraine

The State Migration Service of Ukraine will be developed by raising the efficiency of the:

- Performance of assigned tasks, as well as the introduction of modern transparent procedures for the provision of high-quality services and for managing internal problems – primarily corruption – as well as rebuilding public trust in the State Migration Service of Ukraine and other security and defence bodies in Ukraine;

- Implementation of State policy in the fields of migration (immigration and emigration), specifically, countering illegal (unlawful) migration, citizenship, registration of individuals, refugees and other categories of migrants, as provided by the Law.

State Service for Emergencies

The goal of developing the State Service of Ukraine for Emergencies is to ensure the efficient implementation of State policy in the field of civil defence through perfecting the unified system of civil defence, its harmonisation with European Union standards and its efficient functioning in peacetime and in a contingency, as well the provision of advanced equipment, assets and outfit for civil defence forces.

Development will mainly be achieved through the implementation of measures of the State Target Programme of protection of the population and territories from technical and natural emergencies for 2013-2017, approved by the Law of Ukraine No.4909-VI, dated 7 June 2012.

Department of State Guard

Priorities for the development of the Department of State Guard of Ukraine in the security and defence sector include the:

- Improvement of bodies involved in the protection of state power in Ukraine;
- Provision of security for officials as provided by the Law, wherever they stay in Ukraine and beyond its borders;
- Guarding and defence of facilities provided by the Law;
- Participation in counterterrorism activities.

State Service of Special Communications and Protection of Information

The priorities for the development of the State Service of Special Communications and Protection of Information of Ukraine include the:

- Development and perfection of the system for technical and cryptographic protection of information in accordance with standards (requirements) used by leading European states;
- Creation of a national telecommunications network, and the provision of its trouble-free functioning and cyber-defence.

State Special Transport Service

Reformation and development of the State Special Transport Service will be conducted with the purpose of enhancing its mobility and ensuring the provision of advanced equipment and arms so as to guarantee the performance of engineering and transport tasks in support of the Armed Forces of Ukraine and other military formations in peacetime, under martial law and in a state of emergency, as well as the technical protection and restoration of transport facilities operated by the Armed Forces of Ukraine and other military formations.

In the mid-term, the State Special Transport Service is planned to be integrated into the Armed Forces of Ukraine.

Intelligence agencies (services) of Ukraine

The development of intelligence agencies (services) is aimed at enhancing Ukraine's intelligence capabilities by ensuring effective coordination between them, and the management of activities by the Joint Committee for Intelligence Activity under the President of Ukraine, as well as strengthening cooperation with the special services of partner NATO member countries.

Further development of Ukraine's intelligence agencies will aim to:

- Concentrate the efforts of intelligence agencies on the priority domains of national security;
- Avoid the duplication of functions and tasks in the activities of intelligence of Ukraine;
- Strengthen cooperation among intelligence agencies and coordinate their activities;
- Ensure the full staffing of intelligence agencies for solutions to urgent tasks;
- Pool together advanced resources and technologies in the Ukrainian intelligence community;
- Involve the users of intelligence information and other actors of the national security and defence sector in intelligence activity;
- Improve the system of budget funding for the intelligence agencies of Ukraine;
- Strengthen cooperation between intelligence and the special services of partners – primarily NATO members – as well as building relations on the basis of mutual trust;
- Implement advanced mechanisms of democratic civilian control over Ukrainian intelligence agencies.

Staff of the National Security and Defence Council of Ukraine

Priorities for developing the staff of the National Security and Defence Council of Ukraine include:

- Information analysis and organisational support for the activity of Ukraine's National Security and Defence Council as a coordinating body in charge of national security and defence issues under authority of the President of Ukraine;
- Coordination and control over the activities of executive authorities, other State bodies in the national security and the defence sector;
- Generation of proposals for the perfection of legislation on national security and defence, the elaboration of the Strategy of National Security of Ukraine and the Military Doctrine of Ukraine, as well as on other guidance documents concerning national security and defence;

- Study and analysis the situations concerning national security and defence, the functioning of Ukraine's security and defence sector and activity of its related elements, the actions of other State bodies active in this domain, the generation and submission of relevant proposals to the President of Ukraine, Ukraine's National Security and Defence Council, executive authorities and other State bodies;
- Support of operations of the Main Situational Centre of Ukraine and coordinate between situational centres of Ukraine's security and defence sector bodies;
- Organisation of work of other working and advisory bodies of Ukraine's National Security and Defence Council.

Ukraine's defence industry

The development of the defence industry in Ukraine is aimed at creating the conditions for moving Ukraine's defence industry to a new level of production of arms in terms the numbers produced, and for military equipment to meet the needs of the Armed Forces of Ukraine and other military formations and law-enforcement bodies, as established in accordance with the laws of Ukraine, thus enabling the creation of an integral system capable of regeneration and functioning based on the principles of equilibrium.

Expected results of and resources for implementation

The practical implementation of the Concept will make it possible to create an integrated security and defence sector for Ukraine, acting as the main catalyst for the provision of national security, as well as an efficient state tool for prompt and reliable response to crisis situations threatening the national security of Ukraine.

Expenditure on national security and defence is not to fall below 5% of Ukraine's GDP, and including defence expenditures – **not below 3% of its annual GDP**.

Annual expenditures on support and development of Ukraine's defence industry is estimated at **0.5% of its GDP**.

With the aforementioned in mind, the document is to be backed with the appropriate funding.

In conclusion, the Concept is not only a result of long-term meticulous work, but also a product of compromise, which is of course inevitable when drafting such strategic documents. The document may be not perfect, but it creates a sound basis for further activities. In my opinion, the Concept is evidence of Ukraine's progress towards an efficient security sector, the activity of which will meet democratic principles and norms, as well as the standards of NATO countries. This refers not only to technical requirements but also to the culture of security – implementation of the principle of treatment of a man as the highest value, not denying the need to perform their intrinsic tasks. We not only require structures that can perform the aforementioned tasks, but ones that can do it cost-effectively.

DEMOCRATIC CONTROL IN THE PROCESS OF NATIONAL SECURITY POLICY MAKING & IMPLEMENTATION

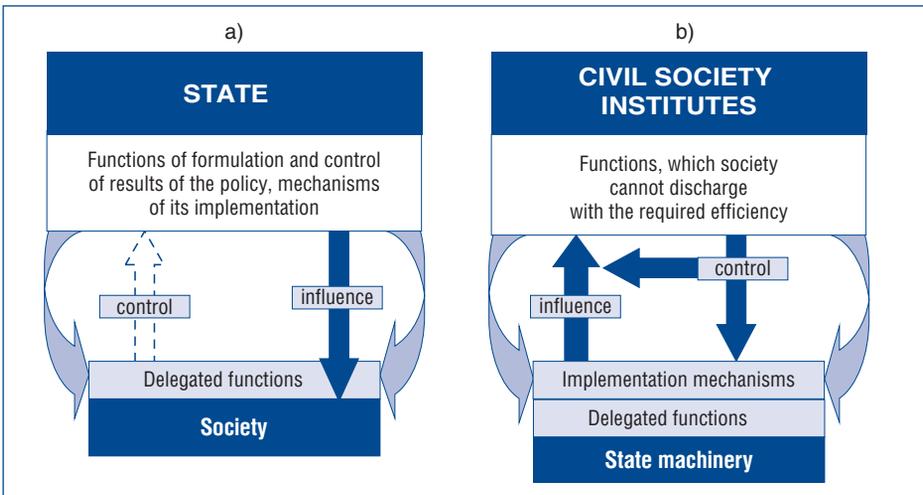
**Mykola SUNHUROVSKYI, Director,
Military Programmes, Razumkov Centre**



The essence and technology of democratic control depend on the type of relations between the State and society:

a) The State enjoys a monopoly on the definition and exercise of functions of policy making and implementation, a part of which (including participation in control) it is ready to delegate to society: under such a model, democratic control is seen as a voluntary act of the State, in which it can claim to be “transparent and accountable”;

b) The functions of policy formulation and implementation are set by civil society, which in turn delegates them to the State and agrees that it may devise appropriate rules of conduct and mechanisms to ensure their observance, which, although may include repressive ones, remain under the control of society, i.e., under the condition of obligatory transparency, accountability and responsibility.



Until recently, Ukraine has followed model (a). Only after the Revolution of Dignity, however, did society demonstrate a desire (although not overt and currently lacking institutionalisation) to move to model (b).

Democratic control is an element of feedback in the system of governance, the efficiency of which depends on the guaranteed completeness of such feedback, which is in turn measured by the extent to which the government meets the needs of society and adapts to change. However, for this to happen, the quality of control and signals for policy adjustment transmitted by it should also be guaranteed.

Today, the systems of governance and democratic control cannot boast of such quality for a number of reasons, in particular:

- Despite the existence of the Law 'On Democratic Civilian Control of Military Organisation and Law-Enforcement Bodies of the State', it does not encompass the entire system of state organs nor the full hierarchy of the processes and procedures of governance, making procedures for democratic control fragmentary and incomplete;
- In the absence of a 'process-approach' to managerial activity, there remains an absence of clear definitions for objects, the results of democratic control and requirements for it;
- The lack of skilful 'public controllers' with high moral qualities (even in the wake of the Revolution of Dignity) in the bodies of democratic control, which act to strongly compromise them, both in the eyes of authorities and the public, as well as undermining the efficiency of control.

The content of democratic control, its technology and requirements for the staff concerned depend not only on the desire and readiness of citizens to control State activity, but also on (and mainly) on the content and complexity of the processes taking place in the field of State governance and on the requirements of their efficiency.

On the other hand, in addition to the requirements for efficiency and control, such statement of the problem shapes requirements to governance, namely: openness, structuring, adaptability and clarity.

The methodological principles presented here will somewhat differ from Western standards in terms of terminology, mainly as these are not yet widely established in Ukraine. Of note in regards to Western countries is that, thanks to the continuity of State policy, the periodicity of the conceptual stage – when social values, national interests, strategic goals, etc. are determined – is measured in decades. With this in mind, the current practice focuses mainly on the following stages (planning, programming, and budgeting). In Ukraine, the conceptual stage is still not over, and therefore, the subsequent ones remain vague in nature, although it should be noted that today, our Western partners, pressed by the present-day challenges, also face the task of revising their value system and national interests with a view of their commonality. Observing the processes taking place in the Western countries, one can clearly see how uneasy revision and its integration with existing practices of governance and democratic control can be.

Let us try to briefly review the key objects of democratic control, namely, the stages of formulation and implementation of State security policy and the main requirements of the controllers.

Political stage

At this stage, the Verkhovna Rada – with support from the Presidential Administration, NSDC Secretary and Staff, concerned ministries and agencies, public organisations and independent experts – develops and approves the regulatory-legal framework for the processes of functioning and the development of society and the State, including the national security sector – with the leading role concerning parliamentary committees. On this basis, political guidelines are generated and issued at different hierarchic levels of governance (the president, the government, ministries, agencies), shaping (adjusting, elaborating) the goals of provision of national security, political priorities and relevant limitations, tasks in the short or/and middle-term.

During the aforementioned stages, as well as the following ones, democratic control is exercised via representative institutions (President, Parliament), as well as by means of the direct employment of qualified representatives of civil society for the creation of the regulatory-legal framework, observance of its compliance with social values and national interests, optimisation of political priorities and the removal of factors contributing to corruption.

Conceptual-strategic stage

At this stage, the principles of provision for national security, are, in the long-term shaped by: developments in the external and internal security environment, positive and negative factors; potential threats to national security, rational forms and methods of countering (prevention, response and settlement), capabilities required and resources needed. On this basis, the general principles concerning the functioning of the security sector and its development are determined, elaborating provisions for the regulatory-legal framework and political guidelines, which are reflected in fundamental planning documents, including: the National Security Strategy and the Concept of development (reformation) of the security sector, strategies and concepts of functioning and development of its elements.

Forecasting and the creation of the legal and organisational basis of a rational system for the provision of national security (of the national security sector) and its functioning may take place within the framework of the regular Comprehensive Review of the security sector, or reviews of its elements.

Preparation of the conceptual-strategic basis involves concerned ministries and agencies, scientific institutions, as well as highly qualified independent experts. The final documents are to go through a process of broad public discussion.

The main requirements for democratic controllers at this stage (participation in targeting is one of its forms) include knowledge of the principles of strategic management, systematic thinking, a high level of professional training, practical experience, the ability to generate non-standard solutions and to deduce an integral policy from them.

Programme planning stage

In the security sector – in parallel with the process of planning for socio-economic development proceeding from the provisions of the National Security Strategy and Concept of the security sector development – plans of functioning and programmes

of development for the relevant structures are devised. The plans of functioning set objectives of life support, readiness, employment and coordination of the national security sector structures. Development programmes determine the algorithm of action concerning the implementation of long-term goals aimed at building that system, i.e., the sequence of interrelated objectives of development (creation, reformation) of the national security sector and its structures. Such plans and programmes are developed by concerned ministries and agencies with scientific departments, as well as with consultation from independent experts, and should be coordinated with the National Security Strategy, Concept of the security sector development, other programmes (insofar as they are concerned), and allocated resources necessary for their implementation.

During the present stage of development, something of a novelty was witnessed – the creation of the National Reform Council under the President of Ukraine, comprising of a project office and relevant committees, including those in charge of security. The Council's subcommittees are led by functionaries (with a natural fear of reforms) – namely heads of concerned ministries and agencies, for whom reforms constitute only **one of** their objectives; as such, one should not expect overt commitment from them. Hence, it may be expedient to change the principles of its staffing (to employ respected leading political figures and experts for subcommittee management) and to limit its activity to the conceptual-strategic level and coordination of reformist actions at lower levels of the managerial hierarchy.

Broad involvement of non-governmental organisations and independent experts with appropriate qualifications for advancing the objectives of this stage will likely significantly improve the quality of the results and transparency of the process. The main requirements for democratic controllers at this stage include professional knowledge and skills in specific areas, the ability to effectively comprehend the national legal environment, think out of the box and to find efficient and alternative ways to achieve the goals, as well as knowledge of relevant NATO requirements, norms and standards.

Budgeting stage

During the budgeting process in the security sector, the need for funds for the implementation of programmes and plans of development and functioning of the national security sector, the structure of their distribution and the terms and procedure of funding, are all determined. To this end, programmes and plans should be elaborated in sufficient detail to enable an assessment of the technological level and cost of the intended measures, plans and programmes.

