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President, Razumkov Centre

Enhancement of transparency and responsibility as the key guidelines of export control development in Ukraine

Dear friends,

We warmly welcome at this international conference the leading Ukrainian and foreign experts working in this critical field. Its importance is evidenced by the fact that violation of export control regimes established by international organisations was one of the reasons for the war in the Persian Gulf.

Our special thanks to the immediate organiser of this Conference, L.Polyakov, Military Programmes Director of the Razumkov Centre, and its co-organisers — the Geneva Centre for the Democratic Control of Armed Forces, represented by its Director Ambassador T.Winkler, and the Stockholm International Peace Research Institute (SIPRI) in the person of its Director Dr. A.Bailes.

We are grateful to the donors that rendered financial support for the arrangement of this event — the U.S. Embassy in Ukraine, represented by Ambassador C.Pascual, and the British Embassy in Ukraine, represented by Ambassador R.Brinkley.

Special thanks to Professor A.Rotfeld for his immense contribution to the organisation of this conference. Our co-operation began when he headed SIPRI. Now, he is Deputy Minister of Foreign Affairs of Poland, and we largely owe the organisation of today's event to his initiative.

The subject of today's discussion covers the key issues of export control that now worry Ukraine and the world community and that we, lead experts from 25 countries, are going to discuss. The broad context of our discussion will encompass international security, international control regimes and the format of international co-operation aiming to prevent proliferation of dangerous technologies and arms, and remove sources of threats to regional and global security. These problems cannot be resolved by any single country on its own, no matter how strong it may be.

To be sure, arms will always be in demand, even in 10 or 50 years. For this reason, it is extremely important to have clear and transparent rules of the game to be abided by all countries. Given the developments in and around Iraq, no one can claim that the world is

becoming safer. The first reason for that is the persistence of the old and emergence of new threats (dependent on the development of the post-war situation in Iraq), second — the problems that arose in the activity of some international organisations due to the difference in positions of their key actors.

Ukraine's system of export control has gone through several qualitative stages:

- ❖ the "grey-and-black" stage, when arms trade was unsystematic, non-transparent, uncontrollable, the system of export control was actually absent or, more exactly, it was in the making;

- ❖ the stage of the system's emergence; Ukraine obtained critical assistance from foreign partners, first of all, the USA; regulatory fundamentals of the export control system were laid down, necessary institutions were established (and improved, at a later stage); i.e., in late 1997 - early 1998, Ukraine saw the establishment of an effective export control system which, however, lacked a specific legislative foundation — its activity was regimented solely by presidential decrees and Government resolutions;

- ❖ the stage of development whose beginning was marked by the establishment of legislative fundamentals of the export control system — adoption of the Law of Ukraine "On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods"; now, we are facing the task of implementing the norms and rules provided in that Law with account of the international experience, present-day trends and expert opinions on those issues.

Over that period, Ukraine has gone through a number of scandals related to the breach of arms export rules. Some of them had no other reasons but for attempts of putting Ukraine in a disadvantageous position in a tough competitive environment. Some issues remain unanswered, including some due to Ukraine's fault. I believe that those scandals were not useless: they should teach us how to behave with true partners and with rivals in an extremely tangled and competitive environment. Indirectly, they show the course in which we should develop our export control system.



We see transparency and responsibility as the key lines of development for this system. Many scandals might have been avoided had Ukraine's Government published summarised annual data of arms exports and imports (when, where, what and on what grounds was delivered or purchased), without any negative effects for the protection of state secrets. This is the common practice in many countries of the world. In particular, Ukraine might improve the process of extension of such information to SIPRI — the institution that sums up and publishes in its Yearbook data on many aspects of international security — for the world community to know that Ukraine respects international control regimes.

Today, the Razumkov Centre jointly with the Geneva Centre for the Democratic Control of Armed Forces present the third Ukrainian language publication of the SIPRI Yearbook 2002. It was initiated by the Stockholm International Peace Research Institute in 1969 to sum up and analyse events, phenomena and trends in the field of international security — first of all, its defence policy and defence industry aspects. Today, the Yearbook materials are translated and published in China, South Korea, Russia and Ukraine (for the latter, from 2000). The extended SIPRI information network, and its employment of world-famous experts in the relevant sectors promote the high authority of SIPRI and explain the high demand for the materials prepared by the Institute.

The Ukrainian edition of the SIPRI Yearbook is distributed among governmental and parliamentary bodies, central authorities, higher educational establishments, and public libraries. Among other things, it contains information about Ukraine's involvement in world processes for maintaining peace and security, non-proliferation, disarmament, and international arms control regimes. The study of that experience, and its comparison with the experience of other countries may be interesting for the authorities, concerned governmental and non-governmental organisations, and to the broad public.

SIPRI materials cover both the gains of the world community in strengthening international security, and the obstacles and deficiencies on that path. For instance, there are noticeable discrepancies between the figures presented in the SIPRI Yearbook and Ukrainian statistics on arms trade. SIPRI tends to attribute this to the insufficient observance by Ukraine (as well as many other countries) of the requirements dealing with information exchange under existing international agreements.

In the course of preparing the Ukrainian edition of the SIPRI Yearbook, the Razumkov Centre's experts, with the assistance of representatives of the concerned



Ukrainian authorities, paid particular attention to the standardisation of terms and definitions translated from English. The positive development here is that, thanks to the distribution of the SIPRI Yearbook, international normative terminology is gradually becoming customary in the practice of state power bodies in Ukraine.

Our readers view the publication of the Yearbook as an important contribution to transparency in the spheres that, up until recently, have been closed to the public. We are convinced that its publication in the Ukrainian language will help make up for the lack of summarised information on contemporary processes in the sphere of international security in Ukraine.

Today's conference is another contribution to the establishment of the principles of transparency and responsibility. Representatives of Ukraine's Parliament, ministries and agencies directly engaged in that activity are present here. While a year and half ago this subject was taboo for journalists and public organisations (as one could hear during the first Round-table on the same problem yet in 2001 in this very hall), by now, its discussion has become normal. We see this as a serious step by Ukraine on the path of enhancing transparency and responsibility in the face of our own taxpayers and international partners, as a contribution to predictability, reliability and stability.

I invite all those present to take part in a tolerant discussion of the proposed subject and believe that each of you will contribute to mutual understanding and co-operation in this sphere. ■



Adam Daniel ROTFELD,
*Deputy Minister of Foreign Affairs,
Republic of Poland*



The reactions on the new challenges to security

I am very pleased and honoured to participate in this conference on security sector reform and arms export controls in Ukraine. For the success of any conference three elements are essential: timing, topicality and the level of participation. Judging by the number and the quality of the delegates, I am confident this conference will be a great success.

I would like to extend my special appreciation to the Ukrainian Centre for Economic and Political Studies, and particularly to Dr. A.Grytsenko, for organising this event. I wish to extend special thanks to the governments of the United States and the United Kingdom, and especially to Ambassadors C.Pascual and R.Brinkley, for their personal involvement in co-hosting this timely organised and politically significant conference. I wish to express my gratitude to Dr. Alyson Bailes, Director of the Stockholm International Peace Research Institute, and to Ambassador Dr. T.Winkler, Director of the Geneva Centre for Democratic Control of Armed Forces, for their productive co-operation with the Razumkov Centre in the publishing the 3rd Ukrainian edition of the SIPRI Yearbook.

Finally, and with special emphasis, I would like to recognise the presence of Ukraine Government's officials and members of Parliament, representatives of academic and non-governmental institutions and organisations active in advancing security sector and export control policies.

We have been eager to bring together government representatives of Sweden, Switzerland, Norway, the United States and Poland, countries that attach great importance to non-proliferation of weapons of mass destruction and export controls, to talk about the practical ways of improving global and regional security.

Our meeting is taking place at a time of stress that needs no elaboration. We are face to face with challenges and threats that demand new approaches to decision-making and above all, to the carrying out of those decisions. I would almost go so far as to call it the summons to a fresh philosophy of co-operation among nations.

I would like to concentrate on four major problems that characterise the current global security situation.

Current problems in the security sector

First, we are confronted nowadays with new non-conventional threats that have assumed global dimensions: terrorism and the proliferation of weapons of mass destruction — and the delivery systems that can turn a threat into actual catastrophe. There is no need to say, in the assessment of the Government of the United States, Iraq posed a serious threat to the national security of the United States. In order to deal with that threat, the U.S. has adopted a new security concept. Iraq has consciously and consistently avoided the adoption of solutions based on rules and principles of international law and United Nations Security Council resolutions. In spite of warnings and sanctions, Iraq has refused to fulfil the most recent and other previously agreed UN resolutions to. As the result is the high probability that weapons of mass destruction and means of their delivery may fall into the hands of terrorists.

The second problem consists in the increasing number of non-state actors and failed or weak states becoming the source of dangerous instability, criminality and corruption. The threat of using weapons of mass destruction does not stem in post-Cold War period from the probability of a global conflict between two world powers, as was the case during the Cold War. Today, partially due to the fact that bipolar order is replaced by emerging new international disorder, access to weapons of mass destruction has become much easier as failing, weak or bankrupt states cannot exercise their sovereign control over their respective territories. Consequently non-state actors and terrorist organisations are emerging on the global scene as one of the main sources of instability, risks and threats.

There exist serious and well-founded suppositions that countries belonging to what President George W.Bush called the "axis of evil" may be willing and able to transfer their technologies and weapons of mass destruction to terrorist groups, including Al-Qaeda. Yet even the most powerful countries are not sure they have effective instruments to combat global terrorism or to defend against it.

The attacks of September 11, 2001, on the United States proved that we all are facing a new type of threat. Four basic features can characterise its novelty: *first*, the scale of the attack; *second*, the nature of the attacks that were sudden, unexpected and not predicted; *third*, responsibility for the attack was traced to an amorphous and invisible terrorist network organised into loosely connected cells armed with asymmetrical capabilities; and *forth*, last but not least — the terrorists attacked the strongest global power that regarded itself as rather invulnerable to an attack, a kind of sanctuary or heaven, particularly one on a massive scale.

The third major problem stems from the crisis in transatlantic relations. A rupture developed between Europe and the United States and was closely followed by divisions within NATO. This has led to the taking of significantly different positions on the question of Iraq. Differences among allies are not new. But never before have they emerged on this scale. To put it bluntly, Iraq has become the catalyst that forced into the open existing differences and discrepancies. This regrettable development has posed considerable difficulties for countries in our region.

