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# MONITORING UKRAINE'S SECURITY GOVERNANCE CHALLENGES

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PROCEEDINGS FROM THE THIRD INTERNATIONAL CONFERENCE  
“GOVERNANCE AND REFORM OF  
STATE SECURITY SERVICES:  
BEST PRACTICES”  
24 May 2016, Kyiv, Ukraine

**KYIV-2017**

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**Proceedings from the Third International Conference  
“Governance and Reform of  
State Security Services: Best Practices”**

**24 May 2016, Kyiv, Ukraine**

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This publication offers the proceedings of the Conference III “Governance and Reform of State Security Services: Best Practices”. Following the findings of the previous two conferences, participants elaborated current challenges related to reforms of the State Security Agencies and role of democratic institutions in Ukrainian Security Sector Governance. In addition to identification of the reform challenges and priorities, one of the main objectives was to propose solutions based on lessons learned and international best practices relevant to Ukrainian realities.

This publication offers presentations of the key speakers and selected remarks during Q&A sessions.

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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# CONTENTS

<b>I. INTRODUCTION</b> .....	5
<b>II. GOVERNANCE AND REFORM OF STATE SECURITY SERVICES: BEST PRACTICES</b> .....	6
<i>KEY MESSAGES AND OUTCOMES</i> .....	10
<b>III. WELCOME REMARKS</b>	
<i>Dr. Philipp FLURI</i> .....	10
<i>Oksana SYROYID</i> .....	11
<i>Oleksandr LYTVYVENKO</i> .....	12
<i>Alexander VINNIKOV</i> .....	13
<b>IV. SESSION ONE. INTELLIGENCE AND SPECIAL SERVICES' REFORM CHALLENGES</b> .....	15
<b>KEY CHALLENGES AND DEVELOPMENTS     IN STATE SECURITY SERVICE REFORM</b>	
<i>Andriy BODRUNOV</i> .....	16
<b>OVERSIGHT OF THE INTELLIGENCE SECTOR: THE PARLIAMENTARY DIMENSION</b>	
<i>Oksana SYROYID</i> .....	20
<b>KEY PRIORITIES OF THE SECURITY SERVICE REFORM</b>	
<i>Volodymyr PALYVODA</i> .....	23
<b>INTERNATIONAL SUPPORT FOR UKRAINIAN REFORMS –     COOPERATION AND COORDINATION ISSUES</b>	
<i>Serhiy PUN</i> .....	27
<b>V. DISCUSSIONS</b> .....	29
<b>VI. SESSION TWO. INTELLIGENCE OVERSIGHT – EUROPEAN BEST PRACTICES</b> .....	35
<b>INTRODUCTORY REMARKS</b>	
<i>Simon LUNN</i> .....	36
<b>INTELLIGENCE OVERSIGHT IN THE CONTEXT OF     DEMOCRATIC SECURITY GOVERNANCE</b>	
<i>Mans Hanssen</i> .....	37
<b>GENERAL CHALLENGES OF INTELLIGENCE SERVICE REFORM</b>	
<i>Ann-Kristin Bjergene</i> .....	41
<b>THE LEGAL FRAMEWORK FOR INTELLIGENCE OVERSIGHT</b>	
<i>Professor Ian LEIGH</i> .....	45
<b>VII. REMARKS</b> .....	49
<b>VIII. SESSION THREE. BEST PRACTICES – PARLIAMENTARY OVERSIGHT OF INTELLIGENCE SERVICES</b> .....	50
<b>ROLE OF THE NORWEGIAN PARLIAMENTARY OVERSIGHT     COMMITTEE ON INTELLIGENCE AND SECURITY SERVICES</b>	
<i>Professor Theo KORITZINSKY</i> .....	51
<b>ACHIEVEMENTS AND FAILURES IN     BUILDING PARLIAMENTARY CONTROL SYSTEMS</b>	
<i>Oleksandr SKYBINETSKYI</i> .....	56
<b>IX. DISCUSSIONS</b> .....	60



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# INTRODUCTION

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The ‘*Monitoring Ukraine’s Security Governance Challenges*’ programme funded by the Kingdom of the Netherlands and implemented by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Razumkov Centre jointly to which this publication owes its existence aims at raising public awareness and wide discussion and communication on democratic oversight and good practices in the management of the security sector of Ukraine.

The programme’s objective is to facilitate a public discourse on and public access to Ukrainian and international best practices in security governance while making pertinent information in both the Ukrainian and English languages available in printed publications, a dedicated website [www.ukrainesecuritysector.com](http://www.ukrainesecuritysector.com), and through Mass Media coverage of public events. Two opinion polls are designed to establish whether and to what degree democratic governance of the security sector is understood, and implemented.

A third conference “Governance and Reform of State Security Services: Best Practices”, the proceedings of which can be found in this volume, sought to identify current reform priorities and challenges as well as weaknesses in both executives and oversight structures. Also, it aimed to propose relevant solutions and capacity development needs for the identified problems based on lessons learned and best international practices.

Carefully selected speakers and topics allowed covering a comprehensive degree of SSR issues and representing different points of views by the Ukrainian and foreign officials, scholars and civil society activists. The executives in charge of day-to-day activities and reform implementation, members of Parliament, their international partners from NATO and EU offices in Ukraine, young experts and seasoned professionals spent a very productive day in discussions around a table.

Ukrainian Parliament offered a significant support for the conference by providing high-level speakers and premises of the Verkhovna Rada of Ukraine. That served as a strong evidence of law-makers’ interest in democratic oversight of national security and intelligence services.

*Dr. Philipp H. Fluri,  
Deputy Director,  
DCAF*

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

# GOVERNANCE AND REFORM OF STATE SECURITY SERVICES: BEST PRACTICES

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## KEY MESSAGES AND OUTCOMES

Inability of the Ukrainian state in general and the security sector in particular to efficiently resist the armed aggression of the Russian Federation at the beginning of 2014 led to illegal annexation of the Crimean peninsula and an armed conflict in the East of Ukraine. Analysis of the whole set of reasons that led to such tragic consequences and today's problems in the security sector witnesses the need of using a systemic approach to the national security system reform. Being aware that reformation of separate elements of the security sector should take place within the framework of a unified state strategy, participants of the 3<sup>rd</sup> Conference focused on discussion of problems of the special services and first of all, the Security Service of Ukraine (SSU).

Reformation of the national security sector is a complex task, especially when the country is in the state of a military conflict with an enemy possessing much greater military and economic power and employing a powerful arsenal of tools of a "hybrid war". Meanwhile, as was repeatedly stressed in presentations, Ukraine cannot afford to delay implementation of the necessary reforms, pushed by civil society and Western partners.

The process of reforms is accompanied with a "collision of worldviews" – existence of polar positions of conservatives and ardent opponents of relics of the past:

*"Someone hopes that he can ruin everything and build something new afterwards, but this cannot be so – everything grows on something older".*

*"Many people who were or consider themselves to be bearers of knowledge and understanding of the security and defence sector stay within the old paradigm. Those who seek change and propose solutions have to run counter to the established system, as an icebreaker".*

The fact that the country simultaneously appeared in the state of an armed conflict and a large-scale process reforms may be a challenge and an opportunity at a time. The strong public demand for change reduces the risk of opposition on the part of the staff. Meanwhile, the traditional problem of shortage of resources is seriously aggravated. However, the most critical resources for special services and law-enforcement bodies of Ukraine are presented by the trust of society and the international community. The readiness to provide substantial assistance and the readiness to accept and use the proposed assistance are similarly important.

The Service Security of Ukraine has a long experience of cooperation with international partners, domestic non-governmental experts and public organisations. In 2005-2009,

SSU got serious support under a programme of intelligence-building under the auspices of the Ukraine-NATO Joint Working Group on Defence Reform. Cooperation of SSU with the NATO Liaison Office and the EU Advisory Mission (EUAM) in Ukraine is on the rise, in particular, in the context of joint efforts at development of the Concept of SSU reform. Geneva-based DCAF has been closely cooperating with SSU for more than 10 years now in the issues of respect for human rights, transparency and accountability in the activity of special services.

International partners stressed that efficient interaction, confidence-building and development of cooperation with the Euro-Atlantic community require not only concepts of reforms but also plans of implementation with exact deadlines and financial indicators. Legislative and institutional support for activity and reformation processes, de-politicisation of special services and strengthening of institutes and mechanisms of civilian democratic control are no less important.

Reforms require the strong and steady political will. The key role in effective democratic control belongs to Parliament. There is no universal model of democratic oversight, but the experience of development of the regulatory-legal framework, best practices of the allied countries deserve proper attention in course of reformation of Ukraine's security and defence sector.

NATO countries possess huge experience of creation and employment of rather universal tools of democratic civilian control of armed forces. Democratic civilian control has become one of the key lines of cooperation within the framework of the NATO "Partnership for Peace" (PfP) Programme. In other segments of the security sector (intelligence and special services), there are also universal principles and standards, coexisting with rather a wide range of specific national features.

The case of today's Ukraine graphically proves the known narrative of the expediency of implementing the best international practices of democratic civilian oversight with account of historic and cultural factors, as well as political, economic, security and social realities.

Special services are one of the tools, with which, the state provides the most vital public good – security. They operate not autonomously but within the state structure and in a historic context. The leading role in the organisation of efficient functioning of special services belongs to Parliament, called to represent the interests of voters and accountable to them. On the other hand, Parliament should effectively influence formulation and implementation of the state security policy on behalf of society, as well as appointments and control of the use of public funds paid by taxpayers.

Granting of additional powers to special services by Parliament in case of emergency must be accompanied with improvement of the capacities for democratic civilian control of their activity, first of all, through guaranteed access of legislators to information and their professional development. The process of SSU deprivation of alien functions should not lead to functional vacuum in the national security system. Some law-enforcement functions (pre-trial investigation, fighting corruption and

organised crime) should be left to SSU for some time ahead, at the stage of creation and maturity of new state bodies.

Granting additional powers to one branch quite often involves risks of abuses. The safeguard is presented by the development of a system of checks and counterbalances, resting on a solid legal framework.

MPs should have the powers, the required expertise and mechanisms of control (regulatory-legal framework, procedures, and bodies), not confined to sporadic hearings of special service heads. Parliament should be able to initiate checks, leaving no room for “grey zones”.

Reformation of a separate body of the security sector should be an element of a broad general plan encompassing all national law-enforcement and security structures, and should be clearly associated with strategic documents.

The process of drafting reform documents should be clear and transparent, involve partners (civil society, independent experts, international partners). The process outputs should include: a strategy document, a detailed plan of implementation, specifying the terms, resources and responsibilities, and a mechanism of coordination of activities and proper monitoring.

The processes of planning and implementation of reforms should be accompanied with strategic communication measures. Permanent communication with domestic and international audiences, distribution of honest and pithy information build up confidence and support. Monitoring and assessment of the results of reforms should also involve independent bodies to the fullest extent possible, while striking the balance between open access and the required level of information security.

In the current geopolitical situation, Ukrainian and Western special services need each other for joint fight for peace and democracy. The security and intelligence sector reform measures, if implemented in compliance with the best practices of the EU and NATO countries, may contribute to Ukraine's cooperation and possible future integration with NATO and the EU. Establishment of effective parliamentary control and public oversight is a road to confidence-building. This is the only way for the Ukrainian special services to join the Euro-Atlantic intelligence community. Partnership with NATO and the European Union should rest on common values – such as democratic control, legitimacy, accountability and full readiness to defend Ukrainian citizens and their constitutional rights.

Striking of the balance between collection of Big Data and defence of human rights is a new and complex challenge of the day. It is necessary to create a system of control mechanisms meeting the needs of efficient functioning of special services and principles of a democratic state that respects its citizens. It makes sense to legislatively elaborate the notion of national security, since it immediately affects the scope of the Security Service functions.

The EU countries have different bodies for civilian and military intelligence activities. As a rule, civilian agencies are subordinated to the Ministry of Internal Affairs,

military – to the Ministry of Defence. In some countries, civilian intelligence services are further divided into internal and external, or more specialised intelligence agencies for countering specific threats (organised crime, corruption, terrorism). In practice, the more complex organisation of the system of special services is, the more difficult and fragmented democratic oversight of the system is.

Separation of law-enforcement bodies from intelligence is a common European practice (with the exception of Austria, Denmark, Finland, Ireland and Latvia) meeting the 1999 recommendations of the Parliamentary Assembly of the Council of Europe, saying that internal security services should not be empowered to perform such law-enforcement tasks as criminal investigation, arrest or detention due to the strong risk of abuse of their powers, and to avoid duplication of police functions.

In most member countries of the Council of Europe, functions of parliamentary control are vested in special committees or subcommittees supervising the security services. Most supervisory committees in European countries deal with a wide range of issues (of policies, budgets, human resources). In some countries committees have the power to supervise operations of special services, but only *post factum*. Neither Europe nor the USA knows instances of prior notification of MPs about planned operations.

In some European countries, parliamentary committees are tasked to handle complaints of citizens about security services. The expedience of implementation of such experience in Ukraine is questionable, since such practice may politicise the process of consideration of complaints.

The key role in control of special services in Ukraine belongs to the President. Powers of the legislative and executive branches to control the activity of special services and actions of the President in this sector are limited. There are no mechanisms of parliamentary control (in the form of special commissions) that could assess the completeness and quality of intelligence information presented to the President, and the President's reaction (actions or inaction) to information critical for the national security.

Journalists and civil society have an important role to oversee security and intelligence services. In many cases, their actions were prompted by the absence of efficient external (state) and internal (agency) control. The most publicised journalist investigations were made possible by whistleblowers who had to turn to journalists, not hoping for proper investigation of abuses by state supervisory bodies. Publicising of the problems of special services activity may pose a danger to the national security due to possible leak of sensitive information and undermine their authority. That is why special services should be interested in efficient mechanisms of internal control and state institutes of civilian democratic control, ensuring legitimate solution of problem issues without wide publicity.