In the absence of a general law on the principles of strategic planning in Ukraine and taking into consideration the limitations of the existing laws on the procedure of the development of state programmes, the Budget Code of Ukraine is the only document that *entirely* sets out this procedure, while the prerogative of setting budget priorities (and hence, priorities of development) belongs to the Ministry of Finance. In such conditions, budget planning comes to the forefront – instead of substantial

(process) planning, and the existing state budget structure facilitates rooting of the trends formed in the previous years (in practice – mainly negative), rather than implementation of transformation processes.

To ensure the convenience and raise the quality, transparency and clarity of the budgeting process, programmes and plans may be divided into elements: *sectoral* – based on the uniformity of expenses (on personnel maintenance, training, construction, logistics and maintenance, arms procurement, international partnership, etc.); *target* – with a focus on the achievement of end results and *programme blocks (projects)* – based on stages of concrete results (e.g. the deployment of a certain system by the degree of readiness – initial, intermediate, final; development, production and fielding of weapon systems).

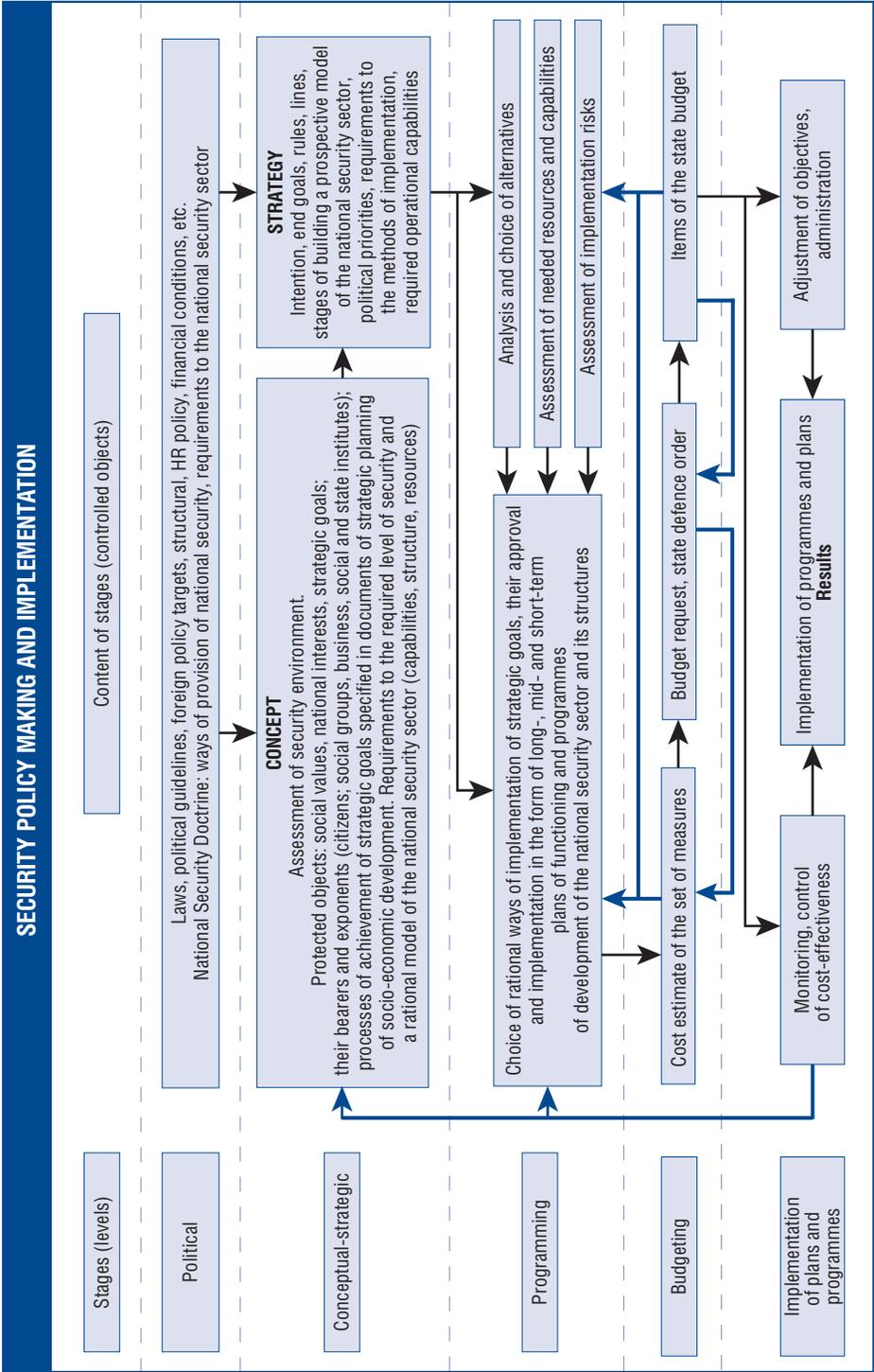
Contributing to the achieving these objectives requires professional knowledge in the relevant specific branches, knowledge of fundamentals of resource management, norms of the national legislation and relevant procedural and technical NATO standards.

The following stage, concerning improvements in the process of strategic planning, may be actualised by creating special units within the central executive bodies – administrators of programmes (plans) – with appropriate powers to coordinate the activity of actors, adjust programmes, and manage budget funds. Forms and methods of democratic control will also require appropriate transformation.

Stage of implementation of programmes and plans

This stage involves the attainment of programme objectives aimed at developing (modernising and reforming) the national security sector and its structures, as well as measures to protect the national interests and functioning (employment) of security sector structures. These tasks are vested in concerned ministries and agencies – recipients of budget funds and their subordinated entities. The mechanisms to achieve such objectives, as well as the coordination of actors and ensuring their accountability for results and budget spending, are specified in Laws of Ukraine, programmes and plans, technical specifications and relevant agreements (contracts).

The implementation of programmes and plans in the security sector is accompanied by their monitoring, control and adjustment. Efficient assessment of results and adjustment of strategic and programme documents are facilitated by a regular (as a rule, every 4-5 years) Comprehensive Review of the security sector (or its separate segments). Under certain conditions, a Comprehensive Review may focus on the weakest components of the national security sector. Those tasks are vested in concerned ministries and agencies (internal control), external control bodies (the Accounting Chamber, inspections) and parliamentary control mechanisms. The monitoring of the implementation of programmes and plans should correspond to their stages and rest on an assessment of concrete results, as well as the expenditure of the relevant resources, the level of impartial control and the timely adjustment of the security policy. Mechanisms to monitor, control and assess the implementation of programmes and plans should be based on reports of actors implementing programme objectives, the recipients of the relevant results, the applicable state organ for statistics, e-governance, and independent sources of information.



Moving on, the processes of strategic planning and, respectively, the structure of planning documents, remains insufficiently regimented in Ukraine, constituting a primary reason for their low efficiency and the difficulties in controlling their development. A solution to this problem may be found in the adoption of the 'Law on Fundamentals of Strategic Planning' (instead of two current laws on state programmes).

The most controversial issue concerns the structure and content of documents of the conceptual-strategic stage. In brief, the internal structure of those documents should be as follows:

National Security Doctrine with relevant sections for the separate aspects of security (instead of the current Military Doctrine): general description of the security environment, essence of changes in it and a long-term forecast of developments; general description of the main threats, crises and conflict situations; methods of dealing with threat escalation, crisis management, conflict settlement, using Ukraine's resources and those of partners, principles of interaction with them and with international security organisations; summarised prospective models of the national security sector and its elements (**in terms of requirements for them**), and providing the required level of national security and contributing to regional and global security.

National Security Strategy: validity term (period); description of the main objects to be protected (social values, national interests, their exponents and bearers, implementation processes, including their resource support); description of the security environment and a mid-term forecast of developments (forecast of escalation of threats, their nature, sources and the potential of insecurity); strategic goal – the level of security and its parameters; **required capabilities of the national security sector and its elements**, and dynamics of their growth (commensurable with forecasts of threat escalation).

Concept (long-term programme) **of security sector development:** general description of the external and internal environment, factors that influence national security sector development; forecast and assessment of trends and dynamics of change; the would-be appearance of the national security sector and its elements (end goals) – taking into account provisions of the Doctrine (requirements) and Strategy (required capabilities); stages of creation of the required capabilities; the procedure for ensuring compatibility and the delivery of intermediate and long-term results; the prospective model of command and control systems, logistics and production facilities; principles and lines of military-technological partnership, import and export of military and dual-use products; financial requirement by stages; risk assessment and management of the Concept implementation.

The general strategic and conceptual documents are detailed in further documents developed on their own basis in specific structures of the national security sector, correlated with each other and with other State programmes and plans – in terms of time, results, resources, and actors. In separate agencies, strategic and conceptual documents may be merged together (for instance, in the Defence Ministry – in the Strategic Defence Bulletin).

PROPOSALS CONCERNING THE STRUCTURE OF STRATEGIC PLANNING DOCUMENTS		
Levels (stages)	Functioning	Development
Political (regulatory-legal)	Constitution, National Security Doctrine, Laws on principles of functioning of the national security sector and its elements, regulatory documents on its separate aspects, the President's Address, departmental orders, directives, etc.	Laws on the structure and strength of the national security sector and its elements, the President's Address, departmental orders, etc.
Conceptual-strategic	National Security Strategy, doctrines of security in the relevant sectors, strategic concept of employment of the Armed Forces, other elements of the national security sector, creation of the reserve of systems of mobilisation, logistics, etc.	Concept of development of the security sector and its elements (long-term programme)
Programme planning	Plans of: training, current activity, stationing, deployment, employment of forces; organisation and provision of readiness of the mobilisation system, civil defence of the population, defence of critical infrastructure; strategic infrastructure development on the state border and the country territory; manning of security forces with trained personnel, their equipment with arms, military and special equipment, materiel, formation of the state security order; international security partnership	Mid- and short-term programmes: of development (reformation) of the national security system, human and material resources, development of arms, military and special equipment; development of the defence industry base; Ukraine's integration in the Eurasian and Euro-Atlantic security space
Budgeting	Budget proposals, relevant items of the budget schedule; state order for the following year	

In addition to the above, an important factor for ensuring the efficiency of democratic control (and of government in general) is through the unification of the respective methodology and reasoning for decision-making with control of their implementation. This entails the existence of formalised:

- Agreed and approved descriptions of objects of governance and control: processes of development and functioning of the national security sector and its elements, acquisition of and provision with resources (financial, human, material, technical, administrative, organisational and legal), procedures of decision-making and their implementation;
- Clear criteria for the assessment of goals and results, reasoning of proposals, rules and procedures of alternative selection;
- Clear allocation of function, powers and *responsibilities* between managers and controllers.

The aforementioned factors also present preconditions necessary for the implementation of the background principle of NATO's administrative and managerial standard – “management through programmes”. In such conditions, managerial processes are transparent, clear and suitable for implementation and control, as well as being safe from illegal actions. In other cases (i.e. in absence of said preconditions), the mode of management becomes “manual”, guided by the emotions of decision-makers. These decisions ultimately form the basis for budget proposals, and it appears that the State budget finances somebody's emotions and preferences (the degree of their coincidence with the national interests is a question for law-enforcement bodies).

However, translation of the aforementioned preconditions from the necessary into the sufficient requires one more factor – political will. It is exactly this which gives rise to the need for enhanced institutional capabilities of civil society, the growth of its influence on State machinery, the perfection of the forms and methods of governance on this basis, and the strengthening of democratic principles.

THE GOVERNANCE ROLE OF DEMOCRATIC AND INDEPENDENT OVERSIGHT INSTITUTIONS

Simon LUNN,
former Secretary General NATO PA



I am pleased to be here for the second conference in this series, focusing on the challenges facing Ukraine in implementing Security Sector Governance.

Let me recall the centrality of the security sector to the functioning of the State and therefore, why its governance is so important. Briefly put, Security Sector Governance should ensure that: the defence and security sector is **effective** in pursuing the policies of democratically elected leaders, is **efficient** in the use of the national resources granted to it, and **reflects** the values of the society it protects.

These aims are unchanging; and the task of this conference is to identify the best practices which can facilitate their realisation. However, in identifying these best practices it is important to stress that they have emerged from very different political contexts and circumstances. They are not absolutes, but represent markers to assist in reaching the desired destination; their application and implementation will be influenced by specific circumstances.

Context, therefore, matters; nowhere is this truer than here in Ukraine. The **singularity** of the situation here was clearly demonstrated during the first conference. Several elements of the Ukrainian context were noted for influencing the pace of reform in the security sector:

- The impact of the war and the continuation of conflict in the East;
- The extraordinary release of civic energy in the form of “volunteerism”, the evident determination of many to drive through change, and the multiple activities to combat an obstructive, ‘old guard style’ bureaucracy – these activities are positive, but pose their own problems with respect to institutional functioning;
- The difficulty of changing attitudes and habits that have formed over the years;
- The need for outside assistance to support the reform and to exert much needed pressure in certain areas – many references to the need for outside pressure exist because the system remains incapable of reforming itself.

The above outlines some of the elements of the current context that influence the adoption of best practices for the Governance of Ukraine's Security Sector.

We have already discussed, at the first conference and here again today, the framework of best practices and mechanisms essential in providing the basis for Security Sector Governance. There is no need for me to repeat these.

For reference, I enclose my own list of best practices:

Each country adopts a different approach to achieving effective Security Sector Governance, based on its Constitution, history and culture.

These overall frameworks have the following common elements:

- The central principle is that armed forces and security services are subordinate to, and accountable to, democratically elected leadership;*
- Clarity of responsibility and competence in the arrangements for the command, organisation and management of defence and security, particularly clear lines of authority at senior levels;*
- A body of laws and literature including defence plans and military doctrine to guide armed forces and security services;*
- Professionalised and non-political armed forces and security services which protect and serve their societies;*
- A mix of civilian and military personnel in the defence and security sector;*
- An independent judiciary;*
- Effective parliamentary involvement to ensure effective democratic oversight and scrutiny;*
- Active media, NGO's and independent research institutes, contributing to openness, transparency and the involvement of civil society in state matters.*

In their own way, each of these components contributes to the effective working of the Security Sector; sometimes reinforcing each other, but equally, sometimes in tension with one another. Good governance of the Security Sector requires checks and balances; and frequently, the need to balance the demands of effectiveness with those of democratic accountability.

In this presentation, let me focus on the role and contribution of parliaments as the most visible of democratic oversight institutions.

The role of parliaments is particularly significant because in most countries, and because of its special nature and characteristics, defence and security lies primarily within the prerogative of the executive, while parliaments normally maintain a reactive role.