Would they stand with Europe against the United States or with the United States against Europe? I consider this to be a wrong and false dilemma. In my view there can be no European security system political and military engagement of the United States, without American presence in Europe. This holds true in the political and the military dimension, in Euro-Atlantic structures as well as in NATO. What is more, I consider this false dilemma to be extremely harmful, because it defines the concept of Common Foreign and Security Policy as well as European Security and Defence Policy in opposition to the United States. As a matter of fact, it fosters the growth of anti-Americanism, which in turn leads to the growth of anti-European attitudes in the United States. It is a high time to stop this drift to disaster.

In the process of defining its policy, Poland is not only faithful to the rule of self-constraint but is continuously working to maintain or to restore normal, close and friendly, relations with its natural partners in the European Union, especially with France and Germany, and the United States.

The fourth, we are touching the last and most serious challenge: the erosion and loss of importance of multilateral security structures. Changes have occurred within the UN — on a global scale; and in the OSCE — on a regional scale. Risks abound and the reasons seem clear. International organisations and structures are of a static nature and reflect the state of affairs existing at the moment of their creation. But security arrangements and processes have a dynamic and changing character. They must respond to new risks and threats.

Having this in mind, Poland has put forward an initiative to establish a Reflexion Group or a “group of wise men” who would embark on the task of preparing a New Political Act for the United Nations in the 21st century. **In our view, the reconstruction of the international system should begin with the conceptualisation of the problems we are confronted with.** We have to define properly the goal we seek. If and when that goal is defined, it should be significantly easier to propose specific structures, mechanisms and procedures



that would make it attainable. This remark applies to the UN as well as NATO, the EU and the OSCE, the Council of Europe and in fact to many other organisations. As matters stand, it is not uncommon to notice that debates conducted within those organisations are often of a surrealistic nature.

Thus a conclusion may easily be drawn that, if the existing multilateral structures and mechanisms do not undergo a process of rapid transformations, they might find themselves on the margin of the main historical stream.

I rather suspect that only a small number of the experts present in this room today remember why and in what circumstances the Western European Union was established. In spite of being one of the best-prepared and best-constructed European institutions, one can only express the hope that the decision to absorb the WEU by the European Union shall allow this organisation to develop a more effective dimension.

Lessons learned

It is my hope that this conference will help our Ukrainian hosts and friends to understand our mistakes and experiences and to profit from both. That it will help them in their reform of the security sector. Please allow me to say a few words concerning this issue. I know that on the basis of SIPRI's project initiated by Ian Anthony the arms export control system in Ukraine has undergone major changes since its creation in 1992. Yet, taking into account its many difficulties, Ukraine's dedication to export control measures has been remarkably steadfast. Ukraine continues to face many challenges, but with determination and assistance, there is every reason to believe that these challenges will be met.

Today, the threat posed by the proliferation of weapons of mass destruction, missiles, and advanced conventional weapons is more diverse and unpredictable than ever. Many “countries of concern” have moved close to becoming “secondary proliferators”.

Luckily, while the threats are more serious than ever, our ability to deal with them is also improving, as nations around the world take stock of their commitments and capabilities and take appropriate steps. But national leaders must make national, regional and international security their highest priority and give it effect in the form of unambiguous commitment to non-proliferation and to effective export controls. They must transform their commitment into action and adopt export control laws that are consistent with international norms. Then they must enforce these laws.

An effective national export control system has three core features: it is adaptive, it is trusted and credible among those on whose co-operation it depends and it is compatible with the export control systems of like-minded nations. It should have an ability to communicate effectively internally and externally. Under the common international standards it is essential that the system include legal and regulatory foundations, licensing procedures, enforcement mechanisms and industry-government relations. These elements are prerequisites for efficient control systems.

National export control authorities must have adequate legal instruments and techniques to interfere in commercial transactions when necessary taking into consideration regional non-proliferation policy based on the threat perception and country specifics to prevent effectively the proliferation of WMD technologies, software, and their delivery systems.

They should have a legal authority to monitor commercial transactions based on an item's potential end use and implement the "catch-all" provisions in the licensing process. National export control authorities must maintain current control lists and advise industries on licensing requirements for current controlled goods, services and technologies. To do so, licensing officers need to access to multiple information sources. They need to co-operate, communicate and exchange information with the licensing counterparts in like-minded nations to establish consistent control procedures, parameters and terminology.



The legal national export control system should have effective enforcement performance based on sufficient knowledge, tools and techniques, information concerning end-users and the best practices. Enforcement officials need to have instruments to conduct pre-license checks and programmes of effective outreach to the business community: importers and exporters.

And lastly, both government and state-owned or private industry must contribute to and benefit from an effective partnership. Export control authorities must help the industry to avoid illegal transactions and to minimise the risk of export control violations that result in penalties and bad publicity. Information and tools government should provide to exporting companies and information and guidance government needs to receive from them.

In conclusion, I would like to stress again that export controls form a key component of our common struggle against proliferation and terrorism. Our discussions today are aimed at helping our Ukrainian hosts to increase understanding of, and contributions to the system of global export control. Ukraine's efforts will help achieve a safer and more secure world. ■



Carlos PASCUAL,
*Ambassador Extraordinary and Plenipotentiary
of the United States of America to Ukraine*

Strengthening of the control on the weapons of mass destruction and sophisticated technology — is in the global interests

I would like to thank the Razumkov Centre for organising this conference and giving us a chance to bring our views together, and to thank all who have worked on this event — the Geneva Centre for the Democratic Control of Armed Forces, the Stockholm International Peace Research Institute, and our colleagues from Poland and Ukraine. I am struck by the number of policy makers involved in this conference, and I believe that this is indicative of the change the field of export control has undergone. Earlier, there would have been mostly technical experts present. Now the linkages between export control and international security are clear. The situation in Iraq highlights how much is at stake when weapons of mass destruction fall into the hands of terrorists and rogue states.

Let me say a few words about this situation. For decades, the possibility of weapons of mass destruction entering the hands of terrorists was seen as a theoretical risk. But as Secretary Adam Rotfeld has said, September 11 awakened us to new vulnerabilities. This is not because weapons of mass destruction were used on that day, but because it made real the deadly threat against the values of freedom and human dignity. For the first time, this tragedy made it possible for us to begin to envisage the impact of weapons of mass destruction falling into the hands of those who disregard humanity. Today's threats are very different from what they were twenty years ago. They are weak states, terrorists and dictators. These are multilateral threats. We have learned that terrorists can be harboured anywhere, that technology and money can cross boundaries, that there is a need for a multilateral regime, a strong and effective multilateral regime, to combat these threats.

The decision to go to war in Iraq, a decision which is now supported by more than 35 partners in the coalition, was not taken lightly. It was not because of a disregard for multilateral institutions, but because multilateral regimes had, eventually, failed us.

This process of seeking to disarm Iraq extended over 12 years. It began in 1991 with UN Security Council Resolution 687, where Iraq promised unconditionally to disarm within 90 days. Ten times since then, the UN

Security Council determined that Iraq was in material breach of this commitment. In November of 2002, the Security Council came together once again and passed Resolution 1441, where they stated that this was a final opportunity for Iraq to comply with the Security Council's resolutions and to disarm and for Iraq to proceed with immediate, active and unconditional co-operation. Iraq was to submit a declaration of its holdings of weapons of mass destruction. When that declaration fell short of the truth, it undermined the prospect for effective inspections.

Many people in this room will remember the days of arms inspections under the Soviet Union and the United States. They worked because there was at least a foundation of trust. Our declarations indicated where our weapons were and inspectors could come and determine that that, indeed, was the case. In Iraq, we were not given the basis to do this, and the inspectors have determined that the benchmarks from 1998 have not even been accounted for. This means that there are tremendous amounts of dangerous materials, weapons of mass destruction and their means of delivery, which have not been accounted for. Anthrax, botulinum toxin, VX nerve gas, mustard gas, and bombs, shells and missiles to deliver them.

I want to take a moment to emphasize, as well, that the actions that the coalition has taken are within international law. In 1990, UN Resolution 678 made clear that all means were authorised to bring stability to the Gulf region. In 1991, when Resolution 687 produced a ceasefire, that ceasefire was based on Iraq's unconditional commitment to disarm. And the ceasefire abided if Iraq abided by its commitments. But Iraq withdrew from those commitments. Once again, Resolution 687 came into effect, authorising use of all necessary means. That interpretation was reaffirmed first in 1993 by the Secretary General of the United Nations when force was used against Iraq. It was also used in 1998. In 2002, when the UN Security Council passed Resolution 1441, it also stated that Iraq has been and remains in material breach of its commitments to the United Nations.

If there is one lesson that we certainly have learned from this whole process with Iraq, it is that countries and individuals and terrorists will risk everything that they have to acquire weapons of mass destruction and sophisticated technology. And what we clearly know is that Ukraine has materials and technology that terrorists would like to get into their hands. Highly enriched uranium, biological materials, nuclear materials, radiological materials, missile technology. There is no doubt that terrorists seek these.

That brings us back to the topic of export control and two key questions: how to safeguard these materials, but also how to allow for their legitimate sales. An important question to ask today is whether checks and balances in export control work in Ukraine. Over the past months, as a result of numerous studies and interviews, we have seen and learned of some disturbing patterns.

First, I think it is important to recognise that the beginning of any export control process begins with *Ukrspetsexport*, Ukraine's arms export agency. As one individual cited in a discussion — and others following that confirmed — it would be easier to indicate which individuals at *Ukrspetsexport* are **not** members of the SBU, Ukraine's intelligence service. Through *Ukrspetsexport*, proposals are submitted to the state export control service. When there are questions that require further analysis, that export control service submits the proposals for discussion and review by the Committee on Military and Technical Co-operation and Export Control Policy. On the positive side, this is a multi-agency body, which tries to bring in checks and balances. On the negative side, if there are issues that require additional or further research, that research is immediately tasked to the Security Service of Ukraine — the SBU. So, in effect, given the SBU's role in *Ukrspetsexport* and its role as the entity which does the analysis on potential negative transactions, the SBU is put into the position of being both the proponent of export sales and the jury by which to judge whether they are legitimate. That, in and of itself, can be considered a conflict of interest and a closed internal circuit. If it is to be broken, there are two options. One is whether it can be broken at the front end by changes in the nature of *Ukrspetsexport*, or secondly, whether it can be broken downstream, by changing the mechanism for independent checks on sales.



Fundamental questions presented for this conference are:

- ❖ what is necessary to introduce effective checks and balances in Ukraine's export control system?
- ❖ what are the penalties for those who violate the export control system?