# WELCOME REMARKS

## **Dr. Philipp FLURI, Deputy Director, DCAF**

Standing here in the Verkhovna Rada of Ukraine reminds me of the good years, when, through cooperation with the National Security and Defence Committee, we were able to review a substantial number of laws and legal acts. Thus, it is appropriate to hold this conference in the Verkhovna Rada in order to underline the close and fruitful cooperation we have had with the Rada over the last ten years. If we desire security sector reform, we need not only reform the armed services, but also to look into such functions as oversight and guidance – namely, the role that the Rada and the public play in Ukrainian democracy.

This conference is one in a series of eight permanent conferences held by DCAF and the Razumkov Centre, with support from the Kingdom of the Netherlands. The motivation behind these are to create a platform, which, on the one hand, would allow us to document reform plans and implement activities in Ukraine together with representatives of the services and ministries involved; while on the other, provide for the creation of a discussion platform, which would also allow civil society organisations (CSO), the Rada and the media to participate and discuss existing challenges, weaknesses and possible solutions; identify European and Trans-Atlantic reform experiences – which may in turn help us address both conceptual issues, and issues concerning the transition from one system to another – and the capacity development needs related to the aforementioned. Although the goodwill and



intentions of those with academic knowledge about the future formation of ministers and services in Ukraine are no doubt admirable, if you have never worked in these settings and contexts, unfortunately academic knowledge alone will not suffice. You will likely require capacity building; as well as other forms of assistance, such as mentoring, to ensure a successful and sustainable transition.

It is our pleasure to address the issue of reforming the Security Services of Ukraine (SSU). DCAF has a long history of cooperation with the SSU, going back more than 10 years. We focused on questions concerning human rights, transparency and the accountability of the services. Building on this, this conference will look into these questions together with a larger circle of interested and concerned individuals. The Rada is very much needed in this dialogue. Therefore, I am pleased that we are able to open this conference in the presence of the Rada, the NATO Liaison Office of Ukraine (NLO), the National Security and Defence Council of Ukraine, as well as other concerned institutions.

### **Oksana SYROYID, Deputy Chairman of the Verkhovna Rada of Ukraine**

First of all, I would like to thank representatives of DCAF, the Razumkov Centre, the NATO Liaison Office in Ukraine (NLO), the Government of the Netherlands – these are the people who organise such events and create such platforms, enabling an environment that helps turn a monolog into dialog. The failure to do so remains one of our greatest problems: we still soliloquize.

In conditions of war, one cannot escape the pressing need for reforms in the defence and security sector. In conditions of war, answers must be found as to why we should provide for civilian control in the security and defence sector.

The parliamentarians present here are aware of the “clash of civilisations” in this Parliament. Many people who were or consider themselves to be bearers of knowledge and who understand the security and defence sector remain within the old paradigm. Those who seek change and propose solutions have to run counter to the established system. The Establishment of the inter-factional parliamentary group, the “Euro-Atlantic Space for Ukraine!”, is a demonstrative example of such resistance. This group should form the core drawing together adherents of the ideas being in the focus of this discussion.

We should realise that any solution contains two principle elements: the first, a good document, and the second, the political will to implement it. We stand here as legitimate representatives who can create a template, draft a document, and demonstrate what it should look like. Still, I believe that we should strive to increase our legitimacy so as to better shape the political will of elites; and for our soliloquizing to translate into a broad dialog with society. The main element of such a process is that we must create a force that cannot be bypassed – a force through which such decisions will be implemented.

First of all, it is important to think of the people. This state largely rests on people’s enthusiasm – although we have weak institutions, they are populated with progressive and strong-minded people. However, I think that we should pay more

attention to the reformation of training programmes for special service officers. Although expensive, it is required for service officers to properly discharge their functions. Many of us are familiar with such dramas as those experienced by the National SSU Academy in recent years. As far as I know, it has not fully “recovered”, let alone reached an “even-keel”.

When we speak about our own way, I agree that we should look for our own way. However it remains true that until now, the path we have chosen has not been the best one. There were systemic mistakes, and this should be recognised. We may argue that we represent different institutions and therefore have natural differences in views. However, studying the history of the writing of constitutions in different states, I came to the conclusion that they were strongly influenced by the fear of our own arbitrariness they have gone through. We, too, have our own experience of arbitrariness, including on the part of the SSU. I suppose that when implementing civilian control, we should rely on our own experience. When the Verkhovna Rada voted for the current SSU Head, apparently, being an excellent person, many MPs merely voted for him in order to secure his loyalty. I did not vote for him, however, and some told me: “You may have to apply to him, why haven’t you pressed the button?” So, the question is whether we still want to be afraid of the SSU Head, or whether we want one who will serve the interests of the state, rather than certain politicians.

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

One of the most important gains made in recent years is that society and political actors have realised that special services are the key tool of national security. They are not an enemy of democracy and freedom, but a necessary provider of human rights and for the democratic development of Ukraine.

Developments over the past two years presented a tough challenge for all elements of state machinery. We saw a great many bottlenecks, as we faced a real enemy – a visible and strong rival. However, we also saw that that system was viable and had the capacity to respond to existing challenges.

When considering the issues of the reformation of the intelligence and security services, we should proceed from two priorities: the provision of national security, that is, the capability of the services to solve the tasks set out by the Constitution; and the improvement of Ukrainian legislation through the creation of effective strategic documents. However, this cannot be done without the full implementation of the principles established in the Euro-Atlantic community. For, without a clear and complete adoption of norms and values inherent in democratic countries, our progress will remain uneven – we will not be able to achieve our tasks and priorities. So, when we speak about civilian oversight, I’d better not contrast the notions of democratic civilian control and efficiency, for these are two sides of the same coin: without efficient democratic civilian control there will be no efficient structures.

Natural resistance to outside interference is absolutely understandable, but democratic civilian control is not just a new link of the control chain – it represents

the chance for our democratic society to achieve huge gains, whereby politicians are held responsible for their decisions. In turn, this releases professional military servants and officers of the special services from the burden of political decision-making. One should realise that democratic civilian control is a two-way street: through exercising control, politicians assume vast responsibility for their decisions.

My third point deals with gained experience. The contemporary Ukrainian writer, Serhiy Zhadan, said “You can flee from me but not from yourself. And to be frank, you will not flee from me either”. Although some hope that they can ruin the system and build something anew, this cannot be so – everything grows from old roots. We therefore should realise what we have, what we want to give up, and what we seek to achieve. Around us, I see the elders of the Ukrainian security services, who are familiar with the situation in those structures, as well as those who spent many years creating our current system of democratic civilian control. Here also stand new political figures, scholars, and European and Euro-Atlantic experts. I contend that such a line-up will facilitate multifaceted investigation of existing problems, and help to identify practical areas that should be attended to, as well as appropriate solutions.

### **Alexander VINNIKOV, Director of the NATO Liaison Office in Ukraine**

As you know, NATO has increased its active support to Ukraine in recent years, both politically and practically. Our continued commitment to Ukraine’s sovereignty and territorial integrity is aptly demonstrated by the decision to hold the session of the NATO-Ukraine Commission at the highest level during the NATO Warsaw Summit in July 2016. The Summit will be an opportunity to highlight the progress that Ukraine has been made with respect to reforms, and to define the priorities of our joint work as we go forward supporting the reform of security and defence sector of Ukraine.

The Summit is expected to adopt the key deliverable for Ukraine – a comprehensive assistance package – which will streamline existing and new initiatives that cover the vast majority of cooperation. Here I would like to take the opportunity to draw your attention to two key areas where we would like to increase our engagement. The first one is democratic oversight. Here the key focus is for parliament and civil society to provide oversight of the security and defence sector. For the NATO Liaison Office, today’s event is the first in a series of workshops we would like to support in order to help develop the capacity of the Verkhovna Rada to perform this function.

Jointly with our colleagues from the NATO Information and Documentation Centre, we are expanding our support for civil society, in particular with respect to its monitoring role of Ukraine-NATO Annual National Programme. One further important aspect of oversight is the accountability of intelligence and special service sector. This brings me to the second area, where we have and will continue to increase engagement which will form part of the Comprehensive Assistance package. This forms the basis of our support to the wider security sector beyond the Ministry of Defence and the Defence Forces. First of all, I refer to the Security Service of Ukraine and the Ministry of Interior. We have begun an expanded dialogue with both bodies,

and we strengthen our cooperation with the European Union Advisory Mission (EUAM), which has a leading mandate in this sector.

Our view is that we need to see a stronger effort to depoliticize each of these institutions. We believe that civilian control must be non-partisan if it is to be effective. Reforming the SSU should be in line with Euro-Atlantic standards and requires strong and consistent political will.

We acknowledge that reform during times of conflict is extremely challenging, but also take the view that Ukraine cannot afford to turn its back on reform at this pivotal stage.

The SSU has already benefited from a substantive intelligence governance program in 2005-2009 under the auspices of Ukraine-NATO Joint Working Group on Defence Reform. However, lately, our cooperation has grown more intense and is yielding real progress. In particular, we are appreciative that the NLO and the EUAM have been invited to assist with the drafting of the Concept for the SSU Reform.

However, in order to enhance trust and further cooperation with the Euro-Atlantic intelligence and security community, we need to see not only a concept for reform, but also an implementation plan with clear timelines. In this context, we would also like to see oversight structures established and related legislation adopted. In this respect, the role of the Verkhovna Rada will be crucial. To be sure, there is no single, "one size fits all" model of democratic oversight. However, with the Alliance, we have accumulated tremendous experience in developing legal standards and distilling best practices regarding oversight. Hence, we believe it is vital that Ukraine takes into account the lessons learned as it implements reforms in the security and defence sector.

For states in transition and for states in conflict, security often remains a fragile public good. Consequently, security needs to be protected by a multi-sector strategy that is developed, owned and implemented by national and local stakeholders, which includes the executive, the legislative and judicial branches, as well as civil society. NATO is ready to provide its expertise to support Ukraine on this challenging path.



# SESSION ONE. INTELLIGENCE AND SPECIAL SERVICES' REFORM CHALLENGES



**Chair:** Oleksiy MELNYK, Razumkov Centre

**Speakers:**

- Andriy BODRUNOV,  
Centre for Reforms Support, Security Service of Ukraine
- Oksana SYROYID,  
Deputy Chairman of the Verkhovna Rada of Ukraine
- Volodymyr PALYVODA,  
Senior Research Fellow, National Institute for Strategic Studies under  
the President of Ukraine
- Serhiy PUN,  
International Cooperation Centre of the Security Service of Ukraine

# KEY CHALLENGES AND DEVELOPMENTS IN STATE SECURITY SERVICE REFORM

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**Andriy BODRUNOV, Centre for Reforms  
Support, Security Service of Ukraine**



Reformation of the Security Service of Ukraine (SSU) as an element of the security and defence sector is a strategic task set by our state leadership that requires active and resolute steps.

In consideration of the foregoing, and in response to new national security challenges, in the past two years, the SSU has substantially improved the organisational framework of its activity, and has turned into an efficient tool for protecting the interests of citizens and the state against existing threats, both external and internal.

During this period, the level of strategic management in the security sector was raised with the establishment of a Situation Centre at the SSU that will interact with similar centres of other state bodies, as well as the Main Situation Centre of Ukraine located at the National Security and Defence Council of Ukraine.

The structure and tasks of the SSU's "A" Special Operations Centre were updated, new functional teams of the special unit were formed, special personnel were selected for manning alongside highly professionalised soldiers; and world-class methods of their training were introduced.

Large-scale changes took place in the organisation of counterintelligence activities as the key function of the SSU. Within a short period, the structure of the Counterintelligence Department and counterintelligence units of regional bodies of the Service were reformed, and their efforts concentrated on fighting the key threats to national security.

The Security Service is currently drafting the ***Concept of Counterintelligence Procedures in Ukraine***. The Concept will set forth the fundamentals of counterintelligence activity and the principles of the legal mechanisms of its conduct, taking into account the threats to national security that exist today as well as those that may arise in the future. The introduction of such procedures will fully comply with the conditions of an open democratic society, and make it possible to substantially mitigate risks and threats against the national security of Ukraine.

Additionally, a vertically integrated structure of military counterintelligence was restored and brought into compliance with the needs of Ukraine's Armed Forces and Defence Ministry. The Security Service drafted a bill providing for operations of military counterintelligence as a separate branch within the SSU's HQ. The introduction of the proposed changes will substantially improve the efficiency and coordination of counterintelligence support for military formations.

The structure and tasks of the Department of Protection of National Statehood, being the main department in the SSU system as well as among other providers of national security in the field of countering terrorist organisations and the special services of foreign states seeking to undermine the sovereignty, territorial integrity and inviolability of Ukraine, was optimised.

Meanwhile, dynamic developments in the security situation in Ukraine and Europe, and civil society more generally, demand further steps from the Security Service of Ukraine to enhance its functional abilities in order to counter present-day challenges through reformation and the building of an efficient special service modelled on European designs.

To attain this, and to practice future lines of the Service development, while taking into account the sustainable development strategy "Ukraine – 2020", the National Security Strategy, the Military Doctrine of Ukraine, and the experience of special services of foreign partners, the SSU Reform Support Centre was established in November 2015 within the Apparatus of the Security Service of Ukraine Head, followed by the standing International Advisory Group for the Security Service of Ukraine Reform in January 2016.

An important milestone in the reformation of the Security Service of Ukraine took place on March 14 2016, when the President of Ukraine, by Decree No.92, approved the Concept of Development of Security and Defence Sector of Ukraine, setting out the guidelines and targets of reformation of the Security Service as an integral element of the national security and defence sector.

The said Decree instructed the Security Service of Ukraine to draft conceptual and programmatic documents for the reform (development) of the SSU within three months (by 14 June 2016).

The International Advisory Group for the reform of the SSU provides expert support for the reformation of the Security Service in the form of permanent consultations aiming for the perfection of the legislative framework; the determination of the future model for the SSU, taking into account best political and legal practices of EU and NATO countries. Apart from Security Service officers, the Group's activities involved: Anatoliy Poliakh, the President of Ukraine's Commissioner in charge of the control activities of the Security Service of Ukraine; the ; the 's,Iryna Friz, the MP of Ukraine and the Head of a Subcommittee of the Verkhovna Rada National Security and Defence Committee; representatives of Ukraine's NSDC Staff, European Union Advisory Mission, NATO Liaison Office and NATO Information and Documentation Centre in Ukraine, as well as official representatives of partner special services, Ukrainian experts and scholars active in the field of state security.