Parliamentary involvement in defence and security inevitably raises the question of the division of responsibility between the executive and parliament. In this relationship, there is a tendency for executive officials to resist the intrusion of outsiders, who they often perceive as 'amateurs'.

This is also true of relations between the military and their civilian and political counterparts. The lines that separate the respective spheres of competence and responsibility are easily blurred and political and military considerations frequently conflict with one another. The military have a tendency, understandable in certain situations, to see defence as their preserve and to resist outside interference, particularly from parliamentarians. Civilian involvement in military affairs during a time of conflict is a sensitive issue; even when done so by democratic leadership.

Inevitably, grey areas of disputed responsibility represent potential sources of tension and friction. Managing them constitutes the art of good governance; which takes time, perseverance, and the mutual respect of concerned parties.

All governments need the support and the democratic input of their parliaments. Parliaments play a variety of roles, reflecting different conditions and constitutional arrangements. In the field of defence, security and intelligence, these roles and best practices can be summarised as:

Legislation: drafting the necessary legal framework.

Budget: voting on the necessary resources.

Scrutiny: monitoring government activities.

Oversight: holding the government to account.

Transparency: contributing to the openness of the defence and security sector.

Members of parliament have the dual task of explaining and justifying government policies to the electorate, while reflecting on their responses.

How these roles are carried out varies depending on local conditions. The key questions in determining the strength of parliamentary involvement are: when, and at what stage in the development of security and defence policy is parliament consulted? To what degree are parliamentary views listened to?

As the democratic expression of the voters, parliament should, at least in theory, hold ultimate responsibility; being the final arbiter with the responsibility for monitoring the workings of the various related sectors and which should be involved in all stages of the development and implementation of the arrangements governing the country's defence and security, from concept documents, to organisation, to operations.

There are some areas of best practice where parliamentary involvement and influence can be particularly significant and which can often engender the following tensions.

Clarity: ensuring that there is clarity in the lines of command. Constitutional arrangements can leave room for doubt, and where doubt exists, confusion creeps in.

Participation: in the definition of the strategic goals of the armed forces and security services, and the publication of 'white books'. The executive takes the lead, but parliament should be engaged in these reviews, clarifying assumptions and priorities along the way.

The drafting of military doctrine is best left to the military. However, in the early days of democratic transition some parliaments attempted to draft military doctrine due to their mistrust of the military.

Budget: all vote on the budget needed for defence and security; the question is in what degree of detail do they examine the budget? What are the priorities? Do the resources available meet the needs?

Aligning mission and means: oversight can be effective in identifying a mismatch between the executive's ambition and the resources available (for example the United Kingdom in Afghanistan).

Checking mission and mandate: oversight can also identify when a country's participation in a mission ceases to be consistent with its mandate (for example, Norway's participation in the Libyan operation).

Encouraging: the 'civilianisation' of defence and security through the employment of civilians in the MOD. It should be noted, however, that becoming a civilian is not a question of simply removing a uniform and donning a suit, as happened in several countries during the early days of partnership;

Procurement creates conflicting pressures where military requirements often clash with political and commercial arguments; the military present their requirements but it is parliament who ultimately authorise expenditure.

Intelligence has a special significance for oversight because of its relevance to national security and the need for confidentiality and secrecy. This raises the question of who decides on who is granted 'access' to sensitive information, and, ultimately 'who guards the guardians?' – democratically elected representatives should be the final arbiter.

Corruption: parliament must be in the forefront of the fight against corruption.

Gender balance: parliaments should reflect society's norms, values and demographics; in several countries parliamentary pressure has pushed reluctant bureaucracies towards establishing a better gender balance.

In each of these fields there is potential for friction.

Parliamentary involvement needs the right structures in the form of Committees, debates, hearings, and audits.

However, it also requires the right people.

An effective parliament depends on the commitment of individual members to accept the obligations and responsibilities of being an elected representative. In order to play an effective role in the field of defence and security, they must equip themselves with the competence and expertise needed to exercise informed judgement, question and challenge the government and hold it to account.

Acquiring expertise can be a challenge because members have competing demands on their time. What is needed is a supportive infrastructure – professional

staff members, advisors, research departments and alternative sources of information, for example through NGO's. For many countries, particularly those in transition, the provision of this infrastructure is problematic because it requires resources, of which are often scarce. However, it is essential in order to provide effective parliamentary involvement; but also to ensure continuity, taking into account that elections frequently result in changes in elected representatives.

My own experience from 30 years of working with parliamentarians from a wide range of countries has shown me that members do master the key elements of the defence world, sufficient to be an equal partner with the executive. However, the process takes time, perseverance and resources.

Parliamentary involvement in defence is more effective if based on a cooperative relationship with the government. There is always room for tension between the two. However, it makes little sense, and is ultimately counterproductive, for the Ministry of Defence not to cooperate with parliament – the body that provides the resources. So the desired end-state should be a relationship based on respect, confidence and cooperation.

In time, these tensions are accommodated, becoming an essential element in the dynamics of democratic governance. Each country must manage this process in its own way and according to its own requirements, history and culture.

SESSION TWO.

WORKING GROUPS' JOINT MEETING

This session outlines best practices of international security governance, forming the core of this public communication and outreach project. The introductory presentations and follow-on discussion aims to standardise the agenda of the Working Group discussions on specific subjects.

Chair: Maksym BUGRIY, Razumkov Centre

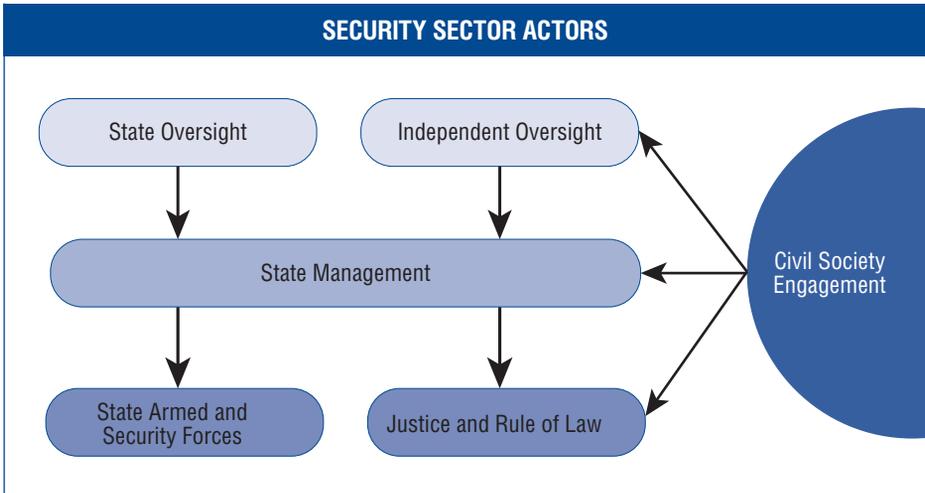
- Introduction to Gender and Human Rights in the context of Security Sector Governance *Claudia MICCICHÈ, DCAF*
- The Governance Role of Civil Society and the Media *Karina PRIAJINA, DCAF*
- Law Enforcement: International Best Practices in Use of Force and Firearms *Nazli Yildirim SCHIERKOLK, DCAF*
- Intelligence and Defence Oversight and Reform: Best Practice and Reference Materials *Dr. Philipp FLURI, DCAF*

INTRODUCTION TO GENDER AND HUMAN RIGHTS IN THE CONTEXT OF SECURITY SECTOR GOVERNANCE

**Claudia MICCICHÈ, Coordinator,
Office of the Deputy Director, DCAF**



Governance is an umbrella term that can be generically applied to security to explain how international, national and local actors all play roles in shaping decisions about security and their implementation.¹



Security Sector and Human Rights

The security sector has a crucial responsibility in society to support democracy and human rights and to protect citizens, including those most vulnerable. This considerable responsibility underpins the essential compact that exists between security forces and the societies they are meant to protect and defend. Such concepts are essential to achieving the objectives of good governance and security.

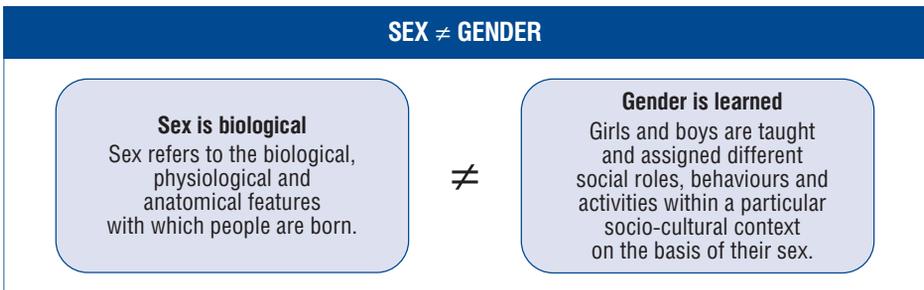
¹ Bevir, Mark (2013). *Governance: A very short introduction*. Oxford, UK: Oxford University Press.

Principles of Security Sector Governance

- Security, human rights and development are interdependent and mutually reinforcing conditions for sustainable peace;
- Effectiveness, accountability and democratic governance are mutually reinforcing elements of security;
- Men and women have different experiences of insecurity and have specific security needs;
- Security Sector Reform (SSR) can only be achieved within the broad framework of the rule of law (RoL) and strengthening the RoL is the purpose of SSR;
- SSR is a multi-stakeholder process, which goes beyond traditional military elements and involves a much wider range of national institutions and actors.

Gender Equality

Sex is defined by reproductive organs, male and female chromosomes (e.g. XY and XX) and male and female hormones. The terms “male”, “female” and “intersex” refer to the SEX of the individual.



Gender roles are changeable and vary within and across societies and cultures. This means gender roles are not the same in all socio-cultural contexts, and within one socio-cultural context they will change and develop in relation to the changes experienced by that society. The terms masculine, feminine and transgender refer to the GENDER of the individual.

Gender equality is an international norm that stipulates the equal rights of women and men to opportunities and resources irrespective of their gender or the sex with which they were born.

Gender refers to the socially constructed roles, identities, and relationships of men and women. Gender – along with ethnicity, age, class, religion, and other social factors – determines the roles, power, and resources for females and males in any culture, and the power relations between men and women. While ‘sex’ refers to the biological differences between females and males, ‘gender’ is not determined by biology; it is learned. From an early age, boys and girls are taught different roles and ways to behave by their families and cultures. These accepted

roles and identities may differ among communities or countries and many may change with each generation.

When gender equality is not considered, SSR will fail. When gender equality is not considered in SSR, security sector institutions are unlikely to challenge the status quo, one which typically protects the interests of the more powerful, male-dominated political elites and overlooks the security needs of women, girls and gender-based minorities.

Gender equality is a constituent part of national and local ownership of SSR. SSR is only successful when led by national authorities and supported at the community level. Legitimate ownership requires that women and men have equal opportunity to influence decisions about Security Sector Governance (SSG) and their implementation, including through public oversight. Participation may be direct (e.g. through diverse and elected or duly appointed bodies) or indirect (e.g. through consultations with civil society organizations, including those supporting marginalized groups of women, men and gender minorities).

Fair and equitable representation in security institutions. Women's participation in promoting the good governance of security institutions should not be limited to representation at the working level of the institutions, but rather should extend to active participation at the senior management and strategic policymaking levels.

Conventions. Because gender equality is a human right protected under international law, incorporating the aims of gender equality into SSR may be a legal obligation according to international instruments such as:

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979) which contains several legal obligations related to SSR, including:

- The adoption of legislation and other measures **prohibiting discrimination against women**;
- **Women's participation** in the formulation of government policy, on equal terms with men;
- The elimination of discrimination against women in **employment practices**;
- Measures to ensure the **full development and advancement of women** for the purpose of guaranteeing them equal enjoyment of human rights and fundamental freedoms.

The Beijing Declaration and Platform for Action (1995) identifies specific actions to be taken by governments, international and national organizations and other relevant stakeholders to combat gender-based violence and achieve gender equality in all spheres of society, including the security sector.

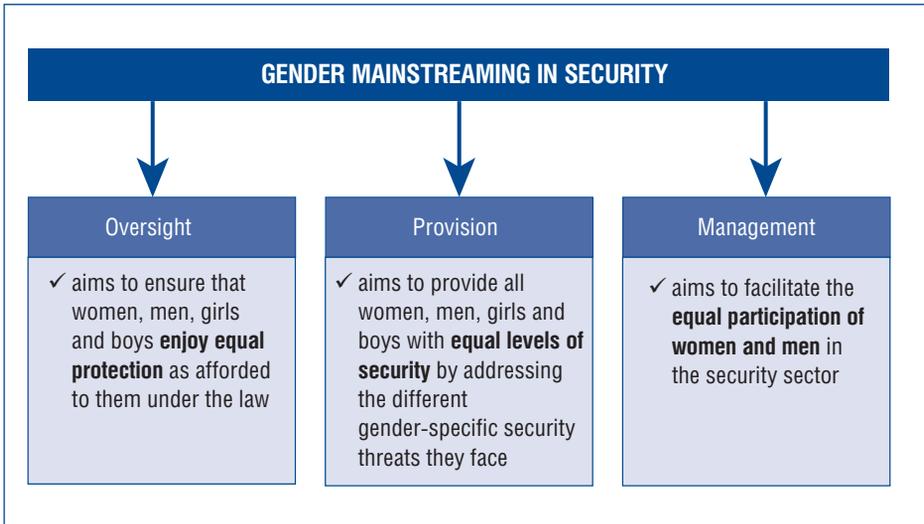
Regional instruments with provisions protecting gender equality include:

- The African Union's Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003);

- The Organization of American States' Inter American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para) (1994);
- The Organization for Security and Co-operation in Europe Decision No. 14/05 on Women in Conflict Prevention, Crisis Management and Post-conflict Rehabilitation (2005);
- The European Union Equal Treatment Directive (2006).

UN Security Council Resolutions (SCRs) 1325. In the context of UN-mandated SSR processes, the UN Security Council Resolutions (SCRs) on women, peace and security define minimum standards related to gender equality that are legally binding. UN SCR 1325, adopted in 2000, is the most influential resolution, as many member states subsequently adopted national action plans detailing how it should be implemented.

Gender Mainstreaming.



Gender mainstreaming means promoting the equal participation of men and women in every part of the security sector and in everything it does. Gender mainstreaming is the process of assessing the positive and negative implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels.

To conclude, security must be provided as a public good: ensuring the security of all citizens. Security services should be based on, and responsive to, people's needs.