These are questions of international significance. We have seen that if technologies and weapons fall into the wrong hands, it can be suicide for all of us, for civilisation. It can be suicide in terms of the lives that it costs, and also in terms of values, because those who seek to use those weapons of mass destruction are fundamentally attacking freedom and human dignity.

We are pleased to join this conference today in the spirit of co-operation. We believe that the positive results of this conference will serve multilateral security and help support the development of new kinds of international security structures.

And finally, this conference, I think, reaffirms our commitment to peace, because keeping technologies and weapons of mass destruction out of the hands of those who would misuse them is a great contribution for everyone in the world and for future generations. ■



Robert BRINKLEY,
*Ambassador Extraordinary
and Plenipotentiary of the United Kingdom
of Great Britain and Northern Ireland
to Ukraine*



Partnership assistance in improving export control system in Ukraine

The United Kingdom was pleased to sponsor the organising of the Round-table “Export Control in the Context of Security Sector Reform”. I am delighted to see here key representatives of the Government and the Verkhovna Rada of Ukraine, other organisations, which are charged with the responsibility for export control and are interested in solving this issue.

The United Kingdom fully supports the position of the United States on the problem with Iraq, presented here by U.S. Ambassador Pascual. There are sensitive issues, for all states, in regional national security and free trade, which are associated with the avoidance or prevention of dangers and risks created in cases where weapons get in the hands of the “wrong persons” or become uncontrolled. We should balance, at the legislative level, mechanisms of ensuring national security in order to establish conditions for safe and risk-free co-operation and trade with friends and partners.

After recent high-profile scandals of disputed sales of military equipment (to Macedonia and Iraq) it is clear that arms export control in Ukraine needs review. **The United Kingdom wishes to assist this process:**

- ❖ by establishing specialist contacts between the UK and Ukraine to develop bilateral projects and co-operation;
- ❖ by promoting public discussions, such as this Round-table, to stimulate debate and encourage action;
- ❖ by training people in information technology and management of new systems, helping the Committee on Military Technical Co-operation and Export Control Policy to recruit and train staff able to professionally carry out their duties in the field of export control in Ukraine.

Transparent and robust export control is a key element of security sector reform and is part of the NATO-Ukraine Action Plan approved at the NATO Summit in Prague. It is a cross-government issue. Many departments of the British Government including the

Foreign and Commonwealth Office, the Ministry of Defence, the Department of Trade and Industry, and Her Majesty’s Custom and Excise co-operate closely to achieve effective export controls and prevent illegal weapons proliferation.

Effective export controls should not hinder or reduce legitimate arms trading. In fact the opposite. A transparent and efficient system of export control should raise the level of trust, support and facilitate legitimate trade, and give producers and buyers confidence that they are conducting business legally. Such a system of arms export control is expected to foster the formation of a strong industrial base benefiting individual arms producers and the country as a whole.

The conflict of interest within the export control system should be avoided. In Ukraine, however, the SBU is involved in the operation of both *Ukrspetsexport*, the country’s arms exporter, and the export control system in the capacity of an agency that investigates questionable export contracts. Such a practice cannot ensure effective checks and balances because, as the ancient Romans put it, *Quis custodiet ipsos custodes?* — Who will guard the guards? Therefore, the export control system must be democratic, accountable, and open to independent scrutiny, with free information exchange between overseeing agencies including the Verkhovna Rada.

Outside the country, information should be shared to engender trust and constructive relations with partners. Meanwhile, certain stages of the arms trade process necessitate the implementation of information protection measures, but they should not obviate the need for process oversight. These are not ideals, they are part of the standards of EU members. Such standards must be implemented in all countries, which aspire for accession to the EU, in order to demonstrate internally and externally that they have an effective arms export control system that prevents illegal proliferation of weapons.

The security of each of our countries is no longer just a national, nor even a regional issue. It is global as well. It is in all our interests to regulate arms sales so that military hardware contributes to maintaining peace and stability, not war, repressions and instability. If the UN Security Council imposes sanctions against a country, those sanctions must be enforceable. Mandatory UN Security Council resolutions are legally binding on all UN member-states. All countries must have corresponding means for implementing and observing such resolutions.

The national export control system is a tool to achieve this goal. Put simply, Ukraine's arms export control problem is also our export control problem. We want to help Ukraine solve it. ■





Andrzej KARKOSZKA,
Senior Political Advisor,
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Control of Armed Forces



Democratisation of the export control system as a part of the security sector

My task here is to try to show how the national arms export control system is linked to a wider security sector of a state. The subject of security sector and its wide-ranging reform has become very much “the topic of the day” in many countries of the world. But I am not going to discuss the security sector control as a separate subject. There will be, I think, a good opportunity today afternoon to discuss this subject thoroughly, when the SIPRI Yearbook 2002 (translated into Ukrainian thanks to the efforts of the Razumkov Centre) will be launched. This Yearbook contains a chapter on “The challenges of security sector reform”, of mine authorship. SIPRI’s attention, given to this subject, is yet another recognition of the role played by a security sector reform as a new paradigm of various international activities. Though the security sector reform is seen as a mechanism enabling better efficiency of international development assistance, regional confidence building, overall democratisation of post-authoritarian states, and a national building in the post-conflict areas, it is also pertinent to our subject of today, namely, to the problem of arms export control.

I think it is a very opportune moment for our debate on a national arms export control system because Ukraine’s President in his decree of February 20, 2003, (*Note: at this date actually the Law was adopted by the Parliament, which later was signed by the President to become valid*), has opened up a new stage for the development of the proper arms export control in this country. And I see in this fact one more important step towards a wider progress in the Ukrainian security sector reforms.

I would start by dividing the issue of arms export control, into two aspects, two tasks. The first aspect deals with setting norms, regulations, establishing administrative structures, and nominating specialised institutions which are to perform certain functions within the system. The second task, which is much more important and also much more difficult to execute, is giving this whole system a proper implementation framework with well defined powers of execution of norms and regulations, and effective procedures facilitating the interactions between the institutions set up in the system.

If we take into account the experiences of countries of Europe during the last decade from the area of democratic transformation of armed forces, this second task, which is implementation, procedures, the actual functioning of the system according to certain principles, is much more difficult. It is much easier to create a facade of norms, rules, regulations, and even to establish complex administrative structures, than to use them in an efficient and correct manner. This requirement is particularly demanding in periods of difficult, contradictory political situations, in which several interests are played out and have to be balanced off.

Why do I propose to discuss an arms export control system within more general aspects of security sector reform?

Let’s visualise what entities are playing a role in such a national system. First, we must mention the arms industry. In a country like Ukraine, possessing a very powerful arms industry, there are a large number of firms producing weapons and military equipment. Second, we must take into consideration enterprises which are organising the trade with arms. Again, there are many such firms licensed to carry out such activities.

Third, we have extensive administrative organs, responsible for the creation of the arms trade regulations, composing list of goods permitted for trade, licensing of firms, controlling their documentation and their activities, auditing them and inspecting. Also within this area exist several state co-ordination and supporting institutions, like Ministry of Foreign Affairs, Ministry of Defence, intelligence agencies, secret services, border guards, and custom services.

All these elements of a system of arms trade control are part and parcel of a widely conceived state’s security sector, which can be analysed both from a theoretical as well as practical point of view.

A particular feature of the security sector, which can be visualised as a complex network of various entities with different lines of command and decision-making, is its strong linkage with the political power centres. This is the main reason for underlying the second aspect of



a national arms trade control system, namely the problems of implementation. As we have already said, the actual operation of the system on a daily basis, the actual correspondence between legal and procedural regulations on the one hand, and the actual functioning of various elements of the system on the other hand, is decisive. Either the system works in consonance with democratic principles and is well controlled by democratic state institutions, or it is ruled by other, non-democratic principles.

We have to assure not only the effectiveness of arms trade activities, but we must also assure that what is produced is also sold properly, thus bringing financial and political benefits to the country. However, this general objective has to be met according to democratic principles of operation, guaranteed by the existence of effective democratic oversight by the entitled state organs.

The chain of arms trade processes is in theory just another field of state business. Therefore, it should operate under general principles of good governance: making profit, staying within the internal and international legal norms, and being publicly accountable as any institution of a democratic state should be.

What are the operative aspects which I would like to bring up as those that should characterise a well operating, meaning “well governed”, system of national arms export control?

Although on the surface it may not appear to be the most difficult, I would name as the most important, the **balancing of political interests at the top level of power — that is the highest political and state institutions — with the economic and financial interests of those who produce and sell.** Somewhere in the system this balance has to be created to make the outcome according to the principle of effectiveness and good governance.

To achieve that balance a **clear state policy of what a state wants to do in its international foreign and security domains** is of a primary. This should include clarity on where and for what purpose it is going to sell weapons. This brings us to the second aspect for a state's policy, creating a sort of a doctrine of arms exports — enabling a good planning system and a systematic building up international linkages.

Next I would like to mention a **clear separation of powers and responsibilities between the executive, legislative and judiciary elements of a state's bureaucracy.** It seems a very basic point. However, when we go down to the nitty-gritty of a decision-making system concerning export of arms, it is very important to be clear what is the role of the presidential executive power in relation to the government departments and lower down. To make a little digression: when the law on the democratic control of armed forces was created in Poland, it was written on just two pages. I was responsible for writing down the operational procedures within MoD, including the general staff and the armed forces. It took us a whole year of intensive deliberations to create a clear set of operational procedures, described on more than 150 pages. This example shows the relation between the world of a legal norm and the world of its actual implementation.

This link between political or legal decisions and their actual implementation is of importance also for legislative institutions. Those who create norms should,

at least in theory, have a right to oversee their application. This also means the ability to control the entire arms export control system, naturally, and according to certain rules. Also the judiciary institutions, along with the prosecution and the courts should be able to fulfil their functions properly, punishing those who are perpetrating illegal activities in selling or buying weapons and military equipment.

Let me now turn to two basic, indispensable features of a modern national security system. These are **the transparency of the system and the accountability of those who function within it.** A transparency rule has the internal (and that means national but also inter-departmental and external (international) connotations. In case of national arms export control the requirement for transparency is a very difficult issue. Here we deal often with the matters belonging to, though not exclusively, a state secret. I will come to this problem later on. Transparency is a very wide notion. I have no time to discuss it here in detail; suffice it to say that it is connected with the freedom of the media, with the existence of a public opinion and a civil society. All these elements play a role.

Next, let us mention the issue of accountability. I want to make a **difference between political accountability and legal accountability.** The first one concerns especially the functionaries of executive institutions and “political” means “being accountable to the public opinion”. In the latter case legal accountability gives an answer to questions: were the executive actions complying with the existing legal norms and financial probity, and were the resources of the state not squandered or used for other purposes than they should be.