In addition, the SSU received advice on the lines of reform and future SSU models from the Ukrainian expert community and leading domestic national security experts, in particular:

- MPs of Ukraine (members of the Verkhovna Rada of Ukraine National Security and Defence Committee);
- the National Institute of Strategic Studies;
- the National Academy of Legal Science;
- the Ukrainian Bar Academy;
- leading experts and scholars from the SSU Academy;
- the “National Security Information Analysis Centre” Public Association, etc.

Building on the measures taken, as well as advisory assistance from foreign partners and recommendations from domestic experts, the staff of the SSU Reform Support Centre, in cooperation with all concerned parties, will now finalise the updated **draft Concept of the SSU Reform** and the **Plan of its implementation**. We intend to accomplish this work in the near future, and to submit the final draft Concept to Ukraine’s National Security and Defence Council thereafter.

Moving on, I would like to briefly dwell upon the main ways and lines of SSU reformation, which we plan to lay out in the said Concept, as well as the problem areas that may arise during implementation of those measures .

In particular, **the SSU is to be reformed along the following lines:**

- legislative separation of SSU tasks and powers from those of other intelligence and law-enforcement bodies of Ukraine – including those newly established, as well as elimination of inorganic functions within the SSU;
- perfection of mechanisms of civilian democratic control over SSU activity;
- optimisation of the SSU organisational structure and manning schedule, and separation of inorganic units;
- provision of proper social and legal protection of SSU officers;
- greater involvement of the special services of the SSU in international cooperation.

**The main objectives to be attained in course of the SSU reform include:**

- growth of public trust in SSU activity, and respect for its officers;
- enhancement of institutional capabilities of the SSU as a specialised state body in the field of counterintelligence activity and protection of state secrets, and the main body within the national system for fighting terrorist activities;
- separation of functional tasks and powers of the SSU and other law-enforcement bodies and state bodies fighting corruption and organised crime, and protecting state interests in the economy, information and cyber sectors;

- restriction of the pre-trial investigative powers of the SSU;
- gradual demilitarisation and optimisation of the ratio of military to civilian positions in the SSU, in line with changes in Ukraine's security environment.

The SSU will be reformed, along with other security providers, in order to create an efficient system which ensures the neutralisation of threats to the national security of Ukraine, the achievement and steady maintenance of their ability and readiness to perform assigned tasks, as well as the efficient use of available national resources.

**The reformation of the Security Service is to take place in two stages:**

During the **first stage** (2016-2017), (the reformation) we will devise and submit for considerations of the Verkhovna Rada of Ukraine the updated bill "On the Security Service of Ukraine", as well as amendments to legislative acts and by laws that determine the tasks, general structure, status, key principles of operation of SSU units, and which delimits its powers with those of other actors within the security sector. Reformation measures for the SSU which do not require amendments to the effective legislation of Ukraine will be performed as well.

During the **second stage** (2018-2020), all planned reformation measures of the SSU will be completed. In 2020, following a comprehensive review of Ukraine's security sector, their efficiency will be assessed and methods to further perfect SSU tasks, powers and structures will be determined.

Some law-enforcement functions of the SSU remain a concern. One of the hardest issues arising in course of the reform of SSU will be the delimitation of powers of Ukrainian law-enforcement bodies so as to ensure adequate national and state security for Ukraine.

In particular, new bodies are being created: the National Anti-Corruption Bureau of Ukraine, the National Agency on Corruption Prevention, the State Bureau of Investigation and National Police of Ukraine, all of whom are not yet fully operational.

In fact, as of now, the SSU remains the only state body fighting corruption at all levels, containing the further spread of such crimes. At the present stage, the transfer of relevant powers from the SSU to other law-enforcement bodies may cause a legal vacuum, and thus a serious increase in the rate of such offences.

So, the issue of expediency in transferring some functions of the Security Service in the field of pre-trial investigation, fighting corruption and organised crime to other state bodies is highly sensitive, since in this period we must not allow any deterioration with respect to the protection of Ukraine's national interests.

To conclude my presentation, I would like to express my sincere gratitude to our foreign partners and domestic experts who provide advisory support for the implementation of reform measures, and stress that the Security Service of Ukraine is ready for cooperation in the process and search for optimal ways of reforming and transforming the SSU into a special service of the European type.

# OVERSIGHT OF THE INTELLIGENCE SECTOR: THE PARLIAMENTARY DIMENSION

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**Oksana SYROYID, Deputy Chairman  
of the Verkhovna Rada of Ukraine**

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The same words often carry different ideas. By word of mouth, everything is okay, but we see no results so far. I want all of us to think about the reasons; about how the notion of “parliamentary control” is understood in Ukraine, where its essence lies, and why we appear to be in such a situation.

Let us look at the institutional confrontation between the President and Parliament, observed in Ukraine since the dawn of independence, and the beginning of the formation of these two institutions. Now, neither the President nor the Parliament is fully aware of the differences in the nature of their powers. The President is the top official and representative of Ukraine, acting on its behalf. The people are represented solely by the Parliament – it cannot be otherwise if we are a democratic state. All functions dealing with democracy remain within the purview of the Parliament – not with the President – for the President is the head of state; while he may be referred to differently in different states, he has one function – the representation of the state. The representation of people is provided by parliament, no matter what it is called.

In order to solve the problem of democratic civilian control, I believe we should admit that the personal subordination of the Security Service, intelligence or the Armed Forces to the President poses institutional problems: it runs contrary to the principles of democratic civilian control. This is a threat that if not rectified, will lead us away from our desired end-state. If we do not realise this, it will be difficult for us to move forward.

What is the nature of parliamentary control? It is control on behalf of the people. People cannot manage the executive branch directly. Parliament elects the Government and controls how taxation is implemented, and how the money generated from it is spent – this is the main function of a parliament. If it cannot do this, no democratic civilian control can be put in place.

Parliamentary control is important in several key aspects. Firstly, we need parliamentary control to do away with political manipulations of the Security Service and intelligence bodies. Today, the President personally controls the activity of

the special services. This turned the Security Service into a body too often used for the attainment of the political goals of the president, irrespective of his name. Security Service personnel were often recruited not on the principle of professionalism, but on the principle of personal attachment. One demonstrative example: the previous Head of the Security Service (Oleksandr Yakymenko, 2013-2014 – *Ed.*), who worked in the interests of another state – Russia – and who did a lot to bring us where we are now: he helped Russia to invade the territory of Ukraine. However, despite this, we see this trend continuing. Vitaliy Malikov, who was a member of the Sevastopol City Council and, according to media reports, collaborated with the occupational authorities in occupied Sevastopol, now heads the Antiterrorist Centre! He, without any experience in or managing the special services, now heads the Antiterrorist Centre. How can that man occupy such a position? I am afraid, however, that I am unable to ask the Security Services about it!

Parliamentary control is a safeguard against the usurpation of power. All that does not fall under the legislative's power, that is, those not belonging to representative and judicial functions, fall within the purview of the executive. Democracy means that the plenitude of executive power should be controlled by Parliament. Today we are in a situation where executive powers of the President are unprecedented, both within and beyond constitutional limits. However, at the same time, as an institution, the President remains outside the Constitution – he stands “above the Constitution”, beyond control and “above the law”. This endangers the President himself, irrespective of his name. In the history of Ukraine, we witnessed Presidents falling victim to their own excessive power more than once. So, our task is to ensure the President remains under control. Where he is the head of state – it is his prerogative. However, when exercising executive power, he must be controlled by Parliament. All that deals with defence and security falls under the purview of executive power, not the President's prerogative. Executive power, too, should be controlled by parliament. Otherwise, regrettably, we will continually roll back towards usurpation.

This is especially dangerous now. In the context of hybrid war, martial law has not been declared. Instead, we have the ATO (Anti-Terrorist Operation Zone) and have declared a special period. We have already made dozens of amendments to legislative acts, which provide powers here and there, and which chip away at our democracy, all for the benefit of the President – for he is in charge of this process. In this way, we create even greater danger for the state and the people, limiting democracy in the process. I will not touch upon the question as to why we did not call spades spades, namely, why we did not impose martial law. However, the imposition of martial law is a civilised way to limit human rights and democracy, and also to secure a civilised exit from that state. Now, as we have entered a hybrid state, limiting the effectiveness of our democracy, I do not know how we will exit it. This, however, is the subject of a separate discussion.

Parliamentary control also means control of the budget, functions and structure. As far as I know, we have one of the biggest security services in the world, with the SSU employing some thirty-one thousand officers. Maybe only America has more.

Meanwhile, the quality of SSU personnel remains imperfect. Some of them stayed in the occupied Crimea and the occupied part of Donbass. Maybe we don't need Security Service representatives at the district level? We should also think about those who serve the state well. Will control of the budget change the sService's strength and functions that may be duplicated by another ten bodies? We have similar problems in other bodies dealing with intelligence activity. Abstract control of functions is senseless. We can only control their functions through effective budgeting and efficient use of funds.

Moving on to the need for demilitarisation: the function of counterintelligence, or functions of pre-trial investigations, if we agree to leave them in the category of crimes against the state, are the functions of law and order, rather than defence. One may ask what the difference is. However, this is an entirely different form of subordination, way of thinking, and method of communication with citizens. The Security Service is to work at home in peacetime conditions, but in peacetime the Armed Forces cannot be deployed at home. Being a democratic, not a totalitarian police state, we should build a civilian Security Service that can use appropriate ranks of the law-enforcement service, should we provide for them. However, that body must remain outside the system of defence.

Back to what has been said in the opening remarks. I should note that I understand that MPs feel the tension between the President and Parliament. I used to work in these premises in different capacities for some 20 years, and know that it has always been like this. Now we are in a critical state of war that demands an honest admission of this problem from us. While continuing to treat persons with respect, we should move towards delimitating powers in order to preserve the institution of the President, as well as to preserve and strengthen the role of Parliament (including in the field of control of security and defence). State security now depends on this.



# KEY PRIORITIES OF THE SECURITY SERVICE REFORM

**Volodymyr PALYVODA, Senior Research Fellow, National Institute for Strategic Studies under the President of Ukraine**



Speaking as a scholar today, I should inform you that I have served in intelligence and counterintelligence bodies for almost 25 years and because of that, apparently, some of my judgments may not have been impartial. The programme of this event included discussions on issues concerning the “key priorities of the SSU reform”. I believe that enough has been said about priorities. So, I will let myself focus in my presentation on the problems that accompany the process of reformation of the SSU, as well as intelligence and counterintelligence services in general.

During preparation for the conference, I found materials on SSU reforms in my archives, prepared by me as far back as in October 2005. Right then, after the Orange Revolution, the state leadership set out the main lines of SSU reformation, aiming to transfer it into a modern European special service. Essentially, the reforms were about depriving the SSU of law-enforcement functions, strengthening its counterintelligence activity, increasing its demilitarisation, and strengthening democratic control over it.

Since then, 10 years have passed, three presidents changed, and we again speak about reformation of the system of national special services, first of all, the SSU. The tasks set out now are the same. The Security Service of Ukraine is to focus on counterintelligence activities, relay law-enforcement functions to the Ministry of Internal Affairs and newly-established state bodies, demilitarise itself, and become more open for control on the part of society. Does this mean that within a whole decade the SSU has not made progress towards reforms? In theory, yes! But, as Mephistopheles said in the tragedy ‘Faust’: “All theory is grey, my friend. But forever green is the tree of life”.

Now, imagine: in 2014, the reformed SSU is staffed by civilians whose work schedule, according to respective labour legislation, is five days a week, from 9.00 till 18.00. An armed conflict is unleashed in the East of Ukraine, an antiterrorist operation – in fact, a war – starts, in which the independence and territorial integrity of the state must be defended with arms. It is necessary not only to do away with

enemy subversive and terrorist groups, but also to investigate crimes against national security. Could a civilian special service, moreover deprived of law-enforcement functions, do that? I think this question is a rhetorical one.

I also would like to draw your attention to the phenomenon of the mythologisation of reforms of the national special services. Some domestic “experts”, via mass media, continuously impose on society and legislators the idea of the existence of certain standards for special services, the non-observance of which bars Ukraine’s accession to the EU and NATO. Referring to requirements of influential European institutions, those “experts” in fact play with notions, since they refer to recommendations of the Parliamentary Assembly of the Council of Europe No.1402 (1999) “Control of internal security services in Council of Europe member states”, and to No.1713 (2005) “Democratic oversight of the security sector in member states”, both of which are non-binding.

One such myth says that the special services of NATO and EU member states allegedly cannot employ persons who previously underwent professional training in the Soviet Union. However, I can cite a few examples that defy this myth. For instance, a graduate of the Main Intelligence Agency of the General Staff of the Armed Forces of the USSR, Brigadier General Marek Dukaciewski, in 2001-2005, headed Polish military intelligence, and a graduate of the Higher School of the USSR KGB, Brigadier General Sándor Loborc, in 2007-2009, headed the Hungarian National Security Authority (counterintelligence). In 2008, the latter even headed the NATO Civilian Intelligence Committee (by rotation).

The obligatory demilitarisation of the SSU is another myth. Meanwhile, so-called experts conceal (or do not know?) the fact that a similar paramilitary system with civil servants in different proportions exists in special services of our partners in Spain, Poland, Romania, Slovakia, Hungary and the Czech Republic.

Here is another myth. The legislators have decided that the SSU should stop fighting corruption and organised crime and transfer those functions to other competent bodies, as if European special services are not fit for that. Meanwhile, such functions are discharged by the State Agency for National Security of the Republic of Bulgaria and the Internal Security Agency of the Republic of Poland. Meanwhile, for the last 10 years, Poland has had a parallel separate special service – namely, the Central Anti-Corruption Bureau.