THE GOVERNANCE ROLE OF CIVIL SOCIETY AND THE MEDIA

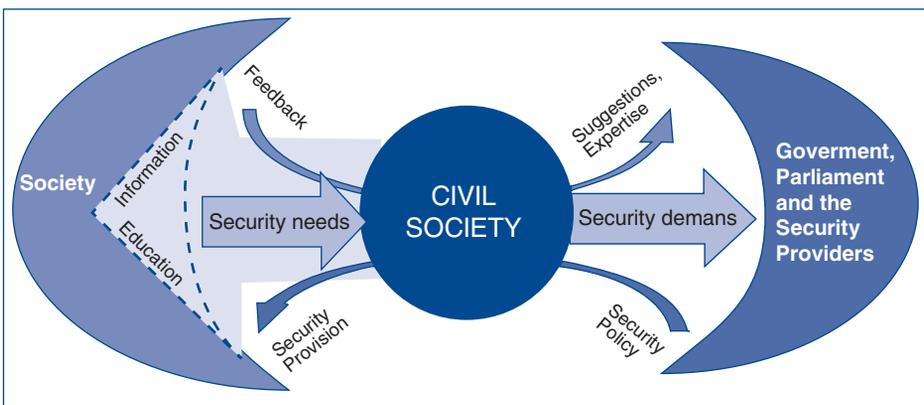
**Karina PRIAJINA, RA NIS Programmes,
Office of the Deputy Director, DCAF**



The Role of Civil Society

Civil society – in all its forms, including Civil Society Organisations (CSO), the media and engaged citizens – plays a crucial role in democratic Security Sector Governance (SSG).

- Among other things, civil society contributes to communication, information, education and representation. Moreover, it provides expertise, human resources, and carries out oversight functions:
- It is a channel for communication. It translates society's security needs into security demands and communicates them to the Government and the Security Sector. It also translates and communicates back to the authorities, society's feedback on the performance of the security sector.
- Civil Society Organisations (CSO) and the media provide information to the public and raise awareness about the importance of SSG issues.
- In doing so, they also educate the public, other CSOs and security sector personnel.



- Civil society should be representative of society. CSOs have unique access to local groups and minorities. Therefore, they play a valuable role in communicating the needs and interests of these groups to their respective governments.
- CSOs are also a source of expertise and knowledge. They can provide technical input to policy making and implementation, and analyse the potential effects of a given policy.
- Civil society and the media play an important oversight role. They evaluate and monitor the security sector, its policies and performance.
- Civil society also provides a source of skilled professionals that governments can utilise.

How can civil society contribute to Good Security Sector Governance?

- How exactly can civil society contribute to good SSG? There are many ways to do that:
- CSOs can carry out policy-relevant research. However, it must be conducted in a professional, competent and independent manner.
- Advocacy serves as a means to exercise influence and is closely related to awareness-raising and lobbying. Advocacy requires establishing a dialogue and engaging on an on-going basis with members of parliament and government officials. Advocacy may include activities such as public education, research, networking, public mobilisation, agenda setting, policy design, implementation and monitoring.
- Awareness-raising and advocacy are key tools for educating citizens about their rights vis-à-vis the security sector. Through awareness-raising, CSOs can encourage public debate and focus public attention on issues that would otherwise be ignored.
- Another fundamental skill that CSOs must have is the ability to train their staff, peers, citizens, security sector personnel, and the staff of democratic institutions.
- One of the fundamental tasks of Civil Society is monitoring the performance of the security sector. It should evaluate the quality and effects of security policies; as well as the level of respect for human rights and the rule of law they engender. This task contributes to greater accountability of the security sector and therefore, good governance.
- As mentioned before, civil society provides a valuable pool of knowledge, advice and experience for governments, in particular regarding legal assistance and budget analysis.
- In order to have a real impact on SSG, civil society needs certain tools. It needs capacity to work effectively. Therefore, CSOs should focus on strengthening their skills, knowledge and practices, not only for policy analysis, advocacy and monitoring, but also for internal management, fund-raising and outreach. Capacity-building should be a top priority for civil society.

- Another crucial component is credibility. Through acquiring capacity, creating networks and ensuring ones' own integrity, transparency and accountability, CSOs can gain credibility and expand their area of influence.
- To that effect, it is important to reach out to other CSOs and to international organisations to establish partnerships and networks of cooperation, as well as to coordinate efforts in a strategic manner.

Key Partnerships and Networks

To be effective, therefore, civil society needs partnerships.

- The key partnership concerns the relationship between the State and the civil society. It must be built on trust and dialogue. The success of Security Sector Reform depends on it. It should be done through an inclusive and participatory approach, bringing citizens and CSOs into the decision-making process.
- A partnership between civil society, the parliament, its committees and the ombudsman is absolutely crucial to good Security Sector Governance. Specialised CSOs are well placed to provide legislative assistance to parliamentarians, for example.



- CSOs should establish partnerships with other CSOs, especially international and regional organisations who have more power in the international sphere. International alliances provide a crucial platform for issues of importance to international attention. They also contribute to improving organisational credibility. The ability to construct effective alliances with the international community – in terms of funding, training, information, human resources and solidarity networks – is a core skill any CSO must develop. CSOs working on the same issue or in the same region should coordinate their efforts.
- Media and CSOs should support each other in their efforts to inform the public about the security sector. CSOs need information provided by journalists in order to carry out research, address issues, raise awareness and suggest recommendations. Media, on the other hand, need CSOs to provide support and protection for journalists addressing sensitive and difficult issues. CSOs also need the media to publicise their publications and findings. In turn, the media need CSOs to provide them with knowledge and expertise. It is a mutually beneficial alliance.

Key Qualities of CSOs

Civil society organisations need tools and partnerships to operate, which implies that there are certain qualities that all CSOs should aspire to have.

They should think strategically and act strategically in order to maximise the impact of their activities.

They should develop skills to monitor and evaluate their own work; this is a precondition for determining the effectiveness and efficiency of their activities. Positive results can be shared, and through ensuring best practices are followed and effective monitoring is conducted, can improve weak aspects. This also contributes to the group's transparency and promotes accountability and integrity.

CSOs should strive to be independent.

They must actively seek to acquire expertise and engage effectively with relevant actors in order to build capacity.

They must develop networks of cooperation with other actors involved in their field of work.

They should strive to achieve organisational credibility, which will enable them to enhance their capacities.

Civil Society and Building Integrity

Building Integrity (BI) and anti-corruption initiatives are a vital part of democratic Security Sector Governance and Security Sector Reform.

In order to contribute to BI efforts, civil society and the media must raise awareness about the importance of these topics. They should expose wrongdoings by means of whistle-blowing; oversee and monitor policy-making, budgeting and implementation processes; provide expertise and promote best practices. CSOs need to be proactive and work in cooperation with the Parliament, its committees and the ombuds institutions.

Providing BI trainings to security sector personnel is one of the most important contributions civil society can make to good SSG. These trainings should also be open for peers and the wider public.

CSO should, of course, abide by the values they promote and stand for. They must be transparent and accountable in their own financial affairs and operations.

Issues and Challenges

Civil society faces, of course, many challenges – among them, the lack of effective implementation of Good Governance legislation, as well as tools and infrastructure to participate in the SSG processes.

Another obstacle is media concentration: the emergence of new media outlets has led to a greater variety of public information sources. However, the continuing domination of mainstream media means that most of the public remains unaware of alternative options.

SSG issues are usually complex and technical. Additionally, security sector personnel and experts tend to use a complicated lexicon, making it difficult for the average citizen to grasp the importance of these issues.

The most controversial challenge concerns the 'culture of secrecy' that surrounds the security sector. Transparency should be enhanced because it lies at the very foundation of democratic SSG. It is also essential for fighting corruption and building integrity.

Another important challenge is the lack of coordination between different CSOs, which can lead to duplication of tasks as well as poor results.

Recommendations

Legal and constitutional provisions such as group autonomy, freedom of the press and to protest, freedom of speech and freedom of information, are essential for good governance. They must be improved, implemented and exercised. Protection of whistle-blowers and journalistic sources is an essential part of this equation.

With regards to the media, it is important that there is a variety of independent news outlets, and free and fair competition between them.

Coordination among all the actors involved in the SSG is needed.

Donors should encourage the development of independent media and CSOs and invest in building their capacity. Additionally, they should make strategic decisions which take into consideration a broader view of the impact of their activities with regards to SSR.

It is more vital than ever to develop media literacy of citizens. Making an effort to communicate in a clear and understandable manner is part of this. Media have an important role to play when it comes to attracting public interest in SSG issues by acting as an interpreter. A healthy democracy requires informed citizens who have access to timely, accurate and reliable information on issues that affect them and matter to them; and are therefore, equipped to participate constructively in public debate. Additionally, CSOs should push for the institutionalisation of government consultation with civil society.

There should be more inclusiveness, in general. A participatory approach is needed to build a sense of local ownership in SSR and increase the legitimacy of the process. Civil society and media must increase their efforts in raising awareness on the importance of anti-corruption and building integrity measures.

Monitoring and oversight should be encouraged on all fronts. Part of the effort should be aimed at educating and preparing the next generation of civil society actors who can exercise effective oversight of the security sector.

Civil society must focus on sharing their expertise through trainings for security sector personnel, parliamentarians, civil society organisations and the wider public.

Conclusions

Civil Society plays a crucial role in SSG.

It contributes to making the security sector and the Government transparent, accountable, representative, effective, efficient, legitimate, and therefore, democratic.

CSOs provide avenues for individuals to participate in public life, beyond the periodic opportunity to vote.

In order to fulfil its role successfully, civil society needs space; tools; partnerships; capacity; credibility and strategic vision.

Without a healthy and active civil society there can be no democratic governance.

LAW ENFORCEMENT: INTERNATIONAL BEST PRACTICES IN USE OF FORCE AND FIREARMS

Nazli Yildirim SCHIERKOLK, DCAF



In this event, I was asked to talk about law enforcement and international best practices, but as you would agree, the topic of law enforcement is broad, and the challenges faced by Ukraine, as well as respective international best practices in such areas, cannot be adequately addressed in 15 minutes.

During the first conference in January 2016, the issue of **unlawful/excessive use of force** was highlighted by both speakers and participants among many other challenges such as: lack of political will and of clear reform roadmap; political influence on law enforcement; ineffective public outreach; widespread corruption; lack of professionalism; overly centralised structure; human right violations in the criminal justice process; blurred lines between law enforcement and military operations; widespread impunity; lack of oversight; insufficient financing and infrastructure.

This is by no means an exhaustive list, but to for this presentation and I will focus exclusively on the use of force during regular law enforcement activities, and not law enforcement involvement in military activities.

At the international level, the United Nation's Basic Principles on the Use of Force and Firearms is the main instrument referred to, which codifies the use of force. It received universal endorsement, and its principles are embedded in the laws and regulations of many countries.

Key principles for the Use of Force and Firearms

Legality: laws, by-laws and regulations should clearly stipulate under which circumstances police can use force and which equipment they are allowed to utilize to do so.

Necessity: any use of force should be absolutely necessary for achieving the police action and/or objective (i.e. arrest, stopping the crime).

Proportionality: the use of force must be in proportion to the seriousness of the offence and the legitimate enforcement objectives to be achieved.

Accountability: states and law enforcement agencies have an obligation to effectively investigate cases and hold officers to account, including superior officers who gave initial orders.

Precaution: the principle of precaution requires that all feasible steps – in regards to planning, preparing, and conducting operations related to an assembly – be taken to avoid the use of force or, where force is unavoidable, to minimize its harmful consequences. When force is used, but could be reasonably avoided, a State may be held accountable for the failure to take due precautionary measures.

Gradual de-escalation: weapons and tactics should allow for a graduated response and the de-escalation of tensions. Accordingly, the provision of a firearm to a law enforcement official who has no non-lethal alternative other than a baton is unacceptable.

The gradual use of force, if applied correctly, guides the police official to comply with the principles of proportionality and necessity.

Examples of Good Practices in Regulating the Use of Force and Firearms

Use of Firearms

The ‘Protect life’ principle – namely, that a life may only be taken intentionally in order to save another – can be described as the leading principle for the protection of the right to life.

Good practice involves clearly stipulating this in Law, and not defining it vaguely. Indonesian law on police is a good example of that:

“The use of firearms shall be allowed only if strictly necessary *to preserve human life* (INP, No. 8, 2009)”.

Some legal frameworks allow firearms to be used for the protection of important buildings or facilities. However, using intentional lethal force to protect buildings or important facilities is not permitted under international law.

Shooting at an escapee

Another controversial issue concerns whether police can use firearms in the event of a person, who, under arrest or detention, escapes from police custody. UN Basic Principles are clear – firearms can only be used to prevent the escape of a person posing a grave threat to life. It is imperative that countries do not misuse this principle by granting police the power to shoot at anyone attempting to escape from custody. If a suspect is not armed, the use of firearms can never be justified (this is also a manifestation of the proportionality principle).

In regards to the aforementioned, Brazilian law exhibits good practice. For example, Law No 13:060, passed in Brazil in 2014, prohibits law enforcement officials from shooting at an unarmed person running away. Kosovo’s Police Law also embraces this principle. Kosovar Law only allows the use of firearms to prevent the escape of a person *presenting an imminent threat to the life of other persons*.

The only exception from the aforementioned is when the unarmed person is a convicted serial killer.

Shooting at moving vehicles: another important issue concerns whether law enforcement officials are permitted to shoot at moving vehicles who do not obey their orders. Emerging good practice in this regard involves limiting the use of firearms against or from moving vehicles. A good example is that of the United Kingdom, which, in 2013, devised detailed guidelines on the use of force in relation to moving vehicles (College of Policing Guidelines, 2013).

The Law obliges that in normal circumstances, police officers are not permitted to fire at or from moving vehicles, regardless of whether the vehicle disobeys an order to stop. Only in cases when a threat to life exists, and when this perceived threat is supported by intelligence, can law enforcement officials engage a moving vehicle with firearms.

Recently, Paraguay also banned the use of firearms against moving vehicles. The *'Manual on the Use of Force by the National Police, 2011'* prohibits shooting from or into moving vehicles, except in cases where not doing so will likely lead to serious injuries to the police officer or third parties and when no other option exists. Recently, Ukraine experienced an incident where a police officer fired at a moving car and killed an innocent passenger. Although every case should be assessed on its own merits, international trends are certainly moving towards stricter regulations, stipulating clearly in guidelines and manuals that police officers who do not abide by these rules shall be held accountable.

Use of firearms in public assemblies:

Argentina, Venezuela and South Africa are among those countries that have explicitly banned the carrying of firearms during public assemblies. Among other reasons, there is a risk that the firearms may get lost or stolen.