Linked to the issue of transparency in arms export control system is **the dissemination of information.** There is a need for provision of relevant information inside the institutions, among the institutions, and between the state institutions and the public. Each one of these relationships needs to be regulated. Here I want to discuss the existence of rules on state's secrets and preservation of confidentiality.

Many of the people involved in arms export control invoke the requirement for secrecy as a reason for trouble in the quality of that “control”. The right to preserve secrecy has many legitimate reasons: not only because we talk about state secrets dealing with state security, but also about scientific achievements, and intellectual property. There are many aspects of state's interests that should be guarded. However, these important rules, as it was already said here, should always enable the overseeing institutions to function well.

The problem of secrecy has many other aspects, like the existence or lack of clear information policy of a state, and the effectiveness of information dissemination process. It concerns general and specialised publications like, for example, “White Books” on state's security and defence policy. Usually there is a lack of legal obligation to disclose information about the arms trade on part of state authorities. Moreover, in some states there exist a very high degree of autonomy of several power organs or other state institutions in the whole system as to the volume and kind of information released for public use.

The issue of secrecy in state's security matters belongs to a kind of taboo, prevailing in a number of post-socialist states. It concerns arms trade and other areas, like for example the military budgets. It was always a



taboo to discuss in detail the military budget. But, as we observe it in many countries undergoing democratic transformations, these taboos are broken.

The list of various rules and principles, some of which I have enumerated here, looks quite impressive and straightforward. However, as the experience of several European states with reforms in their security sector shows, they encounter difficult and specific problems in the application of these beautiful norms and rules.

The first among these problems is linked to the legacy of an authoritarian system, existing in the not so distant past in the post-Soviet and all other states, belonging to the same bloc. I come from this type of political system and I am old enough to be shaped by it. I therefore speak about this from my own experience.

The most powerful factor of this legacy of the past is the problem of individual attitudes of citizens. Here lies the basis for overplaying the importance of secrecy. Here is the already mentioned fear of state's power institutions: the police, secret services, and intelligence. There is also a lack of interest of citizens in state affairs, only partially explained by their preoccupation with difficulties of daily life. This legacy is seen also in the domination of state over a citizen. We still have it in our minds. And finally, there is a lack of trust as far as the efficient working of democratic institutions is concerned. In a number of countries the time is still too short in which we could practice democratic life.

Other legacies could be added to the list of our former political system, like weakness of public society and of media, and the general dislike of the state's authorities to play by democratic rules.

Notwithstanding the problem of the legacy of the past, there are other obstacles encountered in the application of security sector reform. For example, there is a corporate character of all the organic elements of a state's security structure. These institutions and forces are working according to their own code of conduct and often they do not share their inner issues with the public.

There is also a lack of pressure from outside of our states on security sector reform. We are used to hearing from NATO, the EU, and other organisations that we should impose democratic control of armed forces and we oblige. And this proved to be the easiest part of the problem of security sector reform. Ukraine, for example, is very far advanced in the area of democratic control over the Armed Forces. However, the rest of the security sector is left barely touched in many countries, including your own. One of the explanations of this phenomenon is the complexity of the task. It takes fundamentally different measures to democratise or to reform police, border guards, secret service, and intelligence. They all operate according to different rules, and different ways of behaviour. And that is their right. However, despite this differentiation they should all apply more to the same general principles of democracy and good governance, which I have mentioned: public transparency, parliamentary or legislative oversight, political, legal, and financial accountability, and treating the service in various formations as a public service.

Finally, the biggest trouble all the countries including the post-socialist and the old democratic ones, encounter in reforming their security sector structures and operations stems from the fact that security sector institutions are in a direct interaction with a very strong web of political interests of various groups. And thus any national security sector is connected with administrative power, political interests (party and other), and economic interests. In case of arms trade control such a link to the decision makers located in or tied to a military industry has a special importance. The interaction between all these elements creates a specific interconnection, a powerful political entity. It tends to play by its own rule and thus it is very difficult to force it so that each particular element of the security sector is working according to the general democratic norms.

As I have said, these problems are visible in all states coming out of the authoritative political system of government. However, there is a different accentuation of these problems, depending on how long the authoritarian system had existed in a given country. And so, the Hungarian case is different from the Ukrainian one, or from a state located in Central Asia. The geopolitical and historical conditions of all these countries are very specific, and the authoritarian system could enter much deeper in the minds, behaviour, and practices of certain societies than in the other.

In conclusion, I want to stress one more general observation. A security sector reform, and this includes reforms in a state's system of arms trade, depends on general political context, in which this specific transition takes place. It is not enough to issue one or two well-edited documents or to pass one or two decrees, changing a particular part of a system. The democratic security structures can be truly reformed only when the whole society undergoes similar change. Hence it necessitates more general and comprehensive political reforms throughout the whole state system, encompassing the relation between state structures and society, all public life, and all aspects of governance. The improvement of relations between the armed forces and security sector institutions and society, constitutes only one part of the whole process. ■



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The development of European Union export controls

During the 1990s the European Union has become a major player on the international arena regarding arms export control. Transformations that are underway in the EU will make it an even more important partner in this sphere. Developments evidencing the success of this process are taking place every year.

❖ **Deepening of co-operation between EU Member States.** On the one hand, co-operation ties between partners are increasing in number, and on the other, new co-operation models as well as new types and forms of export and new forms of goods and services transfer are being implemented, which further deepens co-operation between Member States.

❖ **Widening of co-operation.** Geographical enlargement of the European Union resulted in a wider EU membership. Other countries are still waiting to become new EU members. They are going to bring in their own export control systems, which aspect is important from the point of view of economic and technological co-operation with such countries as Ukraine. Co-operation in export controls is widening thanks to the introduction of new technologies. The EU is not a static formation; it evolves together with its export control system.

The improvement of EU export controls is part of a wider topic, but I will focus only on those developments in the 1990s which directly relate to this subject matter.

At the end of the 1980s, the European Union embarked on creating a Single European Market. In particular, this process was to ensure the freedom of movement of goods and services across Europe. One of the objectives of this endeavour was to eliminate excessive border barriers and controls at the border crossings between EU Member States. However, this should not undermine security policy and arms control obligations within the framework of effective treaties. Therefore, the balancing of free movement of goods and services, security policy and export control procedures has become a priority.

Information about covert Iraqi weapons programmes and the discovery of European exporters' involvement in

this matter considerably raised the European understanding of the importance of export controls, especially in view of the existing agreements and the progress achieved. The technological level of the Iraqi conventional armed forces during their war with Kuwait substantiates this allegation: much of the Iraqi military equipment was imported from Europe. This information was a real shock for the EU, highlighted drawbacks in export controls, and prompted a revision and improvement of national export control systems in many European countries.

The development of the European Common Foreign and Security Policy should create new instruments of co-operation between EU Member States. There is a need and a certain possibility to do so. The need for transformation is determined, in particular, by changes in the nature of sales of defence and dual-use products including the reduced demand from national ministries of defence, increased industrial concentration within European states, increased industrial co-operation and concentration between European states, and increased importance of exports.

European Union responses in the sphere of export control can be divided into two areas defined by the nature of objects under control, namely, dual-use products and weapons. Both areas have different operational and normative aspects.

The Dual-Use Export Control Regulation binding for all EU Member States was adopted in 1995. In 2000, it was extensively modified. Meanwhile, arms export controls have no legal base in the EU and are primarily regulated by national legislations. Thanks to intensive work on harmonising national legislations, in 1998 the European Union adopted a Code of Conduct regarding arms export control.

The main legislative provisions regulating dual-use export controls in the EU include:

❖ Mutual recognition of licences at the external borders, which raises the importance of co-ordinated transborder trading policy conducted by Member States;

- ❖ Formation of a common control list, which creates a legal base for adopting political decisions within the framework of export control regimes. The list serves as a supplement to the corresponding legislative document, has great significance and is binding on all Member States;

- ❖ Exchanges of information on licence denials and institution of consultation procedures, both of which strengthen confidence and emphasise determination of Member States to fulfil their commitments;

- ❖ Empowering the European Commission to oversee the implementation of legal export control requirements at the national level and assist in resolving practical issues. This is considered to be an important element of regulation, which can raise the efficiency of EU legislation implementation in Member States;

- ❖ Introducing new legislative norms between Member States, which define procedures of carrying out export control by national governments in respect of goods that may be absent in the list but can nonetheless be used for military purposes.

In 2000, new legislative norms were introduced, which proved to be unfamiliar for EU Member States and required:

- ❖ Implementation of intangible technology transfer controls (in respect of the Internet, e-mail, telephone communication, etc.) and establishment of procedures of granting permissions for such transfers;

- ❖ Implementation of the end-use or “catch-all” controls.

Co-operation between EU Member States in arms export control used to be carried out in the form of political declarations and was not regulated by EU law. In this respect, the adoption in 1998 of the Code of Conduct regarding arms export control was very important. The Code reflected a voluntary desire of the governments and arms manufacturers of Member States to co-ordinate their actions and carry out arms export control in accordance with mutually agreed procedures.

The Code defined the following main aspects:

- ❖ Agreed criteria to be applied by the governments in licensing arms export operations;

- ❖ Common control list of military equipment;

- ❖ Information exchange between Member States, which includes reporting about instances of licence denials and publication of governments’ consolidated annual reports on export control practices.

Thus, progress has been achieved in both areas of export control (dual-use products and armaments) based on solidarity and concerted actions of Member States and broad exchange of information between them. Reporting in line with the Code requirements has been in place for more than four years and resulted in the provision of more detailed and comprehensive information which allows for a comparative analysis of the countries. This creates additional motivation for Member States to actively co-operate in export control.

Despite positive changes, however, we believe that we are only at the initial stage of creating an effective EU export control system. Notwithstanding the adoption of relevant EU laws, we still have very different national legislations and procedures and a great number



of various products to be controlled. We also have to take into account the internal specifics of each country.

More efforts should be made within the next ten years to solve a number of problems.

In the area of implementing dual-use export controls:

- ❖ To harmonise national legislations in order to establish a common approach to applying EU guidelines to export licence assessment at the national level;

- ❖ To improve co-operation in collecting and sharing information about end-users and end-use in order to implement the “catch-all” principle;

- ❖ To develop closer co-operation with industry in order to raise the efficiency of intangible technology transfer controls;

- ❖ To introduce a common approach to technological progress monitoring in order to: enable the national governments to assess the adequacy of their actions, assist with updating of control lists, and provide exporters with authoritative advice on how to behave on the market.