In this respect, I strongly advise the authors of the myths of mandatory standards to study European legislation more closely, in particular, the Treaty on the European Union (the Maastricht Treaty). Item 2, Article 4 of that document says “The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional... It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State”.

By and large, an analysis of European experience in the field of special service activity prompts a number of questions. Should we hurry to rebuild our system of

internal security (first of all, fighting terrorism or counterintelligence procedures) after the pattern of some NATO or EU country? Or should we first study the weaknesses of the European systems of national security that resulted in known incidents? Here, I am referring to the bloody terrorist attacks in Spain – March 2004; Great Britain – July 2005; France and Germany – January 2015; Denmark – February 2015; Belgium – March 2016. It is important to note that although the US intelligence community informed their respective counterparts about the threats, the national services of these countries did not act.

I wonder how some people here want to reform the SSU and other special services. The populist Law of Ukraine “On Purge of Power”, running contrary to the norms of the Ukrainian Constitution and negatively assessed by the Venice Commission, deprived many experienced and patriotically-minded counterintelligence and intelligence officers of the right to continue serving and bringing benefits to their state. In due time (in 1991), I served in Moscow and made a conscious choice in favour of an independent Ukraine. Then, I managed to return to Ukraine with some 50 officers who wished to work for Ukraine. Today, the said Law bans their employment in special services on the ground that they studied and worked in Soviet institutions.

Although in January 2015, amendments were made to that legislative act, they only dealt with the highest officers. Unfortunately, it should be noted that with the practice of conferring general ranks that has existed in recent years, the level of professionalism of those persons was not taken into account, while generals are considered experienced pros here.

Furthermore, there is good European experience in this field, for some reason neglected by our legislators. In 1990, Poland conducted verifications (re-assessment) of former officers of the Security Service of the Polish People’s Republic, which let it preserve the core of professionals, and gradually create a new special service – the State Security Agency.

The efficient reformation of the SSU is impossible without new approaches to human resources and educational policy. The priority tasks should include adoption of new principles of career growth and professional aptitude of the staff. In particular, executive positions should be staffed by officers who have the required professional experience in specified operational positions (it may be reasonable to set some qualification requirement of service in such positions).

When developing and implementing programmes for the professional growth and patriotic education of personnel, particular attention should be paid to the notion of “corporate culture”, since corporate ethos is one of the binders that ensure the efficient operation of special services in the leading countries of the world. In recent years, the discrediting of this notion discouraged SSU officers of feeling proud of their agency.

To avoid an “erosion” of corporate culture, boost anti-corruption measures and prevent leaks of secret information, we should give up the practice of appointing former officers of bodies of internal affairs to executive positions in the Security Service of Ukraine.

Appointments of militia generals to executive positions in the SSU, (like [Communist] party officials appointed to executive positions in the Soviet KGB), have always caused a strong negative reaction in the Service. The appointment of all heads of regional Administrations of Internal Affairs to specially established new positions of first deputy heads of regional SSU administrations by the former President of Ukraine, Viktor Yushchenko, in 2009, requires investigation and independent legal examination. In less than a year they returned to the Ministry of Internal Affairs of Ukraine, having obtained access to SSU operative data (including materials concerning the investigation of corruption among officers from internal affair bodies).

We should also avoid appointments (motivated by political expediency) to executive or advisory positions of persons without special education, or whose official duties duplicate the tasks of units of the central SSU staff.

In dealing with human resources, education should be improved, employing ideologemes that take into account differences in the mentality of residents of different regions of Ukraine, and which strengthen national unity.

The reformation process should be well considered, using an individual approach to personnel and ensuring the preservation of their highly professional potential; while not compromising the combat efficiency of the SSU as a special service and as one of the key elements of the system of provision of state security. It is very important for our country, given we are currently in a state of war.

As regards foreign experience of special services' activity, I am not at all against its use for SSU reformation. However, it should be extrapolated to Ukrainian realities, taking into the specificity of Ukraine's historic development, national mentality, present-day trends and foreign policy situation.

Let me finish with the words of Taras Shevchenko: "Study, read and learn thoroughly the foreign things – but do not shun your own".



# **INTERNATIONAL SUPPORT FOR UKRAINIAN REFORMS – COOPERATION AND COORDINATION ISSUES**

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**Serhiy PUN, International Cooperation Centre of the Security Service of Ukraine**

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I share the opinion that reformation of the SSU alone is not enough to effectively counter threats. The whole security and defence must be reformed, and the existing institutional problems between the executive and legislative branches should be resolved.

As it stands, the SSU is one of the most efficient elements of the national security and defence system in Ukraine. The National Police is in the process of reforming and increasing its capacity, and currently, has limited capabilities to efficiently perform its functions. A new system of anti-corruption bodies is being created: the National Anti-Corruption Bureau of Ukraine (NACBU) and the National Agency on Corruption Prevention (NACP). Of course, those bodies are also in the making. The NACBU already has some gains, but for those bodies to work properly, we should support them at this initial stage. I would like to stress that those processes should be backed with comprehensive measures which aim for the reformation of Ukraine's security and defence sector.

Soon we will see the presentation of the draft Concept of the SSU reform, to be accompanied with a detailed implementation plan. The creation of a separate structure in charge of oversight and supporting the process of SSU reform shall be considered. I believe that in the near future this idea will receive proper support.

A few years ago, one could not even imagine such a forum, where domestic and foreign experts may openly discuss reformation of the SSU, being a special-purpose state law-enforcement body, in fact, a national special service. In some other countries, the holding of a public forum on reformation of the internal security system would be questionable, even now.

In my presentation I will place emphasis on several aspects of international cooperation in course of the SSU reform. The main partner in reformation of the

national special service is the European Union Advisory Mission, where a component responsible for reformation of the state security sector was created. The SSU continuously works together with strategic advisers of the Advisory Mission.

We are also grateful to the NATO mission in Ukraine, represented by the NATO Liaison Office and Information and Documentation Centre. They are our partners, assisting the Security Service of Ukraine with reforms for some time. We not only enjoy political support on the part of NATO, but also receive practical assistance with respect to reformations.

I would also like to mention that the Geneva Centre for the Democratic Control of Armed Forces (DCAF) maintains contacts with the SSU since the early 1990s. We arrange joint research activities, where we discuss pressing issues, reformations and perfections of institutional capabilities.

We also work together with our partners from NATO and EU countries, sharing experience of the establishment and organisational activity of national special services.

New forms and formats of cooperation appear. For instance, with the purpose of optimising international assistance, the International Advisory Group was set up, which included representatives of the EU, NATO and partner countries. The activity of specialised groups discussing specific issues, such as special audits, recruitment and training of personnel of special services, is of particular importance.

The institute of foreign advisers is rather efficient. The development of this institute will only raise the efficiency of SSU reformation. The work of “liaison officers” of foreign special services in Ukraine offers a different format. We believe that such an institute should be reciprocal. The SSU should have its liaison officers at Ukrainian diplomatic missions abroad. This will help provide solutions to urgent issues and create more opportunities for regular consultations, and exchanges of experience with our partners.

We are especially grateful to partners for providing material and technical assistance. In particular, the establishment of the Cyber Security Trust Fund and the creation of the Centre for Hybrid War Problem Studies, which provides additional opportunities for engagement of the most experienced experts, as well as the expansion of international cooperation and the professional development of SSU officers.

At present, there is no universal model or uniform standards for NATO and the EU regarding special services. There are certain political and legal models shaped with account of cultural and historic traditions of one or another country. Special services are not all alike, but are guided by common principles; their activity rests on universally accepted values: the rule of law and observance of human rights, civil rights and freedoms.

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## DISCUSSION

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### **Artur HERASYMOV, Member of National Security and Defence Committee, the Verkhovna Rada of Ukraine**

You can rely on the National Security and Defence Committee, because we realise that we have no right to stop the reformation of the Security Service and intelligence services of Ukraine. Do I support reformation of the SSU? Of course I do! Do I support the efforts of Ms. Oksana in such reformation? I do 100%, especially with respect to civilian control of the budget! But first of all, I would like to stress that the President of Ukraine was elected by popular vote. He also represents the people, and we should keep this in mind. Second, we are in a state of war. In the army, there is a principle of unity of command. Even in the Soviet Union, there were Officer Assemblies, but they did not decide whom to send to death, and did not assume such responsibility – we should keep this in mind.

When we speak about demilitarisation of the SSU – yes, after the victory over the enemy I will surely support it. But as of now, I cannot.

Regarding the procedures of the antiterrorist operation and martial law, one should realise that in the conditions of a martial law, we (the new parliament – *Ed.*) would not have been here. It would have been the old Verkhovna Rada with communists, and we should keep this in mind. A number of laws were passed that imposed the most needed norms of the martial law, but we held parliamentary elections, local elections, preserved freedom of speech, and our media are a real “fourth estate” in this country.



Despite all the drawbacks and deficiencies, as of now, the SSU functions relatively well. There are wide gaps in our knowledge; but such is the work of the Security Service, for ordinary people not to know what was planned, how many acts of sabotage were prevented – hundreds of them – and how many arrests have been made.

In summary, I can say in support of civilian, especially parliamentary control, especially of the budget – yes, of course. However today, we should always keep in mind that the President is the Commander-in-Chief of this country. Although we are currently witnessing confrontations in the echelons of power, it is often born by parliament, not the other side.

### **Ann-Kristin BJERGENE, Deputy Director, NATO Liaison Office in Ukraine**

Mr Bodrunov's presentation discusses "optimization". We have been discussing this and we would like very much to see a downsizing of the SSU. Ukrainian National Security law mentions a critical reduction of current and forecast volumes of resources provided to ensure national security and defence. That should pretty much underline the validity of SSU downsizing as being supported by the authors of this law.

Regarding Mr Palyvoda's speech, NATO advice is based on best practices. Without insulting anyone, some of the countries are more developed than others as regards to how to govern and control their security and intelligence services. Regarding the question concerning the hiring of people educated in the former Soviet Union, the practice in Norway is that we might not hire such people solely in order to protect them, nor is it a policy to exclude such people. I understand that you may be sceptical about the international community's advice. We do want Ukraine to find its own path, but we need to see real political will to follow the democratic route. Unless we see that, and a true will to reform, we would not be able to achieve integration and trust. In the future, we need you, just as you need us.



**Heorhii KRYUCHKOV, Former Chairman, National Security and Defence Committee, Verkhovna Rada of Ukraine**

The problem of parliamentary control over the security and defence sector has arisen in practical terms in this country not so long ago. I wish to remind you that on August 19, 2003, the Verkhovna Rada of Ukraine passed the Law “On Democratic Civilian Control of the Military Organisation and Law-Enforcement Bodies of the State” drafted by members of the National Security and Defence Committee (chaired by me at that time), the second section of which (Articles 8-12) dealt with powers of the Verkhovna Rada of Ukraine, its committees and special commissions, and national deputies, as well as the Verkhovna Rada Human Rights Commissioner exercising such control.

Let me take this occasion to express sincere gratitude to the Assistant Director of the Geneva Centre for the Democratic Control of Armed Forces, esteemed Dr. Philipp Fluri, present here, for his advice given when the mentioned Law was drafted.

It was one of the first attempts in the post-Soviet space to legislatively regiment the methods of civilian, including parliamentary, control over the security and defence sector that remained closed for society for many years. It was a framework law, but rather specifically described quite a number of purely practical issues.

If we look back at almost fifteen years of its effectiveness, its imperfections and weaknesses are well seen, but this is natural – we had no experience.

The declarative, I dare say – in some occasions, too cautious approaches to legislative regimentation of control of this important and delicate domain became obvious for us when we learned of the experience of some democratic countries, like Great Britain, visited by a group of national deputies – members of our Committee. We felt it especially strong, when the provisions of that Law began to be implemented.

The first thing that struck me was that some heads of special services were – let me say – not overly enthusiastic about control on the part of parliament and its concerned committee. Members of our Committee, including the Chairman (then – a communist), were never invited to any events held by special services (except festivals). One of the service executives, soon after his appointment, called me and said: “Heorhii Korniyovych, I ask you to send two or three Committee members – I will teach them how to exercise parliamentary control of the Security Service...” However, soon after that “expert in the field of parliamentary control”, who had never worked in security services before that, was dismissed. But nevertheless, this fact is telling.

One form of civilian control was to be presented by public boards set up at ministries and agencies. There were attempts to keep their activity within certain limits, to use them to the benefit of the agency’s leadership. This prompted the known constitutional scholar, former Vice Speaker of the Verkhovna Rada of Ukraine, Viktor Musiyaka, and me (not an active MP at that time) to announce our resignation from the SSU Public Council. At that time, the Service was led by Valentyn Nalyvaichenko.

Now moving onto the main thing – the essence of parliamentary control. Familiarisation with the experience of foreign states and apprehension of the developments in our special services make me sure that parliamentary control will lose a great deal of its efficiency if it does not cover human resources management. In many democratic countries, appointments to executive posts, as well as conferment of the highest military ranks in the security and defence sector, including special services, are made with account of the stance of parliament and the opinion of its concerned committees – something we do not have here.

The following facts may set some thinking. Independent Ukraine saw 12 appointments of SSU heads (I do not touch upon services separated from it – foreign intelligence, special communications, etc.). Valeriy Radchenko and Valentyn Nalyvaichenko were appointed to that position twice. Only in five instances, the appointed heads remained in office for more than two years. Half of them worked less than a year. Valentyn Nalyvaichenko, whom the Verkhovna Rada of Ukraine in March 2009 unanimously refused appoint as the SSU Head, “ad interim” – for almost two and half years after that decision performed the duties of the Service Head, an unprecedented fact in human resources management.

The practice of conferment of top military ranks in this country is similarly striking. Out of the ten persons in the most senior positions of the Security Service of Ukraine, six acquired the rank of the Army General of Ukraine. Among them, Ihor Drizhchanyi stayed in office just over a year and Valeriy Khoroshkovskiy – less than a year. More than that, as far as I know, Khoroshkovskiy had never served in the military. The picture in other components of the national military establishment is very much the same. Such practices strongly affected the professionalism of defence of the national security.