Thus, it is important to equip police officers with a range of non-lethal equipment to avoid the use of firearms. Although UN Basic principles cover the use of non-lethal force, they are not specific. Since 1990, technology has advanced immensely, particularly in regards to non-lethal weapons. Therefore, stricter regulation is needed; because if not used correctly, non-lethal weapons can inflict fatal injuries. In 2016, the UN commissioned a group of experts to develop basic guidelines regulating the use of these weapons.

Standards and good practices in using less – lethal weapons:

Rubber coated bullets:

Kinetic impact projectiles must not be fired randomly at a crowd, but rather against, and only against, person(s) engaged in violence against others, and only when other means have failed to stop the violence. They should be aimed at the lower part of the body so as to minimize the risk of serious injury. They should never be fired in skip-fire (i.e. re-bouncing off the ground).

The Parliament of Catalonia in Spain prohibited the use of rubber bullets in 2013.

The case of Argentina provides a good example of strict regulation as it only allows the use of rubber bullets in self-defence or in defence of a third party. In this sense, the respective Law effectively equates non-lethal weapons to firearms, imposing the

same conditions on their use. Furthermore, it explicitly prohibits the use of rubber bullets to disperse a crowd (Protocol for Public Demonstrations, 2011).

Conducted Energy Devices (Tasers)

Another non-lethal weapon widely used by law enforcement officers are 'Conducted Energy Devices' (CEDs), also known as Tasers. As a substitute for lethal weapons, Tasers should only be used when there is a real and immediate threat to life or a risk of serious injury. They should never be used in prisons or psychiatric clinics – except in hostage situations.

If misused, Tasers can cause heart attacks or long lasting health problems. The UN Committee against Torture has, on several occasions, raised concerns that the use of CEDs, could, in some situations, amount to torture.

Furthermore, CEDs should be equipped with a device (generally a memory chip) that can be used for recording information and conducting checks on the use of the weapon (such as the exact time of use; the number, duration and intensity of electrical discharges, etc.). The information stored on these chips should be systematically reviewed by the competent authorities at appropriate intervals (a maximum recommended interval would be every three months). France exhibits good practice in this regard. According to the '*Code of Internal Security, 2012*' all CEDs are equipped with a control system that records any use of the device. In addition, each use of these devices must be reported to the civilian authorities.

Accountability:

Accountability is a very broad issue and there are many different internal and external oversight mechanisms that aim to ensure it. Selected standards and good practices: **Individual level – Holding Superiors Accountable.** As stipulated in UN Basic Principles, commanders and supervisory officers will be held responsible if they know, or should have known, that officers under their command have resorted to the unlawful use of force, and did not take all reasonable measures to prevent it. This principle, with almost the exact same wording, is enshrined in the UK College of Policing guidelines.

Investigations:

In regards to investigations concerning the abuse of force, it is a well-established standard that while initial investigations are often carried out by the police, they should be conducted by a special unit in charge of investigating possible offences by police officers, and should be staffed by officials who do not have any personal or professional ties to the officer(s) under investigation. This is the case in Netherlands, where the National Police Internal Investigations Department, while part of the Dutch Police, is a separate, highly specialised investigation service under the direct control of the General Prosecutor.

Further information on examples of good practice can be found in the following Amnesty International Publication on the Use of Force:

<http://www.amnesty.nl/nieuwsportaal/rapport/use-force-guidelines-implementation-un-basic-principles-use-force-and-firearms>

INTELLIGENCE AND DEFENCE OVERSIGHT AND REFORM: BEST PRACTICE AND REFERENCE MATERIALS

Dr. Philipp FLURI,
Deputy Director, DCAF



Ukraine is undergoing reform in both the areas of intelligence and defence. In terms of reference materials and international organisations' engagement, we can say that the defence sphere is very well documented. For example, when it comes to best practices, NATO has done its utmost to document everything related to institution-building and enhancing integrity in the defence sector. If one wants to acquire this information and to seek guidance from it, it is widely available in reference documents, including in the Russian and Ukrainian languages. One can seek guidance from the documents and from the respective organisation: for parliamentarians – from NATO PA programmes; for academy representatives – it is very likely that their academies are part of the PfP Consortium of Defence Academies and Security Studies Institutes, a body that provides comprehensive guidance in terms of institution-building in the defence sector.

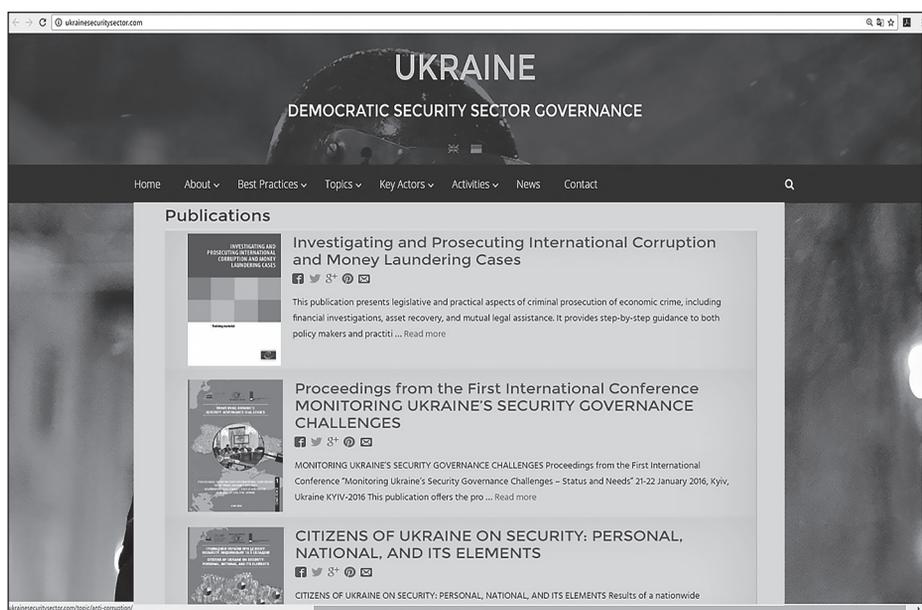
The message is the following: the management of the defence sphere (not military actions, but the actual management of defence), including all aspects related to planning, procurement and human resources, is essentially not that different from other spheres of management. That is a very important point. Working for many years across Europe, I have become familiar with the mystification of the defence and intelligence sphere: “one can understand the science of defence planning only if one is initiated through strange rites”. This, however, is not correct. You need a manager to run a hotel or a shoe factory, just as you do a defence establishment. For all three, you need to be a good manager: you need to understand what planning is, what strategic planning is and what transparency is; you need to know what people to hire, and to what parameters and criteria they should meet. If you do not understand the aforementioned, then you are the wrong person for the job, even if you are wearing a uniform with five stars on your shoulders.

In essence, defence reform is about understanding management and applying the principles of management effectively. Essentially, defence reform is about producing

a 'product' (i.e. effective defence institutions) which contributes to the defence and security of your country. The production of this 'product' should be done in a transparent and accountable manner, with the correct parameters and mechanisms in place, guaranteeing that the 'product' is produced in an accountable, efficient and effective way. If you cannot do that, put simply, you are the wrong person for the job.

There are two spheres in the production of defence. The first is the one I have just discussed. The second concerns the activities, or military actions, usually planned and executed by General Staff. In this sphere, one adheres to a different code of conduct and values. While one understands that working in this sphere puts your life at danger, a large element of working in defence also concerns management and the need to have the right person in a right position. This is the message of NATO in the sphere of defence institution building. In order to have accountability, proper mechanisms are required: who is accountable to whom and who oversees who within the organisation? So, the rules of engagement for internal executive oversight need to be clarified along with the definition of the discrete entity in the defence institution system. We need to know what these institutions are meant to do to avoid overlap, inefficiency and the duplication of work; which inevitably leads to insecurity because of inaccurate definitions of portfolios for defence institutions.

We also need to know who the 'right people' are to hire for these institutions. Thus, human resource management constitutes a critical element for an effective management structure. Employing unsuitable people can make functioning institutions inefficient. Even if the right people are hired and properly trained, there is an issue of appointing an appropriate superior who is in charge of instructing and overseeing these people.



With regards to intelligence reform, it is important to say that State security and intelligence service in Ukraine differ somewhat from their regional counterparts. For historical reasons, State security and intelligence services are still deeply integrated in Ukraine and the question remains as to whether they should stay as they are or embrace the experience of other western intelligence services: for example, the separation of strategic and tactical levels, analysis and collection systems and the civilianisation of services, or at least an introduction of civilian departments – not bound by uniform and the military's code of conduct. These are issues that need to be addressed by Ukrainians themselves. This is an important message, because this is your country and your security services.

With this in mind, a broader base of discussion is needed for reform. As we have already seen, there is a place for external experts and for civil society. However, not everyone who considers him or herself a member of civil society, just because he or she has an opinion, should be asked. However, usually, despite the traditional secrecy attached to the activities of such services, expert knowledge also exists outside of them. These experts need to be consulted when it comes to questions such as: how can civil society to be brought into the domain of the security services? (Along the lines of what the police is achieve with respect to community policing).

In order to use the knowledge of external experts, one needs to establish mechanisms and channels for the exchange of such information. If such information exchange is one-sided, then it is unlikely to function effectively in a democracy. If a State security service needs to expand its knowledge and its database by accessing the resources of civil society, then the service needs to be transparent. It should thus opt for a policy of strategic communications for if you want the support of people, you need to help people understand what you are doing.

You do not need to be transparent about everything, however, it is important that public understands your roles and functions. Although is hard for information exchanges to be fully symmetrical in this regard, security services still need to be honest with respect to strategic communication. This is a very step of reform as it also informs you of what the public expects from you. Like the Police in Ukraine, 25 years after independence, they still require transformation from what is essentially colonial policing into the 'people's' police, just as the Security Service of Ukraine needs to be transformed from a State security service into a 'people's' security service. This can be realised only with the active help and engagement of the public.

Here again, I would like to remind the audience that a host of publications developed by DCAF are available, both in the Ukrainian and Russian languages. They will also be available on our new website.

Finally, there are more important messages, which go beyond the point of being effective and efficient. These are the cultural messages coming from European nations, the EU, OSCE and NATO, regarding human rights and democratic oversight: democracy needs to be reflected in the way that defence and security services are organised.

WORKING GROUP I DISCUSSION. THE ROLE OF PARLIAMENT, JUDICIARY AND OMBUDS INSTITUTION IN SECURITY SECTOR GOVERNANCE

Chair: Mans HANSEN, Folke Bernadotte Academy

WG I discussion was focused on the role of parliament, Ombuds institutions and judiciary in Security Sector Governance. The objective of the session was to identify a range of problems and to develop possible solutions, suggest preliminary recommendations regarding the priority issues to be addressed.

Among other issues the following main problems were mentioned:

- Most of the problems related to the Parliament's performance of its role in the Security Sector Governance are rather of a general nature of the underdeveloped political system in Ukraine, weak institutions, a very low respect to laws and rules by even those who are supposed to show an example.
- Ukrainian officials, but not only are too focused on producing new and refining existing documents for the reason of meeting European or Euro-Atlantic standards while omitting the next necessary stage of their strict implementation. Similarly - creating new institutions without radical changes of the Soviet-style institutional culture.
- An insufficient level of professionalism and security related knowledge of many MPs – which is rather natural and universal – are not compensated by the appropriate institutional support or external expert resources.
- Best practices are used mostly to develop new documents, most of those are to be never implemented.
- Special services are afraid to share sensitive information with MPs because of their irresponsibility, which may lead to the leakage of such information.
- Non-reformed judicial system reform remains the biggest obstacle for proper functioning of the Ukrainian security sector and Ombuds institutions.
- Security Sector representatives understand both an importance and their interest in the well-established system of parliamentary control. At the same time, they are unwilling to provide access to sensitive information for the MPs because of the concerns about their reliability.

Recommendations:

- Requirements for the employees should be based on functions and objectives of institutes and the latest should come from the comprehensive strategic vision.
- The problem of quality of political elite is not to be unless the majority of citizens are properly educated in order to make an informed choice as voters.
- More efforts should be devoted to increase professional level of the special parliamentary committees by more responsible selection of members, improving the professional level of supporting staff.
- Any initiative of creating new institutions, including separate Military Ombudsman Office should be carefully considered upon avoiding duplication or creating additional problems of horizontal coordination.
- People need to be better informed about their rights, ways to protect and to appeal in case of violations as well as to be offered by the different sources of such information and means of reaching the proper addressees in case they needed.

DISCUSSION (extracts)

Talking about institutes of Parliament, court system, Ombudsman, I think we repeat the common mistake – start talking about our practices at once. We are looking at institutes through the lens of our practices, forgetting that they are in many aspects flawed and even harmful. Instead, we should be talking about the goals, principles and basis of operation of these institutes. We must determine requirements for the employees, functions, based on the objectives of these institutes. And the objectives should come from the comprehensive strategic vision of the concept.

The essence of the institute of Parliament in Ukraine is unfortunately largely emasculated. At this point, our Parliament is not the centre of reconciliation of interests – there is only imitation of this process. In international practices, parties are carriers of institutional experience, through which they pass practices into the Parliament, thus preserving the continuity of procedures and traditions. Since we have no parties in the classical sense, we need to look for other agents to take on the institutional role. At this point, I see no such agents in the Parliament. So we need to talk about institutional strengthening – capacity building, even building things from scratch.

We hear inspiring calls to study best practices. The trouble is that officials use these practices to develop a specific document. Soon after a document is developed, it is forgotten. What we need is not to develop specific documents, but rather to develop political culture to create a complete structure of documents.

What are the key things that the Parliament, judicial branch of power, the Ombudsman institution has to ensure? We can establish three-four ombudsmen – this will not resolve anything in our situation, until we revise our very approach to institutions. Therefore, it is necessary to focus on developing the institutional framework and respecting rules and procedures.

The parliamentary law (regulations) is a fundamental document of the Parliament that regulates its activity and ensures its institutional capacity. By neglecting and manipulating the fundamental procedures the Parliament undermines the legitimacy of the institution, gives a bad example to other political actors as well as bad signals for our foreign partners.

Talking about parliamentary control over the SBU, at present, there are numerous agents of control such as the Verkhovna Rada itself, Verkhovna Rada Committee on National Security and Defence, Verkhovna Rada Commissioner for Human Rights, MPs and the Accounting Chamber. I agree that these functions are somewhat dispersed and should preferably be assembled, possibly, in a special committee for security services supervision.