In the area of implementing arms export controls:

- ❖ To continuously expand the level and detail of information exchanged between Member States about their experience, export control procedures, and instances of granting and denying licences;

- ❖ To harmonise views about countries of concern, which is necessitated by greater co-operation between defence industries within the EU;

- ❖ To promote the use of general licences or licence exemptions for trade within the EU.

Along with certain accomplishments achieved by the EU due to implementation of said measures, we face serious challenges posed by the specifics of current political situation, production processes, arms export procedures and export controls. In the past ten years, there have been many documented cases of breaches of export controls by certain countries, companies, and criminal groups including terrorist groups.

Some of the breaches were inadvertent in character and did not pursue a malicious intent. To prevent such violations in the future, EU countries use such mechanisms of co-operation with the industry as reporting by

companies in a preset format about the results of their operation, visits to enterprises by controlling agencies, *in situ* inspections of products to be exported, holding of consultations and seminars, fostering mutual exchange of information including through the Internet.

There are four main groups of challenges that require law enforcement actions:

❖ **Smuggling.** To overcome smuggling, it is necessary to improve border controls regarding product assessment procedures and to implement special surveillance and investigation of breaches of transborder product movement regulations.

❖ **Secure custody of products the export of which is subject to control.** This problem is created by imperfect conditions of storing and safeguarding equipment, materials and technology in the armed forces and at production facilities and warehouses, as well as during transportation. Many European countries have mutually cancelled border controls between them and unscrupulous exporters try to use this opportunity. The operation of such entities should be under close surveillance of appropriate controlling agencies. Furthermore, we should strive to promote a unified view held by controlling agencies and the industry on the norms and rules of export control.

❖ **Falsification of documents.** There are many cases where exporters try to move products under control across the border using forged documents such as falsified licences, end-user certificates, etc. Therefore, it is imperative to improve the efficiency of documentary control procedures.

❖ **Corruption.** There are three kinds of corruption. At the political level, it shows up in the attempts of certain officials to intervene in the process of licence and permit issuance. This can be countered by providing exporters with methodological instructions on application and permit obtaining procedures. Secondly, organisations responsible for issuing licences, permits and other documents should be accountable and open



for inspection of their activity in order to curb corruption at this level too. Thirdly, the elimination of corruption at borders largely depends on the development and implementation of legislative norms, procedures and rules of conduct for border control agencies, diligent execution of duties by their officers, and effective monitoring of the entire border activity.

All these problems make it necessary to focus political attention on arms proliferation issues. Increased attention should be reflected in the adoption of corresponding decisions about allocation of financial, material, information, and human resources, which would ensure adequate functioning of export control agencies. Provision of resources for export control activity will be an important objective for the European Union, because to substantiate such a necessity and to determine the scope of resources needed and individual contributions is a very sensitive issue for Member States.

In the past ten years, the European Union has made a lot to establish arms and dual-use export controls. However, we are aware that this process is still in progress. We have to build an effective export control system which would involve as many countries as possible. ■



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INTERNATIONAL AND NATIONAL EXPORT CONTROL SYSTEMS



The UK export control system

In my shortly presentation I will try to answer to the questions:

1. Why we control strategic exports?
2. What is control?
3. Where we get the legal power to do what we do?
4. How licence applications are processed?

Why do we exercise export controls?

When considering why we exercise export controls, one of the key factors to take into account are the UK's foreign policy considerations. Many of the UK's controls are embodied in international commitments or multi-lateral export control arrangements and are therefore similar to controls in other countries. The UK's defence interests also need to be taken into account, both in terms of defending our own shores and supporting the UK's industrial base. And, as a member of both the UN and the EU, to enforce any trade sanctions or arms embargoes against particular countries or regions.

It is also important to consider **the eight Consolidated EU and UK export licensing criteria (agreed in 1996):**

Criterion One: UK's international commitments (UN sanctions and EU agreements).

Criterion Two: Human rights.

Criterion Three: Internal situation in a country of final destination.

Criterion Four: Preservation of regional peace, security and stability.

Criterion Five: National security of UK, allies, EU members and friends.

Criterion Six: Attitude/behaviour of buyer country i.e. terrorism.

Criterion Seven: Risk of diversion or re-export.

Criterion Eight: Technical and economic impact on customer country.

Furthermore, the UK does not wish to contribute to illicit nuclear, biological or chemical programme; nor missiles and related technology for WMD delivery.

It is important that exporters are aware of any end-use concerns should they receive suspicious enquiries.

To help build such an awareness with UK Industry, the Department of Trade and Industry (DTI) have an ongoing awareness programme with UK Industry.

What is controlled under the UK system?

The UK's controls are applied across three main categories of goods:

1. **Military List.** Derived from the Export of Goods (Control) Order. If the goods are listed then they are controlled; even if they are now being used for a civilian purpose.

2. **Dual-Use List.** Derived from EC Regulations 1334/2000 implemented into the UK by Dual-Use items (Export Control) Regulations. Goods which have been designed for civilian use but should be used as part of a WMD programme.

3. **End Use controls,** also referred to as catch-all controls. If the proposed export does not appear on either of the control lists but we have concerns about the end user or the destination we can deem that export licensable.

Legal power

UK's legal power is vested in the legislation currently in force in the UK. The 1939 Act was the emergency legislation prior to the onset of WWII. It is the legislation we have used ever since to prohibit strategic controls. However, drafting of updated UK legislation was completed last year and the new UK Export Control Act 2002 will come into force later this year. The Act is now

at the Consultation stage which will provide UK industry with their last opportunity to tell us how the Act will affect them. The Consultation period will be completed by the end of April and the legislation will be introduced later this year.

Export licences

In terms of export licences, there are three types that are issued under the UK system.

Standard Individual Export Licence (SIEL)

The most common form of licence. It is issued for a single shipment to a single end user (it can be part shipped provided the quantity is not exceeded). The quantity, value and destination must be specified on the application. An End User Statement is also required to support the application and must be an original and be specific to the licence.

As well as the conventional paper system, SIELs can also be applied for over the Internet; the application is completed off-line and submitted on-line. All documentation can be submitted electronically to accompany the form but the exporter must retain originals should DTI want to see them.

The DTI's target timescale for processing SIELs is 20 working days. At present, the DTI are completing around 75% of all applications in this timescale.

Open Individual Export Licence (OIEL)

Is specific to an individual exporter and covers multiple shipments of specified goods to specified destinations and/or, in some cases, specified consignees. OIELs covering military goods or technology are valid for two years. OIELs covering other goods are valid for three years.

OIELs are granted to what are deemed "trusted" companies. As with other licence applications, OIELs

are circulated to OGD's but there are no timescales for the issue of this licence. It could take as long as six months and the exporter would have to complete SIELs until the OIEL is approved. If an OIEL application is refused there is no right of appeal. Again, the exporter will have to use SIEL's.

Once an OIEL is issued, one of the terms and conditions is an annual visit from a Compliance Officer from DTI. The DTI officer will speak to everyone from the company who is involved in exports and will ask the company to demonstrate they fully comply with export controls.

Once the visit is complete, the compliance officer will submit a report to the company with a series of recommendations. Failure to implement these recommendations could result in the OIEL being revoked.

Open General Export Licence (OGEL)

Allows the export of specified controlled goods by any exporter, providing the shipment and destinations are eligible and the conditions laid out in the OGEL are met. This removes the need for exporters to apply for individual licences. Exporters must register with the DTI before they make use of most OGELs. All Open General Licences remain in force until they are revoked.

Licence process

Once received by DTI, application is "rated" by technical officers i.e. do goods require licensing and under what arrangements are they to be controlled? Then circulated to OGDs (Foreign and Commonwealth Office, Ministry of Defence, Department for International Development) for their advice based on review against the Consolidated EU and National Arms Export Licensing Criteria.

Foreign and Commonwealth Office advise on: foreign policy implications; whether consistent with UK's international obligations e.g. arms embargoes and regional stability and human rights issues.

Ministry of Defence advise on: protection of UK capabilities and classified data; risk of reverse engineering; diversion to undesirable end-users; effect on regional military balance.

Department for International Development advise on: economy and sustainable development; human rights concerns.

Based on OGDs advices, DTI decide whether to approve or refuse. **Only DTI can approve or refuse.** Once approved, the licence is issued within approximately 20 working days and is valid for two years.



A small number of cases are refused (for 2001, 2% refused out of just over 8,000 licence applications). If so, the exporter has the right to appeal and it is in their own interests to provide new facts or evidence to support their appeal. The case is re-circulated to a different panel that dealt with the original case. If the appeal is upheld then Judicial Review is the next stage. There are no targets for appeals or Judicial Review. Appeals have been known to take 18 months, JR — years! ■





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The Swedish export control system regarding exports of military equipment

Outline of the Swedish export control system and responsible authorities

At the government level, the Ministry for Foreign Affairs is responsible for all questions regarding export control; both export control of military equipment and export control of dual-use items. The Ministry for Foreign Affairs (the section of strategic export controls) is primarily responsible for overall policy making, while an independent government agency — the National Inspectorate of Strategic Products — handles day-to-day export controls such as licence applications and contacts with the defence industry.

The Inspectorate is an independent government agency. It was established in 1996. Before its establishment, the licence authority was placed within the Ministry for Foreign Affairs and licence matters were decided by the Government. The establishment of an independent licence agency, responsible for implementing the controls laid down in the Military Equipment Act, was first and foremost an administrative simplification. Previously, the Government had had to handle routine licence matters weekly at its cabinet meetings.

Although the control now lies with an independent agency, this does not relieve the Government of the political responsibility for these matters. The Government follows the issues closely and has regular contacts with the Inspectorate. The agency is however — in accordance with traditional Swedish public administrative structure — completely independent from the Government, and its prime responsibility is to see to it that the laws and regulations are abided by.

In accordance with the Military Equipment Act, the Inspectorate is, on its own initiative, to refer matters that are deemed to be of principle interest or of particular importance for other reasons to the Government for decision. Decisions regarding the granting of export licences are very rarely referred to the Government. It is more common that decisions on foreign acquisition of Swedish defence industry companies are referred to the Government.

The National Inspectorate of Strategic Products also implements controls of exports of dual-use items, and is the competent national authority under the Chemical Weapons Convention.

Legal basis and Government Guidelines

The legal basis of the Swedish export control system regarding exports of military equipment consists of the Military Equipment Act and associated Ordinance. As a complement to the Military Equipment Act, the Government has issued a set of guidelines that are applied when considering individual licence applications.