It is hard to disagree with those who believe that the conferment of military (as well as honorary) ranks is often used, so to speak, to “win” support (if you prefer, “loyalty”, “reliability”) of the top leadership of critical state structures. This is nothing but a refined and therefore very dangerous form of corruption at the senior level.

I am not so naive as to believe that parliamentary control by itself will solve the problem of the statesmanlike approach to the human resources policy. The recent “epic” appointment of the new Prosecutor General of Ukraine and his deputies that met a controversial response in society has shown how far away we are.

Nevertheless, I remain optimistic and hope that the dangerous process of the degradation of state institutions, including parliament, will come to an end, and Ukraine will finally become a truly democratic state ruled by law. I also hope that this will be facilitated by such events as today’s conference, the use of the best-world and, first of all, European experience.

I believe that following the Conference recommendations, the concerned parliamentary Committee should initiate amendments to the basic law on democratic civilian control of the security and defence sector, and specific legal acts dealing with the exercise of control functions by parliament.

**Archil TSYNTSADZE, Project manager, National Defense and Security Reform, National Reforms Council**

First of all, I would like to assure all those here that civilian oversight is not about command and control, and in this respect, I fully agree with Simon Lunn. The organizers should consider one or two panels during future conferences to explain what real civilian control over the security and intelligence is. Second, if wish we to use this platform to discuss the entire Intelligence Community, we have to discuss not only the SSU, but also reforms within other agencies. When discussing civilian control, we should not forget about the President as the institution that is making the decisions.

The SSU is 90 per cent about counterintelligence, while we have four intelligence services, e.g. Defence Intelligence and the Border Security, which also have intelligence functions. My recommendation would be to speak about the overall structure and architecture of the entire security sector with its different parts.



**Ihor SMESHKO, Chairman of SSU (2003-2005), Chairman, Committee on Intelligence Issues under the President of Ukraine (1995-1998)**

We already have a great many achievements and changes implemented by the SSU in the past. In 2004, during the “first Maidan”, the professionalism of the SSU saved the country from bloodshed, when the country was on the brink of civil conflict. Reformation should be approached cautiously and prudently, because the “devil is in the detail”. The SSU certainly needs assistance in reforms, as it cannot reform itself.

I would like to dwell upon three critical issues concerning democratic civilian control. The first concerns the preservation of professionalism within the special service. Pros are not born overnight, they need a solicitous attitude. Field-specific education is absolutely unimportant here – rather, it is about the degree of professionalism, patriotism and integrity of the concerned people.

The second point is that without effective external control, any special or intelligence service stagnates and may itself turn into threat against statehood. However, I would like to remind you that control means mutual obligations, and “controllers” must also be professional. Unfortunately, no such system has been created in course of 25 years, although many steps were made, including in Parliament.

I have a request for those MPs present. You should be aware that you are no longer journalists, reporters or lawyers, but a part of the national legislative branch. The establishment of control procedures depends on you. The law gives Parliament the right to control the SSU, but are the depth and parameters of such control guaranteed? For that, bylaws are needed, to make the meat of the law and internal procedures, along with qualified staff and clearance to state secrets, for professional MPs to exercise control in a professional manner.

Third, the practices of political appointments of the top leadership of special services after 2005 without the ability of the parliamentary opposition to control those appointments created a precedent of “partisan special services”. Every president and leader of a political faction, delegating his people to special services, thinks about how to win loyalty for his party. That is why democratic control is highly needed to defend professional officers of special services from such political influence. Parliamentary control aims to help the SSU and other intelligence bodies to escape politicisation of those structures, and erosion of professionalism of the concerned agencies.

The Verkhovna Rada Committee should consider the above-mentioned problems, while drafting amendments to the relevant legal acts. It is necessary to ensure the parameters and depth of control, responsibility of “controllers”, and the level of their professionalism at any given time. One example: Article 53 of the Law of Ukraine on the Security Service of Ukraine obliges officers must refuse to follow unlawful orders of their superiors. However, in absence of the institute of the General Inspector, an officer refusing to follow an unlawful order should have a possibility to defend his rights, not only by applying to journalists or oppositional political forces. Who, if not national deputies, are to create such possibilities?

Press-briefing, 24 May, 2016



## SESSION TWO. INTELLIGENCE OVERSIGHT – EUROPEAN BEST PRACTICES



**Chair:** Simon Lunn, ex-NATO PA Secretary General

**Speakers:**

- Mans HANSEN, Folke Bernadotte Academy, Sweden
- Ann-Kristin BJERGENE, Deputy Director, NATO Liaison Office in Ukraine
- Professor Ian LEIGH, Durham University, UK

# INTRODUCTORY REMARKS

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**Simon LUNN,**  
**ex-NATO PA Secretary General**

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Listening to this morning's discussion over some of the terms we encountered, i.e. "parliamentary control" and "civilian control", reminded me of the early 1990s, when NATO decided that democratic control over the Armed Forces was one of the parameters that the countries that wanted close association with NATO should focus on. When NATO decided to focus on democratic control, we made it part of the 1994 Partnership for Peace study.

Member countries of the Alliance decided, however, that we did not really know what we meant by democratic control over the security sector. It took three or four workshops with 16 member countries to define what was actually meant by democratic control over the Armed Forces and defence establishments. We did not venture as far as intelligence oversight, the subjects that we are focusing on today. Since that set of parameters was developed, they were refined and further developed over the next phases of NATO enlargement.

Today, we are in an entirely different context. But the two basic problems still remain. One is the identification of best practices in parliamentary or democratic oversight. The second is the problem of applying these best practices to specific country contexts', while taking into account the historical, cultural and real circumstances of the country in question – as Ukraine is today involved in conflict.

The difficulty of selecting and applying a best practice is an important one. One lesson that came out is that this is a process of listening, learning and sharing experiences. Democratic control over the Armed Forces is a fluid process and the historical context of countries always remains in a state of flux.

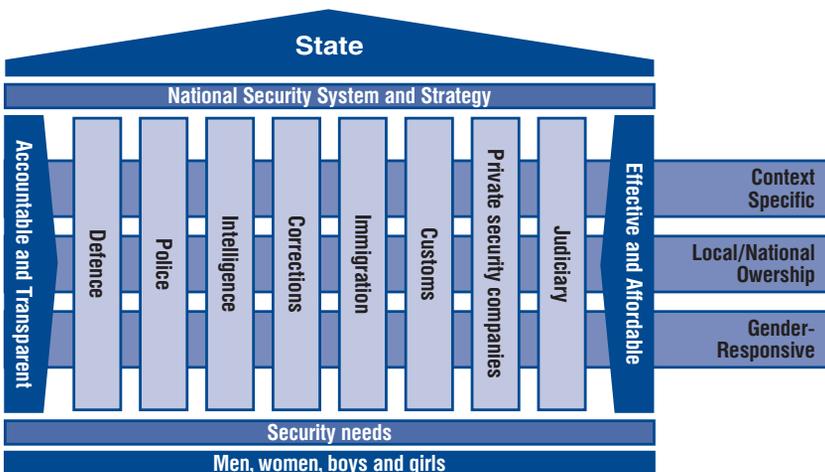
# INTELLIGENCE OVERSIGHT IN THE CONTEXT OF DEMOCRATIC SECURITY GOVERNANCE

**Mans HANSEN,**  
Folke Bernadotte Academy, Sweden



The Folke Bernadotte Academy is the government agency for foreign affairs in Sweden, alongside sister agency SIDA (Swedish International Development Cooperation Agency). In Sweden, we have 100 people working and oversee around 70 seconded persons. In Ukraine, they are seconded with the UNDP, the EU Mission and the OSCE Monitoring Mission.

Security services are one of many actors that provide security to the population of a country. As such, they provide a public good to the population. They exist not in a vacuum, but within a state structure and specific historic context. The two primary reasons why democratic governance and accountability are so important, and why Parliament plays such an important role in this regard, are that, on the one hand, Parliament has to exercise accountability towards its electorate, and on the other, it also has to account for how taxpayers funds are spent.



First, Ukraine has to have an effective security service, especially in light of the current challenges and threats that she faces.

Second, affordability, in the context of the dire economic situation Ukraine is currently in, becomes an even more important consideration. There is a need to have accountability. However, for accountability to work, you have to have the adequate level of transparency.

There are also the subjects of governance, such as the executive, senior SSU management and oversight functions, which have become more specialized. “The Executive” means both the Cabinet of Ministers and the President.

### Oversight of Security Services

	Legislative and policy Functions	Budgetary Functions	Monitoring and control Function	Elective Functions	Representative Functions
Parliament	Legislates	Approval or rejection of budget	Verifies that acts are according to laws	Approval of appointments	Public forum for debate; Hearings
Executive	Policies, priorities, and guidelines	Formulate budget; Examine expenditure	Reports to parliament	Appointment of senior staff	
Senior SSU Management	Ensure policy and law implementation	Ensure budget implementation	Internal controls; Codes of Conduct	Recruitment of staff	Public consultations; Inform the public
Expert Oversight and Inspectors		Audits and inspections	Compliance with constitutions, law, and policies		Investigate complaints from staff
Judiciary			Adjudicating cases; Ex ante/post approval		
Ombuds Institutions			Intiate investigations		Manage complaints from public
Audit Institutions		Review financial management	(Value-for-money assessments)		
Civil Society and Media			Investigations; Exposing improper practices		Inform the public; Encourage public debate

The Parliament has the primary responsibilities of a legislature, as well as the responsibility of not only ensuring oversight of the SSU, but also over the executive as well, including the approval or rejection of the State Budget, as well as approval and denial of appointments.

The Parliament also serves in a representative function through public forums and hearings. The EUAM organized Civil Society – Verkhovna Rada platforms for dialogue; which are extremely important for fostering further conversations on the matters in question.

There are proposals for the appointment of the senior staff of security services and other security sector agencies. Senior Security Service management also has a role in internal oversight. They have to ensure that their financial management and budget implementation is in accordance with the policy and laws which have been passed.

More tangible control functions include internal audits, codes of conducts and pre-emptive control functions – but perhaps the most important is the recruitment of staff. Those who are recruited into the service have a detrimental or beneficial effect on it, and the service adheres to international norms and standards.

There are more specialized areas governed by different actors, such as the judiciary which can initiate cases or exercise *ex-ante* or *ex-post* approval of surveillance by the special services. These roles are complementary, which is an extremely important point to remember. For, in this type of system, if one actor is dysfunctional, it would have less impact on the overall process. A robust system assures this.

Civil society and media play an important role, not only in terms of investigations, or exposing improper practices, but also with respect to informing the public on different practices and processes. This places the burden of professionalism on civil society and media that is often hard to find because of barriers.

While all the aforementioned actors have some oversight role over the security services, who oversees these actors and insures they perform their work according to their given laws and mandates? In the end, it all boils down to the Parliament. Even with a strong judiciary, good expert oversight, or an Inspector general, the system rests on an effective Parliamentary system.

### Parliamentary Oversight of Security Services

<ul style="list-style-type: none"> <li>➤ Specialized committee, sub-committee, inclusion in security and defence committee, or extra-parliamentary committee.</li> <li>➤ General Committee such as budget committee.</li> <li>➤ Parliament should be/have:             <ul style="list-style-type: none"> <li>• Guaranteed access to classified information;</li> <li>• Receive and review reports;</li> <li>• Role in appointment of the head of the service;</li> <li>• Budgetary oversight;</li> <li>• Right to summon heads of security services to testify under oath;</li> <li>• Power to meet responsible executive representative and/or director of services;</li> <li>• Power to conduct regular and ad hoc inspections</li> </ul> </li> </ul>	<p style="text-align: center;"><b>Parliamentary Oversight Cycle</b></p> <ol style="list-style-type: none"> <li>1. Collect information.</li> <li>2. Dialogue with security service and executive responsible.</li> <li>3. Issue findings and recommendations</li> </ol>
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This could be done by specialized committees, subcommittees; or through the inclusion of these issues in Security and Defence Committees, or extra-parliamentary committees. Regardless of the setup, the role of general-mandate committees, such as the Budget Committee, is important.

If the Parliament has guaranteed access to information – and not everyone needs to have access to all information – and is able to receive, review and request reports; enjoys a role in the appointment of the Head of the service; ensures functioning budgetary oversight; has the right to summon the Head of the service and have them testify under oath, as well as executive representatives in charge of the security services; and to conduct both regular and *ad hoc* inspections with respect to information access, while also having the power to visit the facilities of the security

services, Ukraine could build a more robust system, which could be more effective in terms of democratic oversight.

Taking into account that governance over the past decade and since 9/11 has privileged security services with more powers, the question remains as to whether or not oversight functions have increased in scope and power in response? For, greater powers and responsibilities on the side of the security services should be also accompanied by adequate oversight adaptations.

### Overseeing Security Services, Trends and Questions

Practices	Questions
Governments are granting wider powers to security services	Have oversight increased at the same speed as the powers of security services?
Democratic governance begins with a clear and explicit legal framework	Is the current legal framework adequate?
A system of checks and balances must be in place, to prevent executive and legislative misuse	What is the power-balance between the Prime Minister, President, and the Rada in terms of security services?
Several agencies instead of one	SSU – SZRU – HUR MOU
Access to information	How accessible are documents and other material pertaining to the security services?
Resource allocation to oversight	Does the relevant oversight bodies have sufficient resources to fulfil their mandate?
Internal control and individual responsibility	Commitment to democratic norms and human rights as well as civic responsibility

Folke Bernadotte Academy  
Swedish agency for peace, security and development



The legal framework has to be clear from the beginning and avoid ambiguity and overlaps. There is a need for the system of checks and balances to prevent both the executive and the Parliament from misusing their powers. The politicization of the security services is risky for organizations, but if you build a robust system, you will be able to minimize these risks.

Although, if you have several intelligence agencies, this might create competition between them, in many cases, it is considered more easy to oversee multiple institutions, rather than one, in part because you are able to receive analysis from different sources for comparative purposes.