Society needs to understand, what this or that agency does, how well it does its job, whether the society needs it in its current form altogether. Best practices of European and NATO states show that the main job of democratic control is to be done by parliament itself, or such that is organised within the Parliament, even if it is an independent body.

Parliamentary Assembly of the Council of Europe has repeatedly noted that the work of the Verkhovna Rada Committee on National Security and Defence in the part of execution of its control functions is inappropriate. When we discussed this issue with representatives of European Union Advisory Mission, NATO Liaison Office, they noted that in European countries, including Sweden and Norway, the effectiveness of parliamentary control is determined by the amount of access to information of the controlled body.

We already spoke a lot about giving more powers to a special committee. Without questioning the professionalism of colleagues from the Parliament, it should be noted that among the staff of the Verkhovna Rada Committee on National Security and Defence there are essentially no people with relevant special training, relevant experience of work specifically with special services. The political situation is such that the received sensitive information may possibly be used for public relations, possibly disclosed.

We envisage that one of the mechanisms for improving parliamentary control will be either a revision of the way the abovementioned Committee functions or establishing another independent authority within the Parliament with corresponding functions assigned to it. In this case, the legislation should set clear requirements for the members of such controlling authority. In EU and NATO countries' practices, these are, as a rule, the most influential recognised politicians, former judges, security services employees, representatives of opposition parties, etc. These people need to enjoy respect and possess professional skills in the area. Procedure, frequency and form of reporting of the controlled authority to the controlling committee must be determined, as well as the order and limits of access for this committee's members to classified information. Of course, other forms of cooperation between such a committee and the controlled authority must be determined as well.

Answering the question, whether the officers of SBU feel the need for parliamentary control, the possibility of receiving assistance from the Parliament specifically through the instruments of parliamentary control, I would like to say that it is as relevant as a public control. In our country we have the practice of creating public councils as advisory bodies in most ministries, agencies, departments. SBU is not an exception. Cooperation is mutually beneficial. The Parliament, which understands the challenges and needs of the controlled authority, can resolve them more quickly and efficiently, than if the said authority had to initiate resolving such issues on its own.

Often, foreign experts use unfounded, irresponsible statements made for instance by Ukrainian MPs. For instance, one of the MPs stated that 80% of the SSU were people related to KGB. In fact, 99.9% of SBU current staff is not related to KGB. Why has the SBU not reached the desired standards? SBU, along with all other intelligence services, is comprised of representatives of the society. We fail to meet the standards not because we are related to KGB, – this is nonsense. Perhaps, our society has simply not reached these standards yet. When it does, we can talk about responsibility of the Service, which represents a society.

Within our system it is hard to call Ombudsman institution a controlling agency in the full sense of the word. Whether it receives information or not, does it need to have additional powers or not – is a subject for discussion. Rather, this is an oversight agency, which, in case it receives information, can either send inquiries or not to send; can receive an answer or not receive it; can use it in its further work or not use it. These are rather isolated functions that cannot be considered controlling functions. So, I think this institution should be fundamentally reformed, how – is a question for further discussion.

It was proposed to create such agency within the Armed Forces. I think that even if it is created, similarly to the existing Ombudsman institution, it will not have significant influence on democratisation of operation of the Armed Forces. If this authority is created with all the functions of the Ombudsman, then it will be an effective institution, then its introduction will be worthwhile. If it is just for overseeing, we will have the number, not the result.

There is a great number of controlling agencies in Ukraine. So, I do not see the need to give additional controlling functions to the Ombudsman. The Ombudsman should execute the function of parliamentary control over the observance of human rights and freedoms of citizens. Today the Ombudsman already has controlling powers – according to legislation on citizens' appeals, access to personal information, protection of personal data. As for issuing protocols on administrative violations, filing them to courts for corresponding response, I see no need to assign these additional controlling functions to the Ombudsman institution.

Each agency needs to be improved, including the Ombudsman institution. Now we are talking about expanding regional institutions – creating the vertical of representatives in districts, oblasts, regional coordinators for the purpose of receiving feedback from the regions and possibility for early response. In this context, the reform is necessary.

Today, both military and civilians are just not aware that they can appeal to Ombudsman. If people have appropriate information, complaints will be sent from the Ombudsman to the Military Prosecutor's Office. This is leverage. This is what undermines the behind-the-scenes practices of the Military Prosecutor's Office and the Ministry of Defence. Let us keep working, continuing to provide information to people.

Yurii MATVIYKO, Representative of the Verkhovna Rada Human Rights Commissioner on Observance of Rights of the Military

Since March 2016, the Ombudsman office includes a department focused on the functions of civilian control, parliamentary oversight of the rights of the military. It was the Sector on Civil Control over the Military Organization and Law-Enforcement Bodies in the structure of the Department for Protection of Socio-Economic and Humanitarian Rights. That Sector was comprised of three people including me. Like the entire Secretariat of the Ombudsman, we worked with appeals of citizens addressed to the Commissioner regarding issues related to violations of their rights. We sent appropriate requests to the Ministry of Defence, the Prosecutor's Office, including the Chief Military Prosecutor and garrison prosecutors – to facilitate restoring of certain rights.

Last year, we conducted monitoring visits to training ranges “Desna”, “Divychky” and “Yavoriv”, and also visited military units in the conflict area near Mariupol and Kramatorsk. Based on discovered violations of rights of military servicemen, we prepared corresponding violation response acts, which were sent to the heads of the security agencies, whose military units were concerned.

We always exchange contacts with the soldiers we talk to, including in the ATO area, keep in touch with them. For instance, after our visit to Kramatorsk, en route to Kyiv I received a call from the deputy commander of the unit we inspected, who reported on taking proper actions. That was one of the evidences how we could promote improvements for servicemen.

There was the Chapter 14 on military servicemen in the 2014 Report. This year report of the Ombudsman has being prepared, and will be submitted to the Verkhovna Rada of Ukraine soon. It also includes a corresponding Chapter on the military personnel. It will cover all the issues related to provision of the military, retired policemen, who are being dismissed in connection with adoption of the Law on the National Police. There are a lot of appeals from the former police (militia) officers on being deprived of statutory benefits after the old Law on Police abrogation.

I want to support the previous speaker. Any person can go to the Ombudsman website and see the Annual Reports for at least 10 years. Out of 95-125 pages of the annual report, 15-20 pages always covered the problems of the military and special services employees – including personal case numbers, etc. These reports were sent to European institutions as well. We can debate, how effective and comprehensive it was, but as to formal implementation of the law – it was done. Of course, there are areas for improvement. We should consult the Law on the Verkhovna Rada Ombudsman more often – all of Ombuds' functions are quite clearly spelled out, its powers are higher than those of the Committee for National Security and Defence. The Ombudsman can appeal to the Constitutional Court if there are Acts on infringement of rights.

Regarding the work of the Committee for National Security and Defence of the Verkhovna Rada of Ukraine, I would argue that everything is well prescribed in the legislation, but what happens in reality is quite another matter. And I mean not so much the professionalism of the MPs, as their assistants and personnel supporting their activities.

What is the stand of political parties represented by the MPs on the issues of national security and defence? This is the mirror that reflects whom we have elected to the Parliament and to what extent they understand the importance of these issues. Often MPs are more concerned with affairs of other committees than of their own.

In previous years, if the National Security and Defence Committee had invited a Defence Ministers (I am not talking about the last 4-5 years), it would be ill luck for the minister not to come to the Committee to defend the law, to lobby budget interests, or to solve other issues. The Constitution remained the same. The laws are still the same. What has changed is the attitude. All this is in the hands of MPs. If political powers were accountable, wanted to actually do things in real life instead of talking about them on TV, things would go differently.

In our country, regrettably, there is a problem of MPs' responsible attitude to their main work. Something is off in our country's political system – be it parliamentary-presidential or presidential-parliamentary or even hybrid. And something is clearly wrong with the elections that we hold, in the election system – open/closed voting lists, proportional or majority system. A single professional joining the Committee cannot accomplish anything on his own and the idea of having fully professional committee seems impossible. So I am somewhat confused in this regard.

Nobody should doubt the professionalism of defence ministers because of pharmaceutical background or gender if they are good managers and political parties from which they have emerged trust them. They are members of the team, members of the government, and are very responsible people. This is what matters.

The fact that security management is not different from any other type of management is debatable. We can adopt the set of efficient techniques used in this process. But there are many differences too. While in corporate management risks are divided between majority stakeholders, in society – they are divided between 45 million people. There is a difference. And, accordingly, the responsibility is also different.

Oversight of Special Services is a different matter. The Law on Democratic Civilian Control does not have a notion of “sensitive information” or “classified information” at all. By the Law, every MP has access to everything in our Parliament, but in fact there is no access to anything. Special agencies are afraid to provide any information, especially sensitive, as irresponsibility among the MPs is on a very high level. There are no measures to prevent the leakage of information.

Every time we discuss a problem, we talk in terms of personalities – ministers, MPs that we have now, and what ministers and MPs we had some years ago. Our idea of personal responsibility is slightly idealised. An MP that comes to the new Parliament cannot be a professional in many areas. At the time of distribution of authority, sometimes parties have a problem to find people knowledgeable in defence, intelligence, and security. In the period between elections, parties do not work in the form of “shadow” cabinets. These problems are chronic.

The issue of professionalism can be resolved explicitly and simply. We need to think about institutions, about ensuring a system of professionals, who always work on a regular basis, and are independent, isolated from political and party influence. We do not need to invent a bicycle, we need to ensure operation, pull in the resources for ordinary independent institutes of government and institutes of political parties.

So the issue of policy makers should be the focus. In our system it often comes down to party, parliamentary, backstage politics. We need institutions and funding for those, who will ensure the regular process of policy making and its continuity in the period between elections. Political crisis on a regular basis has become a norm for us.

The problem of quality of our political elite is not to be solved by changing an electoral system. In fact, voters by casting ballots are actually answering a question about what kind of people they would like to rule a country. That is why people need to be educated in order to make an informed choice.

Being abroad, I always noticed the degree of responsibility of each congressman or MP to the people that elected them, the degree of a personal accountability. Our MPs, especially those elected on party lists, have a desire to cover up and individual irresponsibility or non-professionalism by group decisions.

Judicial reform becomes more important than the reform of the security and defence sector. Because without the judicial system, no institution will work as it should. Even with the protection of human rights at the appeal of the Ombudsman – the court either does not consider the case, or grants the offender bail, at which point the offender goes abroad.

If there is to be a system of justice, judges have to be protected. An issue of corrupt judges is less important. They can and need to be dismissed, but uncorrupted judges need to be protected from being easily threatened. A prerequisite for having a proper system of justice in Ukraine is to have a proper system of law enforcement and security services in hands of professionals with high standards of professional and personal honour, proper carrier structures. These institutions must be properly financed and people must be properly awarded and appreciated. Until those institutions and the Procuracy as well exist, we will be talking about these issues of quality of justice for eternity.

WORKING GROUP II DISCUSSION. GENDER, HUMAN RIGHTS AND SECURITY SECTOR GOVERNANCE IN NATIONAL DEFENCE, LAW ENFORCEMENT AND INTELLIGENCE SERVICES

Chair: Nazli Yildirim SCHIERKOLK, DCAF

The objective of the session was to elaborate the key challenges as well as the priorities for reform identified and developed during the Conference One especially related to the issues of gender inequality and human rights in the activities of defence, law enforcement and special services.

Among other issues the following main problems were mentioned:

- It is too early to state that there is a new police in Ukraine. After quite a successful launch of the reform there is an obvious challenge of failure due to the low progress in other areas except patrol police. There are many concerns about strong internal resistance to changes.
- Large-scale staff cuts after dissolution of old police (militia) have a significant negative effect. The legislative provision of not accepting legal responsibility by the successor (new Police) has created a problem of social protection for former policemen and presents a threat of massive appeals to courts.
- Procedures of internal oversight have not been specified in the National Police after the Ministry has been limited in its control powers over police.
- Gender equality is still an issue for the women in uniform regarding training, working conditions, maternity leaves etc.
- In order to cope with the on-going conflict in the east, the Ukrainian government has introduced a number of regulation and amendments to legislation, which violate soldiers' rights. For instance, thousands of contracts have been changed to the open-ended ones by the government's unilateral decision.

Recommendations:

- The idea of demilitarisation of services should be approached with the necessary decree of thoroughness and respect to the local conditions as well as to be followed by an appropriate level of social protection of civilians replacing uniformed personnel.
- Dismissed policemen should be provided with the necessary time and means for their gradual integration into civilian life.
- Training programmes for police should be reconsidered in the way to become gender-friendly, as well as to be demilitarised.
- People in uniform should have more information about their rights as well as to have a better access to independent oversight bodies for appeals.

DISCUSSION (extracts)

I would not make a hero of the police we have now, making it appear as though it is doing a great job catching all the criminals, and everything stalls because of the court system. At this point, it is not about the new police being not satisfied with the court system. The country does not have new police.

As one of the authors of the law enforcement reform (prior to the “Georgian period”, when we were side-lined), I am carefully watching the processes in the Ministry of Internal Affairs, and the creation of new Police in particular. Talking about development of the law enforcement sector, namely, the MIA, it should be noted that there are more questions and problems, then solutions and proposed concepts.

The agenda of the new police does not include the question of open policy and gender equality. The Internal Affairs Agencies Gender Development Concept was created back in 2009-2010, but it was neglected when Yanukovich’s team came to power. The “Georgian reformers” have not revealed this despite the fact that these areas were mentioned among the priorities during their work with the EU Advisory Mission a year before. Those intentions have regrettably not been implemented.

Many national experts note complaints of new police officers regarding their poor working conditions, superiors being rude and long irregular working hours without corresponding compensation. This motivates them to create the new police labour union. The existing Union of Certified Internal Affairs Employees has filed a lawsuit against qualification boards’ results regarding the dismissal of ex-militia employees based on recommendations of the boards. This was a new step in protecting the rights of “old” and “new” police, as previously the union was taking quite a passive stand. Here we also have means to assist both the Ministry of Internal Affairs and the new police, if they are willing to accept such help, of course.

The situation with investigation of brutal treatment cases is still complicated. Previously, investigations of internal offenses were conducted by the Public Prosecutor Office. Now its functions are being transferred to the State Bureau of Investigation. Currently, it is hard to say, whose jurisdiction this is, who specifically will take this on.