Export of military equipment is prohibited unless a licence has been granted. Export is defined in the broadest terms and means that a licence is required in all cases where military equipment leaves Swedish territory, including through transits. Licence is also required for national manufacturing and all types of co-operation on military equipment with foreign partners, including licensed production abroad, military training in and out of Sweden and brokering activities.

The Military Equipment Act also stipulates that companies-exporters are required to provide information on different aspects of their activities. Exporters have to provide quarterly reports on their marketing activities to the Inspectorate, as well as information on final and best tenders. Exporters furthermore have to provide information on their actual export deliveries annually, and information on valid licence and co-operative agreements and shares in foreign companies.

The Military Equipment Act classifies military equipment in two categories: “military equipment for combat purposes” — meaning destructive equipment, such as tanks and missiles; and “other military equipment” — meaning parts and components for military equipment for combat purposes, and equipment that is not directly destructive in a combat situation, such as sensors and surveillance radar.

According to the Military Equipment Act licences may only be granted if the export transaction in question is justified for security or defence reasons and does not conflict with Sweden’s foreign policy.

The Government Guidelines stipulate unconditional obstacles to exports and a number of conditional obstacles. The unconditional obstacles are UN Security Council decisions and other international agreements such as EU embargoes.

The conditional obstacles differ slightly between the two equipment categories. According to the Guidelines, exports of military equipment for combat purposes should not be granted if the recipient country is in an armed conflict with another state, involved in an international conflict that may lead to an armed conflict, or to a state that has internal armed disturbances or widespread and serious violations of human rights. Exports of other military equipment, on the other hand, should be granted to a state that is not involved in an armed conflict with another state, a state that does not have internal armed disturbances and where no widespread and serious violations of human rights exist.

The Guidelines stipulate that an overall assessment of all the relevant circumstances should be made when considering an application for licence.

Contacts with Parliament and industry

The Swedish export control system in practice can be said to have two particular characteristics: broad political/parliamentary consensus on arms export policy and close contacts with the industry.

It has been considered important to build broad political consensus on Swedish export control policy, in order to promote long term continuity in the area, therefore a parliamentary board was established in 1984 and has since then functioned as a consultative board to the Government and then later to the Inspectorate. The board, known as the Export Control Council, consists of representatives of all political parties in the Parliament. It is informed of all export licence applications and consulted before decisions are taken on important licensing applications. The Ministry for Foreign Affairs and the Ministry of Defence participate in the board meetings and provide assessments on recipient countries and defence policy aspects.

The Swedish control system is to a great extent based on frequent and close contacts with the industry. Through close contacts with the industry, a relation of mutual trust is established between the controlling agency and the industry, and on that trust it is possible to build an effective and well functioning export control system.

The Inspectorate holds regular meetings with the defence industry, on a monthly, quarterly or annual basis, depending on the size and scale of the company. At these meetings the companies present marketing reports required by law. The objective of the marketing report requirement is to give the Inspectorate an opportunity to give its views on planned projects, customers and countries at an early stage in the marketing process. Regular contacts between the Inspectorate and the industry are regarded as important, in order to minimise the risk that companies pursue business opportunities that in the end will not be granted a licence. A denial late in the process of marketing or contract negotiations is a waste of marketing resources, and risk damaging the



credibility of the company. It might also have a negative impact on Sweden's relations with the country of destination. Apart from this, the temptation on the part of the industry to push through a deal without a licence can also be reduced.

After informal contacts, and closing in on a business deal, companies can request a written advisory opinion from the Inspectorate. After having considered the case, the Inspectorate sends an advance notification to the company with information on the prospects of being granted a future licence for the particular export. The notification is not a formal decision and can include reservations in case the conditions in the recipient country change drastically before the formal licence application is dealt with. The advance notification is however a good way for the company to know whether to go ahead with the deal or not.

If the advance notification gives a positive signal for export, the company can proceed with the first formal requirement in the licensing process — notifying the Inspectorate before giving a binding tender. The final stage in the process, the formal licence application and the licensing, then follows.

The Inspectorate also conducts on the spot visits to a number of companies every year. Visits are aimed at, on the one hand, giving the Inspectorate staff a better knowledge of the company and its products and, on the other hand, giving the company personnel a chance to better know the staff of the Inspectorate and different aspects of the regulations and routines that are applied by the export controlling agency.

In order to maintain a strict export control the Inspectorate visits the companies to assess their internal export control arrangements to make sure that these are satisfactory. All those concerned in the company have to be aware of the rules and obligations that are to be observed in the export of controlled items.

Besides regular meeting with industry, the Inspectorate, together with Customs, Police, and other authorities, arrange yearly outreach conferences for industry representatives. The aim is to give the industry an updated briefing on export control rules, regulations and procedures and raise awareness on issues related to export controls.



Transparency regarding the exports of military equipment

It is the stated aim of the Swedish Government to be as transparent as possible regarding the Swedish exports of military equipment.

Every year since 1985 the Government has presented a Communication, a public report to parliament with an annual account of the Swedish exports of military equipment. The report provides the Parliament with consolidated information about exports of military equipment, which promotes accountability. The report also provides a factual basis for broader public debate on the issue of arms exports.

The Inspectorate continuously monitors Swedish companies' marketing and exports and supplies the Government with the statistical data for the report to the Parliament. ■



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Poland's control system concerning international trade in goods, technologies and services

In the age of globalisation and at a time of global threats, such as terrorism, export control is no longer an internal affair in individual countries but it is becoming a foundation of the foreign security policy of NATO and the European Union and a focus of collaboration between the Member States.

The foundations of the Polish export control system

The Law on international trade in goods, technologies, and services of strategic relevance for state security and maintenance of international peace and security has been founded on the experience Poland has gained during past years. This experience has been modified and enriched by international requirements coming from the EU and NATO.

Among the most important regulations introduced recently into the Polish export control system are the following:

- ❖ general licences and global export/import and transit licences;
- ❖ expanding of the control mechanism to cover the goods not listed on the control lists in case of any uncertainty as to their end use;
- ❖ involvement of the enterprises in the process of control of international trade in strategic goods;
- ❖ groundwork for a partnership between the enterprises and governmental administration.

One of the most important characteristics of the Polish export control law is that it prohibits international trade in goods and services of strategic relevance unless the enterprise has met certain conditions and limitations proposed by the Law, other legal acts, and international treaties and covenants. If such conditions are met, a given enterprise may obtain a licence issued by adequate authorities.

Basic mechanisms of Polish export control

In order to obtain an individual licence for export of sensitive goods, the entrepreneur is held responsible for ensuring that:

- ❖ the end user does not intend to use munitions to violate or suppress of human rights and fundamental freedoms;
- ❖ the delivery of the munitions does not pose a threat to peace or otherwise becomes detrimental to stability of the region;
- ❖ the destination country does not support, facilitate or encourage terrorism or international crime;
- ❖ the weapons may not be used for other purposes than satisfaction of reasonable defence and security needs of the recipient country.

Each application for an individual licence for export must be accompanied by a declaration that the transaction does not involve the above circumstances.

The Ministry of Economy, Labour and Social Policy requires the Polish enterprise to produce an international import certificate or end user statement endorsed by the competent authorities of the importer's country. The end user statement must be endorsed by the foreign importer and by the competent authorities of the end user's country.

The end user statement should contain information regarding:

- ❖ designation of end user country;
- ❖ end user's name and address;
- ❖ designation of the goods of strategic relevance, description, quantities, and value;
- ❖ description of the end use of the goods;
- ❖ designation of intermediate recipients and customers;
- ❖ undertaking not to transfer the strategically significant goods to any third party without prior consent of the Polish trade control authorities.

The end user statement must also contain an obligation by the foreign end user and importer not to: re-export, re-sell, lend, or dispose of the goods/technologies

enumerated in the end user statement in any other manner outside of the end user's country, without a prior written consent by the Government of the Republic of Poland.

It is important to add that also goods that are not listed on the control list may be subject to licensing if there are substantial grounds to suspect that they may be used illegally, contrary to the interest of the country or may be used in the process of proliferation of weapons of mass destruction.

As far as the transit of non-domestic dual use goods is concerned it is also subject to control. Special permits are issued by border customs offices.

Licensing

International trade in strategically relevant goods is subject to licensing by the Ministry of Economy, Labour and Social Policy.

These licences cover export and import of dual use goods and technologies, armaments and military equipment, donations, loans and lease of such goods, provision of shipping, carrier and lading services.

It is important to point out that:

❖ at the moment only individual per-case licences are being issued and relate to a specific commodity and a specific country where the good is imported from or where it is exported;

❖ in the near future the Ministry foresees the possibility of issuing general licences — that would relate to an entire type or category of goods to be traded with a given country or group of countries;

❖ finally, there exists a strong possibility of introducing global licences — that would permit to engage in trade in a type or category of goods without reference to a specific country.

As I have mentioned above it is the Ministry of Economy, Labour and Social Policy that issues licences. It is however important to stress the fact that it is not the only body involved in the licensing process, in order to provide an applicant with a licence. **The Ministry must obtain positive recommendations from all of the following governmental bodies:**

- ❖ Ministry of Foreign Affairs;
- ❖ Intelligence Agency;
- ❖ Internal Security Agency;
- ❖ Ministry of Defence;
- ❖ Ministry of Finance;
- ❖ State Nuclear Research Agency;
- ❖ Ministry of Internal Affairs;
- ❖ Administration.

They amount to a number of eight separate organisations whose opinions must be taken into account.

The Polish law is very specific as far as licence refusals are concerned. There exists a closed catalogue of situations at the occurrence of which licences may be refused by the Ministry. It is imperative to assure that all licensing procedures are clear and transparent. This is the *sine qua non* condition of establishing an effective export control system.



Control lists

Taking into consideration the forthcoming accession of Poland to the EU, Polish control lists, which contain dual-use goods and armaments are accurate translations of the control lists functioning in the European Union. Consequently Polish control lists do not contain any additional items. The latest revision of control lists took place in November 2002, by an appendix to the Ordinance of the Minister of Economy.

The Internal Control System

A crucial element in the functioning of an export control system is the popularisation of its importance amongst manufacturers and exporting companies. In Poland an **Internal Control System (ICS)** has been introduced in every relevant enterprise. It serves as a safeguard for the company against actions violating the national trade control requirements and international obligations.

The ICS functions as an integral part of a larger system that includes besides Polish enterprises, governmental agencies and international organisations that set forth the rules governing international trade in armaments and dual-use items and technologies. The ICS prescribes the principles of international trade in strategically relevant goods, defines recording of export, import and transit, links the national control system and helps to prevent human errors. Being part of this system, Polish companies must clearly be aware of the fact that due to the functioning of the ICS, they are able to protect their own economic interests and build a credible image in the eyes of foreign investors and partners.