You cannot just provide a particular institution with a mandate to oversee the service; rather you have to provide it with finances sufficient to fulfil its mandate. Providing a mandate without proper funding may be counterproductive, as it risks eroding confidence in that institution. It is very important that the whole package is considered during reforms and changes in the oversight system.

The most important element, regardless of how many oversight processes we could implement, or how many measures we could introduce to ensure transparency, is the values and attitudes of the staff of the security service. When we speak about human rights, or democratic systems, it boils down to the staff of the security service – this is where adherence and the right attitude have to come from.

# GENERAL CHALLENGES OF INTELLIGENCE SERVICE REFORM

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**Ann-Kristin BJERGENE, Deputy Director,  
NATO Liaison Office in Ukraine**

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We had a crucial change in how we control the intelligence and security services in Norway, when, in 1996, we established the public oversight committee. This was done in response to the security services overstepping its mandate by monitoring left-wing politicians.

I will share with you some comments on the general challenges involved in reforming the intelligence services. I have, for the last months, been part of the international advisory group on the drafting of SSU Reform Concept, and this process has left me with some impressions and opinions in addition to what my earlier career has taught me.

**A good strong and clear Mandate** (what must be there from the start): the reform itself has to be part of an overarching comprehensive plan involving all law enforcement and security structures in the country. The reform should be clearly **linked to normative strategic documents with clear priorities**.

**Vision:** there must be a strong vision clearly describing the mandate, roles, functions and tasks of the service. There must be a clear understanding of what intelligence is, and what it is not. The concept should underline the distinction between intelligence activities and law enforcement activities. This may include the future powers of SSU officers, including the scope of their operational and intelligence activities.

**The process of drafting a reform:** there should be a clear and transparent process with the right interlocutors (i.e. civil society, independent experts, and international experts).

**Plan:** the result of the drafting process should end in a strategic document with a plan. This plan should outline the new service, stating clear goals in a prioritized order. We seem to have agreed with the SSU on basic principles – there is the time for the plan. Timelines for implementing planned changes must be established and communicated.

**Accountability:** responsibilities for implementing the different stages and phases of the plan must be assigned. The responsible leaders should be held accountable, and a mechanism to monitor this should be designed. In the end, it must be clear who is doing what, where, when and on what kind of legal and constitutional basis.

**Strategic communication:** the concept should also include provisions on public relations, perhaps even an introduction of an annual threat assessment both from the domestic and foreign services. The process will benefit from open and pedagogical information, both internally and externally. This will enhance trust and hopefully ease the pains of transition somewhat. Communication with the public will also help to legitimize the existence of the services and further aid their financing in the long run.

**Evaluation:** there should always be a planned evaluation process following the period after the implementation of reforms. Preferably, this should be done by an independent body (consisting of both former SSU professionals, as well as representatives of civil society and independent experts) with the necessary access level.

**The challenges** that we have witnessed in reforming intelligence services in the post-soviet states and which may be applicable to the current situation include:

**Reform amidst reform:** the fact that the nation itself is in some sort of state of reform can be both a challenge and an advantage. If the rest of the society is also changing, there may be less resistance to reform, but at the same time the services could be vulnerable and this may be a challenge for a fragile society.

**Lack of resources:** First of all, this is about the lack of trust both from the population and international community. This is especially difficult issue for Ukrainian services, that until recently, had Russian sympathizers in their midst. This means that the international intelligence family will be very reluctant to involve themselves to the extent necessary unless the Ukrainian services demonstrate real resolve, i.e. true efforts at reform, which show a genuine desire to join with the Western security and intelligence family.

The will to accept and use offered help and take heed of advice must be present. International advice and guidance will be very important to the reform effort, and here the Ukrainian services have the chance to look at the best practices of Euro-Atlantic countries. International society really has to step in here and be active.

Experience shows that without expertise or outside assistance, the results of intelligence reform efforts have been consistently suboptimal and sometimes disastrous. Therefore, the appropriate allocation of expertise (internal/external) to implement identified reforms is required to overcome the described lack of trust.

**Human rights issues:** the reform should contain an evaluation of how the work of the services comply with HR regulations, and should consist of a plan to correct the possible negative findings.

**Human resources:** Human resources policy is generally not well developed within Ukrainian special services. There is a lack of good personnel management

programs. This includes the fact that the wages are too low, and that real reform has to be followed by a comprehensive and sustainable change in the personnel management of those in the services. This should be done for at least three reasons: to avoid corruption; to enhance skills and competencies and to enhance trust within the services themselves. Post-Soviet states have not had enough time to build up the independent expertise needed to design, plan and implement reforms in this sensitive area.

**No adequate control mechanisms:** the existing control mechanisms should be evaluated to make sure that they actually ensure genuine control of the special services. If somebody is coming to tell you what they have done, this is not control.

**Lack of adequate legislature:** During the process of reform, some of the findings may reveal that the legislature is not adequate. In Ukraine, there is no public oversight committee like the ones we find in some Western countries. In Ukraine, there clearly remains a need to review legislation and for Parliament to initiate new legislation on this topic. Independent public oversight is crucial to ensure that the secret services are not be used as political instruments.

**Lack of will to govern:** There may be a lack of knowledge as to how much one should know, or is entitled to know, about the secret services. This is of course a delicate matter to balance. However, MPs should and must be made aware and educated about the control possibilities. The heads of the services (coming and) telling someone what they have done is not control – this is strategic communication. The parliament, or a committee representing the parliament, needs to be able to initiate control check-ups upon their own initiative. There shall be no grey zones; a clear allocation of competencies and a determination to execute the required legal and constitutional actions.

### **NATO approach to reform of intelligence services**

Given their history as tools of their respective governments, it will be critical for post-Soviet Pact intelligence services to eventually establish review and oversight bodies to ensure compliance. A review body should report to parliament on a yearly basis. A national Security Review committee could be established to review key intelligence issues. The oversight body is particularly challenging in an unstable political environment/climate which includes the threat of Russia, but it should, however, be established as a concrete goal for the future, with a clear roadmap and associated timelines.

### **New and universal challenges: data access**

The Ukrainian services have a chance to develop partnerships in parallel with future sister services, as the protection of human rights and collection of big data is a new and challenging task for all involved. A delicate balance of intelligence gathering and control over this activity has to be established. This is something that we will have to accomplish together to ensure that that we create a set of control mechanisms that are worthy of a true democracy; one which respects its citizens.

To conclude, in the context of today's geopolitical setting, there is no question about the fact that Ukrainian and Western special services will need each other. The reform efforts in the spheres of security and intelligence, if executed in compliance with the best practices of the EU and NATO allies, may serve to deepen Ukraine's cooperation and possible future integration with NATO and the European Union. Establishing efficient parliamentary control and public oversight is establishing trust! And this is the only way Ukrainian special services will become part of the Euro-Atlantic Intelligence family.

Ukraine needs true engagement from other western services to execute this important task, but mostly to show will and commitment to real reform. We need Ukraine for the future common fight for peace and democracy. Future partnerships with NATO and the European Union must be based on mutual values such as democratic control, legitimacy, accountability and a full commitment to protect Ukrainian citizens and their constitutional rights.



# THE LEGAL FRAMEWORK FOR INTELLIGENCE OVERSIGHT

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**Professor Ian LEIGH,  
Durham University, UK**

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I am going to focus my remarks on two specific questions: the legal basis for the work of security and intelligence services in European states, and second, examples of parliamentary and expert oversight over security and intelligence in those countries. These two questions are interrelated. Just as the parliament establishes the legal framework for the services, their oversight is then involved in reviewing that very framework.

## **The legal basis for the work of security and intelligence services in European states**

As part of the European Unions (EU) response to Edward Snowden's revelations in 2015, the EU Fundamental Rights agency produced a report which surveyed democratic oversight over security and intelligence services in all EU states. I had the privilege of being one of the expert advisors for that study, from which a number of important and interesting findings emerged.

First of all, on the question of demilitarization, the study found that almost all EU states have established at least two bodies for civil and military intelligence activities. There are the exceptions of Sweden and Greece, but the normal pattern is for civil agencies to be subordinate to the Ministry of Interior, or Home Ministry, and sometimes to the Prime Minister. The military services, on the other hand, report to the Minister of Defence.

There are a number of member states, such as France, Italy, Romania and Poland, where civil intelligence agencies are further divided in two different spheres; dealing first with domestic or national matters and second with foreign questions. Again, we find variations. In three countries, intelligence agencies were established to deal with more specialized fields and in particular, with those threats that emerge from them: organized crime in the case of Spain; corruption in the case of Poland; and counter-terrorism in Hungary. Those are, however, exceptions to the general pattern.

The importance of oversight is inevitably the more complex security agency arrangements are, the more difficult and fragmented oversight becomes in terms of democratic control over the system. I should just mention one further variation. Only five EU countries deal with strategic surveillance in legislation. Of these, four distinguish between strategic surveillance over their citizens and foreigners. You find such distinctions in the laws of Germany, the Netherlands, Sweden and the United Kingdom.

The aspects of the special services dealing with law enforcement are important issues with respect to reforms in Ukraine. The large majority of EU intelligence services in those countries have separate structures to that of the police and other law enforcement authorities. Exceptions to this exist in Austria, Denmark, Finland, Ireland and Latvia, but the normal pattern is to separate law enforcement from intelligence.

Interestingly, in this respect, there are examples of recent reforms. For example, in Sweden, in 2015 the national intelligence services changed their status from a police authority to a security authority. The separation between national intelligence and law enforcement is commonly considered to be a safeguard against arbitrary data flows, and this is a question that concerns privacy and respect for private life.

We should bear in mind the recommendation made in 1999 by the then Parliamentary Assembly of the Council of Europe, who remarked that internal security services should not be authorized to carry out law enforcement tasks, such as criminal investigations, arrest, or detentions, due to the high risk of abuse of those powers, as well as to avoid duplication with traditional police activities. The law enforcement powers that exist under the Law on the Security Service of Ukraine are to be recognized in discussions on the reform of this law.

Regarding the question of what national security means in law, Ukraine resembles several EU states – this is a good practice and should be very much commended. It provides for a detailed definition of the national security concept in the Law on the Security Service, as appose leaving it to be interpreted more generally. This is a very good practice. However, what is very striking is the enormous breadth of specific categories that are captured under Article 24 of the Law on the Security Service of Ukraine. Here, I counted more than 17 different categories of national security threats. This is the most I have seen in any legislation of this kind from any country. How could one reach a narrower basis of what constitutes a national security threat?

There is a 1996 study of the Johannesburg Principles<sup>1</sup>, devised by experts in international law on national security and human rights. According to this study, the national security is about “protecting country’s existence or territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat [very relevant to Ukraine’s situation], or an internal source, such as incitement to violent overthrow of the government”. The core idea from this quotation is summarised in the following phrase: “protecting country’s existence or territorial integrity”. This excludes areas such as

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<sup>1</sup> <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.

economic crime, or organized crime, which are not traditionally viewed as threats to the state itself – both, however, are on the list under Article 24 of the Law on SSU.

The second question concerns examples of parliamentary and expert oversight over security and intelligence in European countries. There is a recent and valuable study on this matter, namely a report written by a former DCAF staff member, Aidan Wills, in the capacity of commissioner<sup>2</sup>. It provided an extensive survey of nearly 50 Council of Europe (CE) states, including Ukraine. It found that most have established either a Parliamentary Committee, or subcommittee, for overseeing the security services. Generally, this takes the form of a specialized Committee, as, for example, you find in Italy, Germany, and Poland.

There are a few states, however, that took a different route: Georgia and Montenegro privileged this function to a committee covering broader issues, such as Foreign Affairs, National Security, or Defence. Ukraine can be seen as following this approach. The study on Council of Europe states found that a trend existed towards giving parliamentary oversight over the security services to a single committee that was exclusively focused on security, not broader defence matters. There are some minor variations. Romania and Slovakia have created multiple oversight committees with responsibilities for different intelligence agencies, for example.

Concerning the mandate, legal responsibilities and powers of these committees, in most Council of Europe countries, these are fairly widely written and allow the Committee to oversee, monitor, or scrutinize the security service. For example, recent legislation in France refers to the role of the parliamentary committee over the activities and methods of the intelligence and security services. German legislation refers to overseeing the activities of the three specialized services. Most of these oversight committees in European countries deal with a range of questions, including policy, finance, and the administration of services, as well as being able to examine, *ex post-facto*, completed operations.

Generally, in each of these four areas – that is, policy, finance, the administration of services and the examination of completed operations – emphasis is placed on compliance with the law. Sometimes it takes a broader focus, for example in Lithuania the Parliamentary Scrutiny of Intelligence Operations Committee deals with compliance with Constitutional rights and freedoms and other purely legal matters. Of course, the depth of oversight among these different Parliamentary Committees varies: most Parliamentary Committees comprising of elected politicians are not in the position to continuously conduct detailed operational reviews, lacking the time, capacity, or expertise.

An increasingly important and common model in a number of European countries, such as Belgium, the Netherlands and Norway, is to establish either in place of, or alongside a Parliamentary Oversight Committee, a non-parliamentary independent

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<sup>2</sup> Democratic and Effective Oversight of National Security Services. Issue paper published by the Council of Europe Commissioner for Human Rights. – <https://wcd.coe.int/ViewDoc.jsp?p=&id=2328213&Site=CommDH&direct=true>

oversight committee comprising of experts. This allows for closer, more specialized and resource-intensive oversight of the work of security and intelligence services, and provides for the adequate time to do so.

Most parliamentary oversight committees work *ex post-facto* – that is to say that they conduct reviews after the event in question has occurred. There are no European examples similar to those found in the US, where Congressional hearings allow for the briefing of members of Congress on programs, or operations, *before they have occurred*, which, if I may add, is bad practice. One of the reasons this does not exist in European countries is that it creates a conflicts of interest with *ex-post facto* reviews, which parliamentary oversight committees traditionally handle.