Disciplinary offenses are still being investigated by the national police itself. But there is a problem – how do we structure the internal control service (the internal security department). Previously, when the MIA was essentially the “ministry of militia”, the internal security department’s jurisdiction included basically all units and all departments. Now, the MIA is the management authority for other five state executive agencies. The question is whether they should either establish a single internal security department that will cover all the five agencies or an internal security system for each of them, with its own specific features and overall coordination by the Ministry. The second option means that the internal control apparatus will expand to at least 400 people. This is quite a lot. I do not know, whether the Ministry is ready to go for such an expansion.

Police Reform remains vulnerable because of its financial dependence from the Ministry of Internal Affairs. In fact, a minister using his power can hinder any good initiative by not approving a necessary budget request from the Police.

Answering the question on neutralisation of negative effects of large-scale staffing cuts, to my knowledge, there were no costs for this in the budget. There was a provision in the Law that the new national police would not be the legal successor of the internal affairs authorities, including militia. The question is whether this is a moral dilemma or it is driven by financial aspects – simply not to recalculate pensions for former militia and therefore not to pay to those, who will be dismissed? By the way, there was a provision on stage-by-stage cuts in the officially approved Strategy for Development of Internal Affairs Authorities that we have prepared together with human rights activists. For example, the servicemen of the Armed Forces are offered a six-months training, so that after being dismissed they can find a job in the labour market and avoid social strain. Today, MIA management is not executing this provision.

Regarding gender equality, the rights of women and women in uniform, I would like to mention several scandals that took place last year when women on maternity leave were called to report for work and take up their duty, even though the law determines the right of any woman – civilian, military, judge, prosecutor, – for three years of maternity leave. Female officers appealed everywhere, even to the Ombudsman and I do not know, what the end of the story was, but some of them refused to obey and were simply dismissed. I do not know what the term of maternity leave is for military women abroad, but our legislation stipulates certain regulations and we have to conform to it.

I can confirm my colleague's words. The Ombudsman's office receives numerous appeals from the dismissed women, former militia employees, who were on maternity leave or even pregnant. There were no complaints from Kyiv, but a lot of them did come from the regions. The Commissioner appealed with these complaints to the Minister of Internal Affairs, who explained that the new police was not the legal successor of the former militia. Militia was dissolved without a legal successor, therefore dismissal of women during pregnancy or maternity leave is considered to be compliant with legislation. The Commissioner appealed to the Prime Minister. He gave an order to heads of relevant ministries and now this issue is under review.

Continuing with the topic of new approaches to the training of new police, I would like to highlight the relevance of gender literacy issue. In the rhetoric of the new police, there is a total lack of understanding of gender issues and gender equality. Media publications on differences between female police and female militia employees use the argument of visual appeal: "look at the new "barbie dolls". Attitude to a female police employee as a beautiful doll, instead of a colleague who works alongside men and has the same amount of work responsibilities, brings a certain type of expectations that she has to do only things that do not go beyond the limits of a "barbie".

Regarding the rights and the status of civil servants in law enforcement bodies and special services, we should look at provisions of existing laws, under which the military can carry and use weapons, while civil servants – only pepper-spray projectiles or electroshock weapons. They can still become the target of enemy's intelligence agencies or criminals, while having fewer defence opportunities. Also, their social protection is not as strong as that of the military. This inequality prevents experts from the private sector from coming to work in these agencies. Perhaps, on the contrary, civil servants must have equal conditions with the military, especially as their profession sometimes requires more skills than that of the military, with whom they have to work together.

I would like to draw attention to some important aspects of professional training of the new police and gender equality, in particular, excessive militarisation. Professional training of the new police copies the Soviet model – including the range of physical exercises, hand-to-hand combat, for both men and women. There are differences in the system of professional physical training for men and women. According to existing norms, for example, men do push-ups, but do not do sit-ups, while women do sit-ups and pull-ups. The reason for this difference in physical training is unclear, but it raises a question: "Will women and men be on equal ground in the conflict situation in the street?" Police training includes the same number of hours for physical and firearms training. Reality demands physical reaction much more often than the use of firearms.

Even assuming that the same number of physical and firearms training is justified, I would like to point out that policemen are trained to hit the heart or the head at 25 metres, not the hand or leg. An excellent result for an army sniper, but absolutely inapplicable for a police officer, who should be taking care of citizens' lives, even if they are offenders. Moreover, the existing obstacle line for policemen has trainees jumping over trenches, fences, and at the end of the line – diving into a trench and throwing a grenade from there!

The physical training programme includes absolutely useless elements. For example, a policeman has to do five kilometres of cross-country skiing. Not only do we not have any five-kilometre snowfields, but let me tell you a secret, our police departments do not even have skis. But our policemen have to pass these qualifying standards. Such standards still exist. I hope that the national police will soon revise its set of exercises and will train its policemen like our European colleagues do.

There are numerous cases of gross violations of military servicemen's rights, both mobilised, as well as those, who signed the contract at some point of time. Ukrainian government has approved a number of resolutions that further implementation of plans to increase the quantitative composition of the Armed Forces. After the latest failed mobilisation campaigns, the General Staff resorted to such tricks as unilateral extension of contracts with the military. Depriving citizens of on-time military discharge may be considered legitimate in view of the presence of government decisions. However, in terms of human rights – it is a gross violation of soldiers' and citizens' rights. If a soldier is kept in the army by force – under threat of criminal liability, – how can we talk about his motivation? Lack of awareness about their rights, limited possibilities of protection of these rights in court push them to walk out of service without authorisation, or look for other illegitimate ways. Instead, the state, represented by the prosecution office, has unlimited possibilities of bringing them to justice.

I would like to confirm that the problem of insufficiently clear legal definition of the “special period” term does exist. The laws on defence, military duty and military service, mobilisation preparation and mobilisation indicate the beginning of the special period, but legislation does not define its end. Using this, the Ministry of Defence interprets mobilisation and the special period as they see fit, and considers corresponding decisions the basis for refusing to release soldiers, whose contract term has ended. This problem is being studied by the Ombudsman, there is on-going correspondence with the Ministry of Defence, which currently takes the following stand: special period – is not just a period of mobilisation in terms of military conscription, but it involves transition of military units to war footing, which according to the Defence Ministry gives grounds to delay the retirement. There are already court appeals, but the decisions are ambiguous.

The situation could be resolved through, firstly, education – for the people to have more information about their rights, secondly, an initiative of the ombudsman office for studying this problem and taking measures at the state level to protect the rights of citizens currently held in the Armed Forces against their will.

One reason that in 2014 – to the best of my understanding – the formal state of national emergency, formal state of war was not adopted in Ukraine is because under current legal and constitutional arrangements both of these conditions suspend a large number of normal rights. It is odd that this is taken for granted despite all of the discussions taking place, including here, about Euro Atlantic standards. When Britain found itself at war with Germany, Parliament functioned, normal rights were not suspended, certain rights were suspended in the UK, in the United States. There were very limited suspensions in very particular areas, specified by law. Surely, one important part of discussing good governance, best practice in security, law enforcement, defence is to revisit the whole concept of national emergency, state of war and the issue of what rights must be maintained and what rights are to be limited.

We got too carried away with demilitarisation of intelligence agencies. I think this is not the best time for this. Not even because there is an on-going war. In today's economic situation, intelligence agencies simply do not have the capacity to offer a civilian specialist the higher salary than the market.

There is the Soviet experience, which was used in intelligence agencies, namely, in the Chief Directorate of Intelligence of the SBU. When it was necessary to hire a person with a rare specialty, for example, with knowledge of Oriental languages (Arabic, Farsi, Chinese), they found the following solution. A civilian with experience was hired by the intelligence services, enrolled as a military serviceman, awarded a military rank (sometimes "Major"), work experience was registered as military work experience (to provide for retirement with same conditions as the military). In order to do this, we just need to introduce a number of changes to the law, which would allow the intelligence to hire civilian professionals that is currently needs.

I am a supporter of the military corporate system. The question of demilitarisation has been raised in the basic documents of Ukraine for 25 years. Since the collapse of the Soviet Union, the military were drawing attention to the excessive militarisation of our entire state machine – not only special services and the Armed Forces. Look at the prosecution staff in generals' uniforms on public holidays. In our country, state guard is also considered the military. There were times, when forest guards wore uniforms with ranks. An almost surreal story: the head of the SBU is awarded the military rank of the "Army General", essentially, a Marshal. What do security services have to do with the army?

I support the idea that the term “military” should be related only to the Armed Forces. In case absolutely necessary, to military intelligence. I am not a representative of the special services, but I have trouble imagining a true secret service agent doing field work abroad in the rank of a colonel or general. In my vision, above all, they must possess intellectual, political, civil qualities, and not military ranks.

This all comes from being poor. If the government provided proper social package and salary for special services staff, it would not make a difference for them whether they are military or civilian. And we have only social and legal protection of the military. For others – there is nothing, and nobody wants to introduce it, so all security agencies are trying to give this status to all of their employees.

The problem of demilitarisation in the context of reducing the list and the number of the real military servicemen really exists in our country. We, the military, really have a somewhat distorted mind – always have had. So, it is good that we are creating strictly civilian police, who will not have the ranks such as internal service general, police general. There will be crests, marks of distinction, but they will not be the generals that they had in the MIA. Today, no one is showing off their shoulder boards and military ranks there.

It is dangerous to mechanically adopt or copy the European practice. Thanks to the pressure of European and Euro Atlantic standards, Ukraine carried out before 2014 a substantial demilitarisation of its Border Service, which is at the critical moment damaged the security and defence of the country. Ukraine is currently where it is, it is not a Czech Republic, it is not a Denmark. This is why again I draw distinction between adopting Euro Atlantic principles and practices on a case-by-case basis asking whether they are appropriate to Ukraine’s conditions. You might disagree, but I want to state this position as clearly as I can make it.

On this topic of militarization. I would be caution getting too far in defining terms. Last speaker referred to the Soviet days and would refer back to the days of Cold War when I was at NATO in charge of the group of intelligent agencies from all 16 countries. We were trying to compare the forces of NATO with those of the Warsaw Pact as the basis for the western position having problem at the table in Vienna negotiating the CFE Treaty. We needed to have account of what we had on our side and what we estimated they had on the Warsaw Pact side. That was reasonably straight forward when you came to equipment. You could eventually define what a tank was. But when you came to manpower, military personnel, then you had a real problem of comparability. It was enormous problem and we gave up at the end. 

➡ We did not include manpower at that stage of Vienna negotiations. It is a definitional problem which you can go round and round on because of the different way forces and ministries of defence are organised. When we counted people on their side they were mainly in uniform, but people in our MoD were without uniform. So, are they soldiers or not? I caution about this term of militarisation. One needs to be clear what he is talking about.

This is a very difficult problem. It is not an artificial problem. Everyone and all Ukrainians remember the crisis in Tuzla strait in 2003. The Russian border was unilaterally moved by armed Russian troops. They were not troops subordinated to the Ministry of Defense. They were troops of the Ministry of Emergency Situations. In every NATO country an analogue to such a ministry would be civilian. In Russia this is always been military and in fact quite heavily armed. We are now talking about the mining of so called humanitarian convoys in eastern Ukraine. These first humanitarian convoys appeared during the Kosovo conflict in 1999 when a current minister of defence General Shoigu was in charge of the Ministry of Emergency Situations. If you look at the Russian Border Services today, they are larger in not just manpower, but also in equipment holdings, than one or two armed forces of EU member states. It is an extraordinary issue. Even in intelligence terms the second largest security service in all over Europe is Gazprom Security. It is a very serious problem of intelligence assessment.

I fully agree as a suggestion that this problem of nomenclature and classification should not detain Ukraine, when Ukraine decides what is best for Ukraine. I fully agree with the necessity to adopt the Euro Atlantic principles of demilitarization of essential services. But in some areas, services this practice may be wrong. One of these services is Border Services which I suggest would not be fully demilitarized, at least not everywhere, not on every border of Ukraine.

The University of Defence is preparing media specialists commissioned by the MOD Department of Press. By the way, there is not even a sign of gender equality there – the director is proud that there will be no female military reporters in the next enrolment.

In terms of gender quota, it is not to get unqualified staff into organisation, but to diversify qualified staff. This is something to differentiate between the two equal candidates, to make sure that a candidate who represents underrepresented group gets a position instead of a candidate who represents the group, which overrepresented. It is very important to keep in mind, since this heavily influences a discussion on gender quotas.

Gender quotas are not an end state, but the means to achieve a result. They are supposed to be temporary until gender or other minority representation is achieved. In the meantime state agencies should invest different measures to encourage women's job applications to police or other security sector institutions.

Why then in the field where women are underrepresented – under fifty per cent, should I as a man even bother applying for a qualifying position if I know that there is a qualified woman applying for it? Set the rules of the open process are that the any quality of distribution is to be rectified according to the principle of quota. The rational response is then that man should not apply until fifty per cent of qualified people are women.

I think that 50%-discussion is an illusion. You can never reach perfect equality in any sense at any place. The end goal is not to have a work place of 100-staff and 50% of them are women and 50% are men. The end goal is to improve the representation in a way that institutions represent the population in an effective way. Where you draw the line when the effective representation begins is different between different countries.

The most serious issue in Ukraine and the preliminary one is to create a culture where people are in the first place appointed in the position on the basis of qualification and merits, and not on the basis how much money they have, who they are connected with, who is sponsoring them, and so on. That will really require a mental and cultural revolution. Until we understand the importance of that and that is advancing, so many other things even if they are admirable and impressive in their own right like gender quotas are artificial in this context and getting away of this fundamental of all issues.

Mariya Berlinska, Project Coordinator, Invisible Battalion

In July-December 2015, the first sociological study¹ of women's participation in the war was conducted. The project was executed by the Ukrainian Women's Fund together with sociologists from the Kyiv-Mohyla Academy. Its objective was to study which problems women face in this military operation. The research included only women from the Armed Forces of Ukraine. We did not study the Ministry of Internal Affairs that is also involved in the so-called ATO. We studied legal, psychological and everyday life aspects of service of women at the frontlines.

Here are some of the key conclusions. First conclusion – women are extremely highly motivated. Answering the question, until when they plan to stay at the frontline, the majority said they would stay until the victory.

¹ www.uwf.org.ua/project_activities/invisible_battalion

Second aspect concerns everyday life. Women are not provided with proper sizes of uniforms, shoes, lacking necessary amenities. The majority of surveyed women said they purchased their uniforms and shoes themselves or got help from volunteers.

The next problem is related to psychological pressure. They are constantly exposed to demotivation on different levels, as they are persuaded not to go “there”. At first, in their families, then – in military registration and enlistment office. If they overcome these obstacles, the pressure continues in the military unit on a daily basis. People, with whom they serve, demotivate them with simple phrases like: “You are a woman. This is not your business. Go make borshch.” And once everyone has finished eating in the dining room, women are told to go wash the dishes.