The role of the government authorities is to promote this way of thinking amongst Polish enterprises and to provide adequate instruments for the implementation of the ICS. In 2001, the Ministry of Economy provided enterprises which participate in international trade with software containing all information necessary for the creation of the system.

TRACKER — an automated licensing system

In May 2001, the Polish Ministry of Economy received from the U.S. Government a complete computer system — TRACKER — that allows the Ministry to prepare export, import, transit and service

provision licences, prepare certificates and run analyses of the decision-making process. Furthermore the system significantly improved the efficiency of export, import and transit control. In 2002, computers in other ministries participating in the licensing process were connected to the TRACKER. This improvement has greatly sped up the consultation process.

Inspections

Recently a database has been created that includes enterprises that do not respect the basic regulations concerning export control. On such basis on-site inspections are carried out by the Ministry of Economy Labour and Social Policy and by experts from appointed institutions and governmental agencies. In the case of establishing of irregularities the enterprise is given a deadline before which it should restore compliance with the law. Should it fail to meet such a demand its licence is revoked. The enterprise may not obtain another licence earlier than three years after revocation decision.

An enterprise and the State — equal partners in export control

In order to establish an efficacious export control system a dialogue between the administration and the industry has become necessary. However in order to render such a dialogue possible, the industry, business organisations and exporters must familiarise themselves with the state policy in the area of international trade in goods and technologies.

One should not forget that for a creation of an effective export control system it is imperative to reconcile the business interests of enterprises with the political interests of the state. The state and the enterprise should regard one another as equal partners sharing common interests.

Sanctions

The partnership between the State and the enterprise is possible in most cases. Unfortunately in a limited



number of cases sanctions are necessary to insure the observation of international obligations. The November 29, 2000 Law on international trade in goods, technologies and services strategically relevant for state security and maintenance of international peace and security provides as follows: who engages in export, import, transit without a proper licence or consciously (...) violates the conditions of the licence shall be subject to up to 10 years of imprisonment. Enterprises engaging in trade without a valid licence shall be fined up to PLN 200,000. Enterprises engaging in trade in violation of conditions laid down in the licence shall be fined up to PLN 100,000 by the trade control authority.

Those are only a few examples of sanctions included in the Polish law. One must admit that the possible sanctions are quite severe and are quite a sufficient instrument in the struggle against illegal trade of strategically important goods. ■



Anatoliy SHCHERBA,
Head of Arms Control
and Military-Technical
Co-operation Directorate,
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Ukraine's participation in multilateral export control regimes

From the first days of independence, Ukraine has been playing an active role in building and strengthening the European and global security systems. An important component of our efforts was Ukraine's accession to international agreements on non-proliferation and export control of arms, dual-use products and technologies. In creating a state system of export control in Ukraine, attention was paid, first of all, to the need of implementing effective mechanisms of preventing unauthorised transfers of such products at the national level.

In this context, national measures envisaged implementation of regulatory documents and requirements approved by the states — leading producers and exporters of certain types of products and technologies — within the framework of multilateral export control regimes. In particular, as a basis for its products and technologies lists, Ukraine has adopted the lists of the Nuclear Suppliers Group (NSG), the Zangger Committee (ZC), the Missile Technology Control Regime (MTCR), the Australian Group (AG), and the Wassenaar Arrangement (WA).

In so doing, Ukraine proceeded from the assumption that the observance of international norms and principles would foster the effective use of a considerable potential of the domestic defence industry inherited by Ukraine from the former USSR. I would like to mention only one fact which is a vivid example of successful co-operation in this sphere.

In 1992, as a country with the developed space rocket technology, Ukraine began to feel certain pressure from the United States because of its plans to develop co-operation in commercial use of civil rocket systems with other countries. At that time, there was a possibility to carry out a joint project with Australia. Despite a completely peaceful nature of this project, the United States insisted that Ukraine should be guided in its activity by the MTCR principles and control procedures. Moreover, this requirement was made notwithstanding the fact that Ukraine had made

no commitments in this sphere. Taking into account the circumstances and wishing to eliminate obstacles to its international co-operation with other countries in space rocket technology, Ukraine began bilateral consultations with the U.S. which resulted in the signing of a Memorandum of Co-operation between Ukraine and the United States in the sphere of non-proliferation of missiles and missile technology.

The provisions of this document envisaged, in particular, that Ukraine would implement at the national level the guiding principles, control procedures and control lists which were already adopted by the MTCR member-states. The United States, in its turn, recognised Ukraine as an MTCR adherent, which paved the way for collaboration in this sphere. In 1996, President L.Kuchma and U.S. Vice President A.Gore signed the Ukrainian-American Agreement on co-operation in commercial space flights. Sharing of experience with the U.S. in missiles and missile technology export control facilitated successful implementation of the international *Sea Launch* project which used Ukrainian-made *Zenit* launchers.

Therefore, Ukraine's implementation of export control standards and procedures fostered the deepening of economic co-operation with other countries in the area of high technologies and enabled the use of Ukrainian rockets for commercial launching of space satellites of other countries.

As is known, Ukraine is now a full member of four of the above mentioned five export control regimes, namely, WA, NSG, ZC, and MTCR. Ukraine's participation in these regimes would be impossible without the creation in the country of an effective system of export control of particular products and technologies. I would even go so far as to say that granting Ukraine full membership in international regimes was *de facto* recognition of the fact that our country's export control system meets the highest international standards and requirements.



The building of export control system in Ukraine was carried out taking into account international experience. In this connection, I would like to express our gratitude to those countries whose consistent assistance helped Ukraine create suitable national structures and mechanisms. The United States, Sweden, Norway, and Germany were and still are the main partners of Ukraine in this sphere. I would also like to use this opportunity to remind of the fact that the first involvement of a Ukrainian specialist in multilateral export control measures took place in Warsaw on initiative of our Polish friends.

In April 1992, a regular NSG meeting was conducted in Warsaw. The Nuclear Suppliers Group was then chaired by Polish Ambassador T.Strulak. Despite the fact that a sharp discussion was unfolding in Ukraine at that time about the future of nuclear weapons inherited by Ukraine from the former Soviet Union, he proposed that the Ukrainian delegation be allowed to participate in the Plenary Session as an observer and the NSG member-state delegations agreed to this proposal. Significantly, Ukraine had not decided by that moment whether to join the Nuclear Weapons Nonproliferation Treaty and whether to conclude an Agreement with the IAEA about the provision of end-user statements. Later, Ambassador T.Strulak managed the operation of the Contact Group which held consultations with Ukraine regarding the latter's participation in the NSG work. This process was successfully completed in 1996, when Ukraine became a full member and for the first time took part in the operation of the NSG Plenary Session in Buenos Aires as an equal partner. Later Ukraine joined other international regimes of export control.

With respect to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, participation of the Ukrainian delegation in the meetings of the COCOM Co-operation Forum in 1992-1993 played an important role in the country's accession to this agreement.

It should be noted that work in this direction is still going on. At the Constituent Conference in Hague in November 2002, Ukraine was among the founding states which adopted the International Code of Conduct regarding non-proliferation of ballistic missiles. It is expected that during 2003, consultations will be held on co-ordinating mechanisms and formats of notification about ballistic missile launches as required by the Code.

Ukraine is also working on joining the Australian Group. But taking into account the absence of consensus among the member-states on the expedience of expansion of the regime, the implementation of this idea will apparently require additional time and efforts. However, despite the fact that Ukraine has no formal AG membership, the country exercises its national export control of listed chemical and biological products, equipment and technologies with due account for international requirements.

We actively use our participation in multilateral export control regimes for improving Ukraine's export control system by consistently implementing appropriate decisions at the national level. In the years of independence, Ukrainian executive bodies

established co-operation with international organisations within the framework of corresponding expert groups in such areas as application of international norms in Ukraine, information exchange, and improvement of mechanisms of regime operation, etc.

Ukraine was involved in developing new important export control initiatives. After the events of September 11, 2001, Ukraine supported the implementation of tougher mechanisms of control over products and services that can be used by terrorists and the introduction of corresponding amendments to regulatory documents. At the latest WA Plenary Meeting, Ukraine supported a document aimed at controlling the supply of small arms and light weapons. Now Ukraine is carefully studying U.S. proposals for introducing tougher control of the export of Man-Portable Air Defence Systems in view of a considerable threat they can pose to aircraft including civil airliners if used by terrorists.

A proposal for establishing closer interaction between different export control regimes and their possible future integration into a single multilateral mechanism, which was put forward at a recent Vienna meeting of the General Working Group of the Wassenaar Arrangement, merits careful and comprehensive study. Given the similarity of goals set for the existing regimes, the implementation of such integration would eliminate duplication of work and lower expenses needed for carrying out the corresponding regimes.

Along with participating in multilateral regimes, Ukraine recently initiated and conducted a number of consultations on export control and non-proliferation issues, in particular, with NATO and the EU and at the bilateral level with the United States, Great Britain, Germany, and Russia. In 2003, we plan to continue our consultations with other countries on export control issues.

In the course of bilateral contacts, it is possible to share experience and exchange regulatory documents, and establish contacts at the operational level for prompt regulation of possible problems. The bilateral format also facilitates a speedy solution of sensitive problems and exchange of views on certain principal issues of participation in the international regimes.



Based on the results of meetings of the Arms Exports Working Group (COARM) conducted within the format of "Ukraine-EU Group of Three" twice a year, Ukraine studies a possibility of adhering to political criteria stipulated by the EU Code of Conduct in respect of export control.

I would also like to emphasise the usefulness of co-operation between government bodies and relevant research institutions. A fruitful discussion recently took place between leading researchers and delegates to the meeting of the WA General Working Group about ways of improving this mechanism. Such discussions should stimulate the work of the delegations during a revision of WA activity in 2003.

I am positive that today's conference has a great value for governmental officials as well as for representatives of the research community dealing with the problems of arms export control. ■





Volodymyr SIVKOVYCH,
*People's Deputy of Ukraine,
Head of the Subcommittee,
Verkhovna Rada of Ukraine National
Security and Defence Committee*



Applying foreign experience in arms export control to Ukraine

There are various views on transparency and non-transparency of arms export control in the community of developed countries, which Ukraine strives to join, but there is a clear tendency towards opening this sphere to public scrutiny. This is determined not only by democratic principles and the need to prevent abuses, but also by the unification of interests of countries and entire regions in such areas as economics (arms manufacture), military security (arms trading) and sustainable development (regional security). In such circumstances, appeals to national interests are increasingly losing their imperative, but nonetheless continue to be used as a traditional and last-resort argument for applying the “Classified” stamp.