In some European countries such as Poland, Hungary, and Slovakia, parliamentary oversight committees are also involved in handling complaints against the security services brought by members of the public. This is a “minority” model, perhaps not to be recommended, as in a sense it politicizes what should be an independent process for dealing with complaints. Parliamentary committees are rarely able to give a binding settlement regarding a complaint, in a way that a court or a tribunal could, and therefore are perhaps not able to provide what the European Convention on Human Rights describes as an effective remedy (Article 13 of the Convention). After reading the SSU law, it is not clear how the complaints are handled, other than in general courts.

Parliamentary and expert oversight are not necessarily alternatives. Parliamentary oversight committees monitor expert oversight bodies, i.e. oversee the overseers. Ukraine does not have an expert oversight body at the moment, but it is worth considering. The relationship between the Parliament and the expert body could take the form of a Parliamentary Committee tasking or instructing the expert body examining particular areas.

It can receive more detailed reports from expert oversight bodies, and ensure that the expert body has adequate resources and legal powers, and that when it hands back the report and conducts the subsequent hearing, what exactly is found is then clearly revealed.



# REMARKS

## **Ihor SMESHKO, Chairman of SSU (2003-2005), Chairman, Committee on Intelligence Issues under the President of Ukraine (1995-1998)**

Executive control in Ukraine is mostly exercised by the President. The executive government does not have appropriate procedures and tools to check the Service. In the early 1990s, the lack of oversight was compensated for by military officer ethics and military legal standards. The Temporary Joint Intelligence Committee, established in 1995 as an executive branch to oversee intelligence activities, was abolished in 1999. After that, executive oversight depended on the President's political will. Does the President need professional intelligence or just an institution for show? Therefore, we need Parliamentary oversight.

The Parliament should also control the President and the executive branch of government. For example, does a procedure exist to ensure that the President has all intelligence information on his desk? Should he sign after he reads those briefs? Presently, the "main customer" may read the reports, but is not obliged to undersign them and take necessary actions upon reading them. He cannot be prosecuted by law for not using crucial security and defence information.

The third level concerns controls by civil society. In Ukraine's Law on SSU, a provision exists which permits anyone to request information from SSU or law enforcement regarding alleged illegal surveillance, or wire-tapping, but who could check that the SSU responses were true? A procedure exists in the internal manuals regarding classified information. Therefore there must be a body of the executive or legislative branch of government that is able to aggregate and compare the questions and, of course, the answers to those questions.



# SESSION THREE.

## BEST PRACTICES – PARLIAMENTARY OVERSIGHT OF INTELLIGENCE SERVICES

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**Chair:** Leonid POLYAKOV, [Centre for Army, Conversion and Disarmament Studies?]

**Speakers:**

- Professor Theo KORITZINSKY, Intelligence Oversight Committee Member, Parliament of Norway
- Oleksandr SKIBINETSKYI, People's Deputy of Ukraine (2006-2012)

# ROLE OF THE NORWEGIAN PARLIAMENTARY OVERSIGHT COMMITTEE ON INTELLIGENCE AND SECURITY SERVICES

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**Professor Theo KORITZINSKY,  
Intelligence Oversight Committee  
Member, Parliament of Norway**

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## **INTRODUCTION**

Norway is a parliamentary democracy. As part of the Parliament's control of the Government, 20 years ago it established the Intelligence Oversight Committee. In this presentation I address the following questions: why was the committee established? How is it composed, and by whom is it elected? What is the legal mandate of the committee? How does it perform its inspections in different installations, files and archives? How can it have any impact on the services? What can be said, generally, about the relationship between the secret services and the oversight committee? What contacts do we have with democratic oversight committees in other countries – and what can we learn from each other?

## **POLITICAL BACKGROUND**

Our oversight Committee was established by Parliament (the Storting) in 1996. The more general arguments for creating such a committee were based on the values and principles of democracy, human rights and the rule of law – together with the need to develop a broader political legitimation of the secret services.

The immediate reason was the extensive public debate and criticism surrounding the activities of the intelligence services, which led to the formation of a public commission. In its report from 1994 (known as “the Lund Report”), the Commission revealed that the Police Security Service had conducted extensive unlawful surveillance of persons and organizations on the political left, particularly in the 1960s and 70s. Parliament wanted to ensure that, from now on, both the civil and military Norwegian intelligence services would keep their activities within the confines of the law.

## **RECRUITMENT AND COMPOSITION**

The establishment and work of the Norwegian Parliamentary Intelligence Oversight Committee (the EOS-Committee for short) is regulated by statutory law. The Committee is “parliamentary” in the sense that its members are appointed (elected) by Parliament, and it publishes both annual reports and ad-hoc reports for discussions in Parliament. The Committee performs its tasks on behalf of the Parliament, but it is independent vis-à-vis the Parliament in its day-to-day oversight activities.

The Committee is purely an oversight body. It does not take part as an advisor in priority processes in the intelligence services. However, it has the right to be informed about any on-going processes in the services.

The Committee has seven members. We are, based on proposals from the Presidium, appointed by Parliament for a term of five years, but can be re-elected. The Control Act states that the Committee must be composed of persons with a wide range of experience, both political and otherwise. Since its inception, usually four or five of the seven committee-members have party political background and hail from different parties, mostly as former members of Parliament or Government. This is considered to contribute both to the political competence of the Committee, as well as to the legitimacy of its work. However, it is important to underline that it is almost impossible to find examples of discussions in the Committee that clearly reflect the political background of its members.

The Committee has a permanent secretariat which has been strengthened considerably over the last years. At present, it consists of six lawyers, one political scientist, one technical expert and two administrative secretaries. In addition, the Committee can engage experts on an hourly basis. All Committee members and employees must have the highest security clearance under national and NATO regulations (Cosmic Top Secret).

## **THE OBJECTIVE OF THE OVERSIGHT AND THE COMMITTEE'S MANDATE**

The objective of the oversight is primarily to ensure the legal protection of individuals. It is the Committee's job to establish whether anyone has or is being subjected to unjust treatment, to prevent this from occurring and to ensure that the security and intelligence services do not make use of more intrusive methods than are necessary in the circumstances in question. The Committee is also required to ensure that these services work within their legal framework and do not violate general human rights. We have no authority to issue instructions or make decisions concerning the services. We can only express views on matters or circumstances that the Committee has investigated and address our recommendations directly to the services, usually in writing. Such letters might, for example, recommend that a matter be reconsidered or that a measure or practice should be discontinued. In addition, we have the possibility to point out possible shortcomings or mistakes, both in our special reports and in our broader annual report to Parliament. Today the services usually follow the Committees' recommendations. And Parliament has, almost without exception, supported and followed up on our criticisms and recommendations.

I will mention two more points from the mandate that contributes to our oversight possibilities: we have extensive rights of access to the archives and records of the services, as well as extensive rights of access to their premises and installations. In addition, our mandate is functionally defined in law, and not limited to specific organizational entities. It is therefore not of decisive importance for the Committees' authority which bodies or agencies perform security and intelligence services at any given time. Of course, the Committee's continuous oversight is directed at the primary and largest organized services. However, the Committee may also conduct investigations into other parts of the public administration, if necessary in order to check on their work and cooperation with the organized services, for instance the customs and immigration authorities and institutions conducting security clearances. This right even includes private companies if they are conducting security activities on behalf of, or led by, the public administration.

## **REPORTING TO THE PARLIAMENT**

Our annual report is handled by the Standing Committee on Scrutiny and Constitutional Affairs in Parliament. The report is public and therefore cannot contain classified information. The Committee may nevertheless make Parliament aware of the fact that it has classified information Parliament should know of.

The last couple of years the oversight Committee has also given oral presentations of the report in a meeting with the parliamentary Committee, followed by questions and discussions on certain issues raised by the participants. The parliamentary Committee then devises written comments on the report, followed by a debate in a plenary session in Parliament. The remarks from the parliamentary Committee and the debate in Parliament form important guidelines for the future work of our Committee.

## **THE WORKING METHODS OF THE COMMITTEE**

The Committee exercises its oversight through inspections and the handling of complaints. The handling of complaints, however, only forms a limited part of our work – last year, for example, we only received 20-40 such complaints.

By far, our most important work concerns inspections. The Oversight Instructions (also given by Parliament) provide detailed regulations for the exercise of inspection activities. The Committee inspects the headquarters of the Police Security Service six times a year, the National Security Authority headquarters four times a year and the headquarters of the Norwegian Intelligence Service three times a year. External duty stations of the services are also regularly inspected. If necessary, more inspections can be held. Advance notice of inspections is given, but unannounced inspections can also be performed and have been used the last four years, resulting in some important findings. In the past few years, the Committee has usually performed between 25 and 30 inspections.

Our inspections usually begin with a briefing on relevant recent developments and activities by the head of the service concerned. Following this, the Committee inspects the archives of the service. Here we sift through files dealing with specific issues of

special interest to us, selected beforehand by members of our secretariat and/or random samples taken on the basis of the criteria the Committee has agreed upon in advance. In principle, our access to information is unlimited, with one exception: the Committee does not ask for access to files pertaining to sources/agents, and shows general restraint with regard to information that concerns relations with foreign cooperating services.

The preparatory work prior to inspections is done by the secretariat, which has routine meetings with the services for document reading and register searches. Together with preparations for the internal meetings of the Committee, and the day-to-day handling of complaints and matters the Committee brings up on its own initiative, this work takes up all available time of the Committee and the secretariat.

Recently, the Committee has decided that there is a need for more thorough reviews and investigations of some aspects of the work in the secret services. This “project based” way of working has been accepted by Parliament, which in the last two years has raised the Committee’s budget so it is able to employ another legal advisor, political scientist and technical expert on a full time basis.

## **THE OVERSIGHT OF THE THREE MAIN ORGANIZED SERVICES**

### **The Police Security Service**

In particular, the Committee concentrates on criteria and practice as regards registering persons in the service’s records for preventative reasons, handing out personal information to other parties, as well as general keeping and erasure of archives and records. The oversight also includes the service’s intelligence activities, including the use of various coercive methods. Due to the increased global need to prevent terrorism, in 2005 the service was, on a statutory basis, granted powers to use enforcement measures such as telephone, internet and room-tapping for preventative purposes. However, the service requires a court order to do so.

### **The Military Intelligence Service**

One of the main tasks in overseeing the Intelligence Service is to ensure that the ban in the Intelligence Service Act on conducting intelligence activities against Norwegian citizens in Norway is complied with, and that the service remains under national control. It is especially important, when overseeing the Intelligence Service, that the Committee employs expert assistance, mainly in the fields of information and communication technology. This is a type of expertise which is becoming more and more important for the Committee.

### **The National Security Authority**

The National Security Authority is a directorate under the Ministry of Defence. The service has the overall responsibility of vetting and issuing security clearances, and is the appeal body in such cases. The Committee oversee case handling and decisions in cases relating to the issuance of security clearances to individuals. The Committee’s oversight includes all security clearance authorities, both in the Armed Forces and in the civil service.

## **RELATIONS TO THE SECRET SERVICES**

Since its inception in 1996, the Committee has sought to develop a more open dialogue with the management of the services. The services are today more professional and oriented towards the rule of law than ever before. They also often state in public that our work contributes to their political legitimacy and efficiency. The Committee has gradually achieved a better understanding of our functions and oversight possibilities. Discussions with the services during inspections have given the Committee a wealth of experience with respect to their activities – which has increased our competence to develop more focused and efficient control methods.

## **PUBLIC AND INTERNATIONAL WORK OF THE COMMITTEE**

The work of the Committee can of course not be available to the public in its entirety. However, the Committee and the secretariat have gradually become more open to the media, civil society and the general public through participation in discussion meetings, seminars, the issuance of press releases, and the provision of media interviews etc.

To inform oversight committees in other countries about our work, we have updated the English version of our website ([www.eos-utvalget.no](http://www.eos-utvalget.no)). The increasing international cooperation between intelligence and security services, especially in the field of counter-terrorism, is in the Committee's opinion a great challenge to oversight. The Committee believes that oversight bodies in different countries have a lot to learn from each other – on topics like committee recruitment, legal mandate, working methods etc.

Internationally, the Committee cooperates with the Geneva Centre for the Democratic Control of Armed Forces (DCAF). Members of the Committee have participated in several seminars and conferences arranged by DCAF – and contributed to a comprehensive handbook, issued last autumn, which concerns the international challenges for national oversight bodies. The Committee has also participated in several global and European conferences concerning the democratic control of secret services. Finally, we have developed contact through study trips, meetings and seminars with other national oversight bodies, most frequently with those from Sweden, Denmark, Germany and the Netherlands.

## **Conclusions**

I think that the main democratic qualities of the Norwegian control model are the following:

- a. We are elected by Parliament and have a broad political and professional profile;
- b. We exercise oversight over both the civil and military secret services, including their cooperation – and our control is functional, rather than being restricted to particular institutions;
- c. We have unrestricted rights to view all installations, archives and files in the services – with only a handful of exceptions;
- d. We have a highly competent secretariat to prepare and follow up on the inspections of the committee and its other activities.

# ACHIEVEMENTS AND FAILURES IN BUILDING PARLIAMENTARY CONTROL SYSTEM

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**Oleksandr SKYBINETSKYI, People's  
Deputy of Ukraine (2006-2012)**

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In my presentation I would like to share a rather unique and practical experience of parliamentary control of special and intelligence services. In the 1990s, I served in executive positions in the SSU for eight years and therefore, was subject to control on the part of the Verkhovna Rada; while in 2006-2012, I chaired the sub-committee of state security in the concerned parliamentary committee and exercised such control. So, from this “two in one” viewpoint, I will take it upon myself to make a retrospective journey into the history and review our gains in the field of democratic civilian control of the Ukrainian special services.

The evolution of parliamentary control of special services in Ukraine may be conventionally divided into several stages. In early 1990s, the Parliament and special bodies worked hand in hand. In fact, the special services of independent Ukraine were created with the active involvement of the special parliamentary commission, and were placed under its direct control. All appointments to executive positions passed through the commission; national deputies were present in the board of the main special service – the SSU. We jointly drafted, and the Verkhovna Rada passed the Law on the Security Service of Ukraine, effective even now, with some amendments.