Third aspect – legal. The study uncovered that women fighting at the frontlines are excluded from the legal framework, or are within the “semi-legal” framework. What does this mean de facto? This means that there is a list of established posts and assignments, the so-called military occupational specialties, to which women cannot be appointed. This means that a female sniper or a recon is registered as a cook, cleaner or a seamstress. The situation is absurd and abnormal, it is hard to believe – but it is a fact. According to these staffing registries, women cannot even be interpreters, photographers, drivers. A spokesman for the Ministry of Defence says that this is connected with physiological characteristics of women. But which physiological characteristics do not allow to appoint a woman an interpreter? Women do not have access to any key decision-making posts. And even while the position of a cook is available, the “chief of the refrigerator” one – is not.

The Ministry of Defence, replying to our inquiry, explained that this is due to labour legislation. Supposedly, this is the way the country is taking care of women’s health, their future motherhood. But this is a hypocritical and pharisaic approach. In Ukraine, women take on heavy work in the civilian sector. The Ministry of Social Policy talks about labour legislation, the Ministry of Healthcare – about health. In the Constitution there is a certain conflict: Article 24 prohibits discrimination in professional activity and education, while Article 43 prohibits using female and teenage labour in areas that can be harmful for their health.

Currently, the “Invisible Battalion” Strategy has been prepared for 2016-2017. It is planned to continue research in the following areas:

- 1) constant sociological monitoring, primarily in security agencies,
- 2) legal aspects,
- 3) education and adjustment programmes,
- 4) lobbying for changes.

I invite everyone to join the project for the development of civil society through gender equality.

WORKING GROUP III DISCUSSION.

CIVIL SOCIETY, MEDIA AND SECURITY SECTOR GOVERNANCE

Chair: Oleksiy Melnyk, Razumkov Centre

The objective of the session was to identify a range of priorities to improve the governance of the security sector and suggest preliminary recommendations to be addressed specially related to the roles of civil society and media.

Among other issues the following main problems were mentioned:

- Civil society has to delegate to elect politicians its right and power for oversight. There is a challenge of keeping those politicians responsible for advocating social interests not their own.
- Society should be vigilant that the volunteer movement might be abused by selfish interests of some individuals and groups.
- Public councils at some government agencies have been controlled and used by the agencies' leadership for public legitimising of corporate decisions.
- There are no unified standards (code of conduct) of journalists' work, which would facilitate performing their main mission of providing an objective and reliable information without threat to military mission or people's lives.
- There is a problem of professionalism among journalists aggravated by the custom of using the Russian sources often without proper double-check or even references.
- Most of the Ukrainian media are owned by oligarchs despite the real owner is not known to the public. The issue of hidden ownership is still affecting editorial policies and self-censorship.
- The quality of the Ukrainian media undermined by: hidden ownership/sources of political influence; lack of corporate culture and solidarity; lack of transparency and trust.
- Media being preoccupied by their desire to get ahead of the competition pays very little attention to national/public interests.

Recommendations:

- Ukrainian expert community should extend its activity from corporate internal discussions to wider public both national and international. Universities' potential should be involved more vigorously in security related research and information activities.
- To initiate a development of a memorandum of understanding of media-government relations (code of conduct) with the involvement of key stakeholders (representatives of government agencies, journalists associations, public activists).
- The state should develop guidance for journalists regarding the national security sensitive information, which should not be published in media (well-justified and avoiding unnecessary secrecy).
- International institutions that have great authority and respect in Ukrainian society ought to consider the necessity of being more active in the national information space.
- Press and public relation departments of security agencies should understand and promote their true interest in cooperation with the media by providing them with information, facilitating media access to people and spots as well as providing basic knowledge for qualified representatives.

DISCUSSION (extracts)

I agree with everything that has been said about the role of civil society in governance. However, I would like to stress the fact that civil society, in addition to the functions that have been listed, is also the bearer of social values and national interests. If we overlook the aspect of values and their carriers, we are no longer talking about them as the subject of protection and as a subject under threats. And these subjects were attacked in the first place – our national values. If we do not see the subjects under threats, we have no power and means to protect it.

When civil society delegates its functions to the state, the society loses its ability to formulate its own needs and ceases being an agent. Public and national values constitute the very frame of reference that forms national interests, methods of their implementation, which are then converted into strategies, concepts, programmes and, eventually, budget. And if society delegates this function to the state, in the budget part, it ends up paying for the views of some official on what is necessary – not the needs of the society, but ideas of an official.

Volunteer movement also has great influence and respect among people. They do their work and this is their key interest. At the same time, there started to appear fake NGOs that pretend to represent interests of different groups of people.

Covering the issue of interaction between community groups and human rights organisations with the Ministry of Internal Affairs, I can say that Arsen Avakov, upon becoming the minister, has created an Expert Committee for Reforming the Ministry of Internal Affairs. At the first meeting, he authorised the Committee to develop a concept of reform by November 2014. Having started the work, we faced strong opposition from the old MIA apparatus – a reformist came to the “old” ministry. None of our ideas were accepted by the apparatus, until we placed on the minister’s table two alternative concepts, one of which was accepted and approved by the Cabinet of Ministers.

At the same time, we started an experiment on reforming the work of militia in Lviv oblast. In this oblast, there were both social demand and active society. We have created a team of civic activists, militia employees, but all progress of the Lviv experiment was reduced to nothing by the old MIA apparatus. Each proposal was met with formal responses that it is unconstitutional, illegal, “it is not a good time for this, because we are at war” and other “serious” reasons.

We have learned the lesson. As a result, the Strategy for Development of Internal Affairs Authorities and Concept of Regular Actions for Reform were developed. Continuing our cooperation with the Ministry, we created a civil platform named "Reforming MIA together". A memorandum was signed with the Ministry on exchange of information, creating different target groups and mutual cooperation with MIA employees in these groups. Despite this, the results of work in the form of projects, orders and legal acts and regulations on restructuring the system of MIA, citizens' participation in investigating cases of brutal treatment, on open information policy, cooperation with local population, have been accepted by the Ministry, but, unfortunately, found no further implementation for the time being.

The last more or less productive step of the civil platform was participation in the development of the draft law "On the National Police". We have created a document with European-type structure, proposed a European vision for the police service, but then we were told by Zghuladze (First Deputy Minister): "Thank you, we shall go on ourselves." After this we saw the new Law on Police, which is a copy of the previous law "On Militia" with small changes. None of our 300 amendments to this draft law were accepted by the Parliament.

What was our conclusion? All our attempts as a societal expert movement only make sense, when the MIA has the political will to accept these proposals. If they do not want to do this, there is only one way left for the public – to submit these documents through Parliament, through the Ministry and make sure they are considered, up to going to court in case of nonresponse. Of course, there is also another option used by the "Road patrol" – provocation raids in the streets. Oddly enough, they change the work of patrol police and the former traffic police more efficiently than the soft proposals for reasonable changes in the Ministry.

I do not support provocations. But assessing MIA's readiness to work with the public, as well as willingness of the public to work on a regular basis, we arrive at the conclusion that it is a long evolutionary process that requires effort from both sides. It is hard to imagine that a public activist would go to the Ministry on a daily basis and sit next to the civil servant trying to improve his work or do the work for him. This is substitution of notions. How do we make the Ministry accept proposals that come from the civil society? How do we make civil society qualified enough to correctly assess the role of the Ministry and come up with innovations that have to be implemented right at this moment?

There is a question to formation of public councils. For example, in the public council at the SBU, out of 20 members, five are people close to senior employees. SBU website does not provide any information on these people – just the first and last name. So you can guess yourself, who are these people that ensure public control over special services.

Two years we are at war. For me, as a citizen of Ukraine, the lack of media culture is very obvious. In pursuit of colourful images they forget about people's lives and national security. There have been numerous cases, when journalists talked on TV about things that should not be talked about in the time of war. It took security agencies and civil society almost a year to realise the danger of information on the TV screen.

Some positive aspects were the creation of the press offices, accreditation of journalists in ATO area. But then another “tilt” started – we are witnessing obstruction of the work of journalists. It is difficult to say, to what extent it is justified by real risks. There is no single approach to determining the standards of journalists' work, attitude to their work as the need to present transparent, but very well thought through information in the defence sector. Journalists should be aware that they are influencing the course of events.

Freedom and independence of media are very relative. They cannot be independent from those, who fund their activity, or from a certain political situation. Media coverage of events in the country is adjusted depending on these factors.

I have worked in media for a long time, so this topic is very close and familiar. I can say that media in Ukraine is on a rather low level. From everything that is published in the Internet, demonstrated on TV, printed, – only very few can be called the real media.

Journalists have insufficient qualifications. Quality of information is usually not double-checked, information is reprinted from, for instance, Russian media. Sometimes the sources are referenced (so that people understand, where the information is from, and are able have their own opinion), but often journalists make only slight alterations to the text and publish information that is either false or contains elements of Russian propaganda.

Another problem is the rather low political culture of citizens. It is they who are ready to accept and distribute propaganda. Many times we have witnessed the panic provoked by some out-of-context pieces of information. The panic was so severe that the Ministry of Defence and the General Staff had to react to it, often inappropriately in regard to the combat situation, to stop the flow of accusations and fear that engulfed the country.

State, parliament and other institutions are the product of people themselves, our citizens. When we talk about civil society, we have to remember that this is not a single entity, but individual institutions, NGOs, institutions that represent people at the parliamentary level, individual more or less conscious citizens.

No matter how many times we get together for expert councils and important conferences, informing people about events and things happening in the country is still a relevant issue. From round tables we should move on to general public, inform people, educate them how to treat information they get. Strange as it sounds, in the 21st century, our citizens need to be taught how to consume information, how to use it, how to understand what all the news that they see on television is about. People treat inadequate government or General Staff statements as “betrayal”, they panic and get nervous. And this causes damage to everyone – citizens themselves, as well as government authorities.

Of course, we cannot forget that information has to be objective. There is no unconditionally “good” President, Parliament, Government, volunteer squads. Information about all of them has to be presented equally, it has to be comprehensive and not contain any trends.

Ukrainian expert community has huge potential, is respected both within the country and abroad. In addition to participating in such discussions, experts speak on television, write articles. But Ukrainian expert community functions mostly with support of grants provided by our Western partners, starting with the Geneva Centre for Democratic Control and ending with the Soros Foundation. In my opinion, there is untapped capacity for expanding civil society potential, first of all, through the university community, where a lot of active young people do not participate in the work of research and expert centres.

Most universities in Europe, USA, Canada have dozens of creative research organisations that work under guidance of professors and do not require great funds, but are constantly engaged in research, including in the sector of security. Ukraine needs such centres like the ones in the US and Europe. They could accomplish a lot specifically in the security sector. The quality of work does not necessarily depend on the experience of the one doing it. Legal research, the study of foreign experience – these can be done by students as part of their training. For some reason, our Ministry of Education does not encourage this line of work, which nevertheless has great potential. For example, a powerful organisation Stop Fake was established at Kyiv-Mohyla Academy Department of Journalism. At the beginning of war this organisation played a significant role. This is just one example, which should be used and applied systematically.

I would single out five factors influencing the shape of our media. First factor is an economic one, i.e. the issue of ownership and business. Our media, especially television, are still treated not as business, but as means of political influence. The second factor is the lack of corporate culture and solidarity. Third factor is the information space and environment in which our media work. As it was already mentioned, our media often take information from Russian-language space – this is postcolonial inertia. Fourth factor is educational. We still have not created proper school in Aristotle's, classical sense. Fifth factor is lack of transparency, openness and public control. Lack of transparency in relations between the authorities and society causes lack of trust aggravated by the excessive and unjustified secrecy. While media publish information regardless of national interests, and taking into account only their desire to get ahead of the competition.

Maybe there are other factors as well. I have named the main ones. All of them cause complete disregard for values and interests in the media sector. Things are run on the basis of opportunistic considerations. State does not play any role at all, – neither the newly created Ministry of Information, nor the Ministry of Culture do anything in order to address these issues. To be honest, the state should not be doing anything about it – this should be a self-regulating system.

We should not be relying on the state in this case. The government is used to restricting, prohibiting, and preventing. I rely solely on civil society and civil society organisations genuinely interested in the freedom of information and media resources. The problem can be solved only through working on it as a whole, not just in the security and defence sector. Singling this sector out, we are unlikely to succeed.

If I am not mistaken, in Israel, – the country that has been at war since the beginning of its existence, there is a social contract between the state, the military and journalists. I do not know whether they sign any documents or this is an oral agreement, but there are issues of national security, state and society development, information on which should not be published in media.

Media are the agent of society's control over the security sector, including coverage of tactical operations in the media. There are many questions as to the objectivity of information that has been provided by the Ministry of Defence. In any case, looking at media as agents of control, their task is to identify the shortcomings in the work of any authority and to inform the society.

I do not know how effective the work of the Commissioner on the Rights of the Military is, but when journalists published information about the insufficient provision for the military units, – it had an immediate effect in the form of criminal proceedings and other response measures.

International institutions have great authority and respect in our society, but in the information space there are virtually no media that present their voices. Perhaps, I would recommend our partners from the international offices to consider the necessity of being more active in the information space.

I think we want to achieve a goal unattainable in our conditions. Speaking about media control over in the security and defence sector, we first need to answer the question – do we have any objective and professional media that reflect the real situation in the society, in the country, in the government and in other sectors? What is happening at the frontline is just part of this system. How can we expect from the media, which are information weapons in the hands of competing political-oligarchic powers, any objective and, above all, professional reporting and analysis of events taking place at the frontline? We observe a constant battle of media that belong to different political powers.

There are ethics issues of media employees themselves. We need to support those, who are illegally persecuted. These are real professionals and serious analysts. We must give full support to journalists in the coverage of events.

Can we say that leading TV channels have frontline reporters well-known to the public (such as in the BBC), working in hot spots, or military analysts, who provide professional coverage of certain events? Each time we see different people with a microphone on the screen, using the tank as a pretty background picture.

Regarding the issue of strategic communications, in the absence of strategic documents on the development of law enforcement agencies, it is difficult to build a media communications strategy.

It is necessary to distinguish between restrictions in coverage of reform process and developments at the frontline, because the latter does have many restrictions. Perhaps it would be appropriate to invite military reporters to TV channels, where they could participate in the process not as censors, but as professionals. This would bring to the media a better understanding of what is going on.