Under President Kuchma, especially after the adoption of the 1996 Constitution that strengthened presidential powers, cooperation between the special services and parliament weakened, largely confined to the budgeting process and the hearing of some issues in the concerned committee and Parliament. Introduced in 2004, amendments to the Constitution, pushing it towards a parliamentary-presidential style system, revitalised cooperation between the Verkhovna Rada and the special services. Representatives of the concerned committee took part in the work of the governing bodies of the SSU, the Foreign Intelligence Service (FIS), and the Main Intelligence Department (MID) of the Defence Ministry. The Committee held field meetings in the premises of special bodies (i.e. intelligence, counterintelligence,

border services). Authorised representatives of the special services maintained daily contact with the concerned committee of the Verkhovna Rada, which contributed to both parliamentary control and the efficiency of law-making.

After the “return” to the Constitution of 1996 in 2010, the Ukrainian legislation was amended and the established practice reduced, allowing for no possibility of parliamentary control over the special services. Even words stating that the Service was controlled by the Verkhovna Rada were removed from the Law on the SSU. In 2010-2012, representatives of the concerned committee took part only once in a meeting of a governing body of a special service (MoD MID). The institute of representatives of intelligence bodies for permanent working contacts with the Verkhovna Rada did not function properly.

In its time, the perfection of parliamentary control of SSU activity was sought in a bill (considered in May, 2011) that elaborated on the powers of the concerned committee with respect to controlling the observance of the law by the Service, collecting and analysing relevant information, and ensuring the obligatory consideration of its recommendations by officials. It did not duplicate provisions of the Law of Ukraine “On the Verkhovna Rada of Ukraine Committees”, but elaborated and specified the activity of the concerned committee, created a mechanism of real cooperation between the legislative body and the special service, then missing for fully-fledged democratic civilian control. However, the parliamentary majority disregarded the arguments for democratic civilian control, and the bill was defeated after fast-track consideration.

In no democratic country will you find a situation where a special service is not controlled by the legislative body in one or another form. We know that even in such a presidential state as the US, special Senate and Congress committees enjoy vast controlling powers, covering not only budgeting and observance of the law by special services but also assessments of the efficiency of their activity, information about significant operations, investigation of infringements, access to documents, personal appointments etc. It is hard to imagine anything like that in our context, and we should probably not try to copy the US model. We need our own, but one which also ensures an efficient approach to the organisation of parliamentary controls, and which is guided by the best democratic practices.

Democratic society needs a strictly regimented safeguard against the eternal temptation of the government to use special services for narrow partisan home policy, or even personal benefit. Parliamentary control is to play a key role in the democratic system of checks and counterbalances.

The need to adjust Ukrainian legislation to bring our control of special services closer to European norms is obvious. In fact, the task of providing efficient democratic civilian control of special services was mentioned more than once and set in the programmes of security sector reform under the presidency of Kuchma, Yushchenko and Yanukovych alike. Unfortunately, that task, as well as the mentioned programmes, remained unaccomplished. Attempts to do something were in vain, first of all, because of the home policy situation and impossibility of changes without reformation of the entire law-enforcement system, and the security sector in general.

Even now, interaction between the supreme legislative body and special services of Ukraine is far from adhering to best democratic practices. The Verkhovna Rada's right to control observance of the law by special services claimed in the laws on the SSU and intelligence bodies is not backed-up with real mechanisms allowing for the examination of the practice of applying legislative acts in the activity of special bodies and their officials. The obstacles include a common perception (both among lawmakers and in the special services) of parliamentary control as "inspection" or "administration", rather than of the building of a system of joint responsibility for state affairs and the maintenance of democratic standards in the activity of special services.

Yet ten years ago, in 2006, experienced politician and respected chairman of the concerned parliamentary committee in the Verkhovna Rada of the 4<sup>th</sup> convocation, Heorhii Korniyovych Kryuchkov, when handing over his powers to the newly-elected Committee chairman, said that the procedures and mechanisms of the Committee's cooperation with the special services had not been fully established; that the Committee had no real influence on appointments; and that reviews of budgeting issues were confined to lobbying requests of intelligence bodies, rather than programme-target analysis.

Unfortunately, since then, not much has changed. So, what do the capabilities of control of special services now look like in a *parliamentary-presidential* republic, which Ukraine now is, according to the effective Constitution?

**Subordination:** special services are fully subordinated to the President of Ukraine.

**Powers of Parliament** and the concerned committee: control mechanisms in the form of cooperation and joint responsibility are not tested and are regimented only in general.

**The mechanism** of special services' **reporting** to the legislative body is not specified. For instance, the Law on the SSU says only that the SSU Head is to report to Parliament annually, but the terms, specific issues and format of that report remain unclear. Reports of the FIS and MoD MID to the Verkhovna Rada are not envisaged at all.

**Appointment and dismissal** of executives: the Verkhovna Rada only gives consent to appointment of the SSU Head; appointments of FIS and MoD MID heads are not approved in Parliament.

**Approval of expenditures:** only in general; the programme-target method is not used.

Therefore, the long-standing problem of ensuring equilibrium between secrecy and transparency in the activity of special services has been solved by favouring secrecy, at least for the time being.

To remedy that situation, the following proposals can be put forward for joint consideration by the leadership of Parliament and the special bodies:

- To create, in the Verkhovna Rada, a separate parliamentary committee for control of the activities of the special services (the SSU, FIS, MoD MID). To think over and introduce the rules of membership in such a committee, including special clearance.
- To create, for the same purpose, an expert council (with staff and invited members) at such a committee staffed by competent specialists tasked, in cooperation with the special services, to prepare issues for consideration by the concerned committee.
- To find and initiate awareness-building activities for newly elected members of the concerned Verkhovna Rada committee to avoid incompetence, which can in turn harm state security. For instance, to oblige them to take briefings at special services on basic issues concerning their activity and secrecy procedures.
- In order to increase publicity and transparency, to strengthen cooperation between the special services and Parliament through participation of authorised representatives of the concerned Verkhovna Rada committee in some meetings of their governing bodies and the work of public or veteran councils, where applicable.
- For the same purpose, it is also important to legislatively regiment the procedure for the reporting of special services to Parliament. To specify the form (a report in the Verkhovna Rada chambers, in camera parliamentary or committee hearings, a written or electronic report, etc.), terms and issues to be covered in the annual report of the agencies to the legislative body within the framework of democratic civilian control.

Although I do not claim to make a discovery, I want these proposals to give food for thought and to engender further discussions on perfecting the system of democratic civilian control of the Ukrainian special services, at our conference, and in the course of the reformation of the national security sector that still needs to be accomplished.

## DISCUSSION

### **Leonid POLYAKOV, Center for Army, Conversion, Defense and Disarmament Studies**

We badly need to create a committee for control of the intelligence and special services, and I hope that this idea will be implemented shortly. Proceeding from my past experience of work on Ukraine's MoD intelligence budget, I can assure you that without such a committee, including experts and MPs who deal with intelligence, our intelligence will never receive adequate funding. Now, our intelligence services have budgets that can only be termed "beggarly". If we look at international examples, the British intelligence service MI6 (roughly equal to the Ukrainian by strength) has a budget 100 times bigger than its Ukrainian counterparts.

It only proves the known saying that a real strategy "is seen in the budget". If it only exists on paper, as a concept or programme, but is not reflected in the budget, all concepts or programmes are essentially meaningless.

All good work should be properly rewarded. Most regrettably, our national deputies, quite lavishly provided by the state (especially in the past), believe that outside experts should work in committees, for instance, the National Security and Defence Committee, pro bono, performing their civic duty. If we adopt the experience of Norway, where experts work on a professional basis, our national deputies should also think of the introduction of such practices, not only their generic structures.



### **Professor Theo KORITZINSKY**

Members of the Committee are paid a salary of around EUR 20 000 per year, which is a good salary in Norway. This job is between 20-25% of a full-time position. The per-hour payment is EUR 30-40, which is not “extremely high” by Norwegian standards.

On the issue of the budgets of the secret police, or intelligence services, we receive all the information we request. Some details are secret, but most of the information is public. The total budget is not made public, yet it is generally known by the public that the secret services in Norway have been strengthened because of changes in the situation.

### **Ihor KOZIY, Assistant to MP of Ukraine**

The security environment changes very fast nowadays. New forces and capabilities are created not only in special services or other bodies of the security and defence sector. The promptness of the reaction-time of special operation forces, cyber command and their subordinates, combined with possible weaknesses in civilian governments, prompt parliaments to provide safeguards within the framework of civilian democratic control.

So, in the present conditions, the established mechanisms of civilian democratic control require amendments.

### **Professor Theo KORITZINSKY**

I think you could measure some things, but very few things regarding effectiveness. Most of the assessment would be based on the evaluation, and most important of which would not be the Committee’s, but rather the authored (150-page long) evaluation and the parliamentary evaluation. We currently conduct more inspections and projects, including producing special reports. The leaders of secret services in writing, but often orally as well, tell audiences that they appreciate our criticism. It creates legitimacy, and also helps to focus their activities.

### **Ann-Kristin BJERGENE**

In the Norwegian model, in addition to the EOS Committee, we also have the Auditor General whose responsibility it is to ensure that funding is used for the right purposes, and who also has other controlling mechanisms which fall outside of this committee’s purview. The uniqueness of this committee is that they could “knock on the door” at any time and ask what the general has in his drawer. They have a nearly unlimited possibility to do that, which establishes trust with the population, making the public more willing to finance the services.

### **Simon LUNN**

I was just curious about one aspect of the Norwegian model, which is a very sophisticated model based on mutual understanding between the executive and the parliament. You mentioned a couple of times mutual unlimited access “to almost

everything". I was wondering in that case, when you reach the point of "almost everything", how do you decide what is excluded and what is included? Who makes the decision about what is released and what is not released? This is similar to the point raised on the relationship between the executive and the parliament concerning the "need to know" basis. Who is it, who decides who needs to know in the parliamentary group that you represent. What sort of negotiation goes on? Who decides what is classified and secret, and what you have access to and what you do not have right to access?

**Professor Theo KORITZINSKY**

It is defined after a long discussion between the leadership of the secret service and the committee. It is called "especially sensitive issues". It has to do with communication with foreign cooperating services and it also has something to do with very few cases in very special instances. In every meeting at the HQ of the military secret service, we are provided with a number of cases where we are not granted access to certain information.

The problem, however, is that the law gives us complete, 100 per cent unlimited access to information, and does not say anything about exceptions connected with the military secret service. However, a plenary majority decision was taken in 1999, which, prescribing a certain procedure, concluded that if we demand information that the military secret service does not want to give us than this decision does not give us automatic access to this information. Thus, the law says one thing and the plenary decision says something else. The Committee presented this to the Parliament



in many instances and in the last two years' annual reports. The Evaluation Report says, "The Evaluation Committee recommends that the EOS Committee be given an unconditional right of access to information about the intelligence service, but the right of access to particularly sensitive information shall be in practice exercised only by the Chair and the Deputy Chair". This is a sort of compromise by the Evaluation Committee, but at least it brings us one step further. However, many of us would like full access to this information. But we understand the feeling that cooperating foreign services would consider us as a third party. It is now up to the Parliament to decide this, when they read the Evaluation Report.

### **Serhiy NAHORIANSKYI,**

#### **Judge of the District Administrative Court in the City of Kyiv**

Indeed, there is a public demand for democratic control of special services in Ukraine. However, such control presumes both prevention of infringements in the activity of special services and, if they are detected, responsibility for such infringements. You mentioned that your committee, EOS, drafts documents for submission to Parliament, and Parliament considers them. Can you cite examples of real responsibility of special services for such infringements and say, how infringed civil rights are restored in Norway?

### **Professor Theo KORITZINSKY**

In Norwegian, the term "special services" does not include the job of "secret services", but if you mean police, or anti-terrorism, or anti-espionage, or anti-economic espionage – in general if the police do anything wrong that they are not allowed to do, for example harm people's property, people do receive compensation.

### **Nazli YILDIRIM**

You mentioned unannounced and announced inspections by your Committee and in your information note there is also information suggesting that you handle complaints. I wonder if you receive individual complaints, or if you are referred complaints by other organisations, or if you can launch your own investigations into complaints?

### **Professor Theo KORITZINSKY**

We receive the complaints from individuals or from organisations. We receive 20-40 complaints every year and we take them very seriously. Some 50 per cent are from people that suffer from mental problems, but they also get answers. The rest – around 50 per cent – would be followed up with letters to secret services that the complaints are about. Sometimes it is difficult to determine the alleged perpetrators of the received complaints, whether they are about police, or military, but regardless we take them very seriously. We get some results. Of course, we cannot inform people as to whether they are in the files of secret services or not. If our letters are responded to with some results, we let the addressee know what was found and if anything was changed.

## Professor Ian LEIGH

Commenting on the first two levels of control, the absence of investigative capacity whether the service would carry out executive instructions and ensure their legality: this is really one of the key tasks and something an expert body would be able to do, something the Parliamentary Committee would not be able to reach.

The second concerns the role of journalists and civil society. They have an important role in the oversight of security and intelligence services. One only has to think of the revelations from the US about CIA renditions, or black sites, or mass surveillance by NSA and GCHQ to realize the importance of journalistic disclosures and internal whistle-blowers in giving important information to journalists that was not adequately addressed by conventional oversight. But this is the second best option. By far the better way would be if the oversight structures themselves were robust enough to detect abuses and put them right. Without it, there will remain a need for disclosures to journalists that might themselves threaten national security and be rather indiscriminate in the way that they work.

My second point concerns the need of safeguards against the “politicization”, or the abuse of security services for political purposes. Most countries have a rather sophisticated set of interconnected safeguards. They might concern the role of parliaments in approving key appointments, such as the head of security service as provided for in the Law on SSU, but also include questions such as the security of tenure, so that the Head would not be removed after a year or two, and there is a process for this which should not necessarily involve the executive, or President. Some of the safeguards for transparency have to guard against politicization, if illegal behaviour or political instructions are reported to some independent body, or parliamentary body.