In the opinion of EU experts, the wish to make a fast Euro on the sale of arms leads to disregard of human rights, regional security and sustainable development. Therefore, the EU countries are lifting the veil of secrecy covering their operations in sensitive spheres of international relations. By now, there are at least three working forms for implementing transparency principles in arms export:

- ❖ publication of annual reports about the government's activity in this sphere;
- ❖ parliamentary debate on arms export issues;
- ❖ analysis and publication of generalised data on regional and global markets of armaments.

As is known, Belgium, Italy, and Sweden have been publishing annual reports on arms export for many years. Other EU countries implemented this practice quite recently: in the past two years, reporting mechanisms were established in France, Germany, the Netherlands, Spain, Great Britain, and Denmark. In particular, the arms export report of the German Government can be found on the WEB-page of the German Ministry of Economy. The Ministry of Defence of Finland published two annual reports in Finnish and

English on-line; the EU Council of Ministers publishes a Consolidated Report about compliance with the EU Code of Conduct on export control.

The report of the British Government contains general information on export control policy and details about licensing decisions. It gives the number, type and value of licences granted, the number of granted and rejected licences by category of military products, as well as quantitative data on the main types of small arms and light weapons exported to each country by Great Britain.

Parliamentary debates of certain issues in the EU countries have been traditionally used as an important instrument of control and analysis of government policy. Of course, there are certain restrictions imposed on export control. In the meantime, mechanisms for ensuring balance between requirements of transparency and confidentiality have been developed. In the United Kingdom, a joint Quadrilateral Parliamentary Committee has been set up for considering annual government reports about strategic export controls, which includes members of the Defence, Foreign Affairs, International Development, and Trade and Industrial committees. In the Netherlands, the Government, with due regard for confidentiality, briefs the Parliamentary Defence Committee on the planned sales of surplus stock of weapons. After briefing, the Committee presents its recommendations to the Government. The Swedish Government holds consultations on export control policy issues with the Export Control Council comprised of the former and current parliamentarians. While the Council's recommendations are not binding on the Government, a unanimous objection raised by the Council usually results in rejection of a licence application.

Based on previous experience, we have to analyse factors that influence the efficiency of export control in Ukraine. This applies, first of all, to one of the most difficult problems — a search for the optimal balance

between the need to maintain confidentiality of arms exports and transparency of this activity for the Parliament.

The following measures can be proposed as possible ways of exercising parliamentary supervision, which is one of the elements of democratic control in a country:

- ❖ holding regular parliamentary hearings, e.g., annual Government reports about military-technical co-operation (MTC) with foreign countries and problems facing the defence industry, which would draw the attention of lawmakers to existing problems, ways of how to solve them and how to improve a legislative base in the fields of MTC and export control;

- ❖ setting up a Supervisory Council within the state-owned company *Ukraspetsexport* with the participation of members of parliamentary National Security and Defence, Foreign Affairs, Budget, Industry and Entrepreneurship committees;

- ❖ involving independent experts in carrying out particular assignments and MTC analysis for the Verkhovna Rada.

Therefore, protecting the confidentiality of information about contracts that continue to be in effect or agreements, the disclosure of which can bring about negative consequences for Ukraine in the form of appropriate actions taken by competitors on the global armaments market will be an important aspect of activity in the above areas. In this respect, Ukraine could use the experience of certain foreign countries



which organised parliamentary control over the export of arms, collaboration between the Parliament and specialists, etc.

Taking into account foreign experience in organising the process of dissemination of export control information to the public, it can be asserted with a high degree of probability that accusations against Ukraine will continue if this sphere of activity remains non-transparent for the public. The Ukrainian authorities have already gotten used to denying information and giving explanations, but this tactic does not seem to be effective: accusations continue and the main reason for this is non-transparency. ■



Ihor SMESHKO,
Deputy Secretary,
National Security and Defence Council
of Ukraine



Organisation of the export control system in Ukraine

In the years of independence, Ukraine managed to create, on the basis of the experience of leading countries of the world (such as the United States, Russia, and France) and international institutions such as the EU an integral system of state export control and implemented a mechanism of interdepartmental interaction of relevant state bodies while settling problems of international transfer of military and dual-use products.

This mechanism ensures necessary control over the international transfer of products that are subject to control in accordance with Ukraine's international commitments and the guiding principles of international export control regimes to which our country has acceded. These include, first of all, the Wassenaar Arrangement, the Missile Technology Control Regime, the Nuclear Suppliers Group, the Biological and Chemical Weapons conventions, and the main provisions of the Australian Group.

Government policy of Ukraine in the sphere of export control is determined by the constitutional provisions, Ukrainian laws, Presidential decrees and resolutions of the Cabinet of Ministers. They form a legislative and normative environment which makes it possible to adopt effective decisions on whether to allow or prohibit a particular international transfer of products under control.

Ukrainian legislation requires subjects of foreign economic activity to obtain obligatory authorisation for carrying out export and import of military products.

By now, the Cabinet of Ministers of Ukraine has authorised only 14 companies to conduct such operations. They can be divided into three groups.

Group One. Authorised state brokers: the state company *Ukrspetsexport* and its subsidiaries — state company *Ukroboronservis*, state specialised foreign trade company *Progres*, state self-supporting foreign trade and investment company *Ukrinmash*, state foreign trade and investment company *Promoboronexport*, and state self-supporting foreign trade company *Spetstekhnoexport*.

Group Two. Enterprises duly authorised to export and import military products of their own manufacture: state foreign trade company *TASKOexport*, the state joint-stock holding company *Artem*, the Kyiv-based state aviation plant *AVIANT* and the state enterprise *Malyshev Plant*.

Group Three. Enterprises duly authorised to export services in the field of air transportation of military products: state company *Antonov Aviation Technology Research Complex*, state company under the Ministry of Defence *Ukrainian Air Transportation Company*, air company *Motor-Sich*, state design office *Pivdenne*, and joint-stock company *Pivdenmashavia* of the production association *Pivdennyi Machine-building Plant*.

Control over the transfer of products is exercised in Ukraine, as in EU countries and the United States, in accordance with relevant control lists, which correspond to the lists established within the framework of the international export control regimes (the Wassenaar Arrangement, the Missile Technology Control Regime, the Nuclear Suppliers Group, the Biological and Chemical Weapons conventions). It should be noted that the provisions of these international documents have been instituted in Ukraine by corresponding laws.

In Ukraine, the procedure of obtaining permissions for military and dual-use product transfer is a two-stage process.

At the first stage, a company duly authorised for this activity is required to obtain a positive expert opinion from the State Export Control Service regarding the possibility of conducting negotiations on the international transfer of military and dual-use products, during which it is expected to sign a foreign trade contract.

At the second stage, after concluding negotiations and signing a contract with a foreign partner, the State Export Control Service considers the issues of a possibility of transferring military and dual-use products to a particular country for the second time. If there is a positive interdepartmental opinion, the State Export Control Service grants the corresponding permission.



It is of principal importance that international transfers of products under control to countries against which the UN Security Council imposed sanctions, are prohibited. Meanwhile, applications for international transfer of products to countries, in respect of which Ukraine imposed restrictions within the framework of bilateral relations with particular countries, are obligatory considered by the Military-Technical Cooperation and Export Control Committee under the President of Ukraine. Applications are submitted for the Committee's consideration only after gathering all the necessary documents and materials to be provided by interested central bodies of executive power.

The Committee is composed of the following ex-officio members:

Deputy Secretary of the National Security and Defence Council of Ukraine;

Chief of the State Export Control Service of Ukraine;

State Secretary of the Ministry of Industrial Policy of Ukraine;

Chief of the Main Intelligence Department of the Ministry of Defence of Ukraine;

Deputy Chief of the State Customs Service;

Chief of Armaments of the Armed Forces of Ukraine;

Deputy State Secretary of the Ministry of Foreign Affairs of Ukraine;

Chief of the Main Intelligence Department of the Security Service of Ukraine;

Deputy Chief of the Main Board of the Presidential Administration on Issues of Judicial Reform, Activities of Armed Formations and Law-enforcement Bodies;

Chief of the Department of the National Security and Defence Council of Ukraine on Defence Issues of National Security;

First Deputy Chief of the Security Service of Ukraine;

Director General of the state company *Ukrspetsexport*.

The Committee adopts decisions by a simple majority of votes. Certain decisions have to be adopted unanimously. The procedure for adopting a particular decision is defined by the chairman of the meeting.

If the Committee adopts a positive decision on this or that transfer of controlled products, it recommends the State Export Control Service to provide a corresponding expert opinion or permission.

The results of the meeting are recorded in the Minutes signed by the Committee chairman. The chairman then reports to the President of Ukraine about the results of the meeting and decisions adopted. Excerpts from the Minutes containing the Committee's recommendations and proposals are sent to the Cabinet of Ministers, relevant ministries and boards and are obligatory for consideration.

State Export Control Service decisions on the possibility of providing expert opinions or permissions for international transfers of military and dual-use products are sent to the Presidential Administration for approval, which is to be made within five days. When this is done, the State Export Control Service issues the applicant the corresponding opinion or permission.

In continuation of development of the state export control system, in particular, its legislative component, the Law "On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods" was adopted which clearly defined procedures of issuing permissions for such transfers.

Finally, it should be emphasised that Ukraine's export control system, which is currently in operation and regulated by the above Law and other legislation, makes it practically impossible, due to its multi-level structure and collective decision making process, to carry out transfers of military and dual-use products to countries that are subject to corresponding prohibitions and restrictions. ■



Vitaliy SHYBKO,
*People's Deputy of Ukraine,
Socialist Party of Ukraine Faction*



Legislative mechanisms of arms export control in Ukraine

I would like to draw an attention of the participants to the work of the legislative base in the sphere of arms export control.

The Law of Ukraine "On Foreign Economic Activity" was adopted in 1991. It regulated the involvement of the Verkhovna Rada in the arms export process. According to Articles 16 and 17 of this Law, the Verkhovna Rada was empowered to approve the lists of products, the export and import of which were subject to licensing or were entirely prohibited. However, this issue was not even debated during the past two sessions of the Parliament. Such practice contradicts the principles discussed at this conference.

This is not the only drawback of the Ukrainian export control system. Of late, the function of export control is being increasingly transferred from the Cabinet of Ministers, as used to be the case and as required by the Law, to the Administration of the President of Ukraine. The President issued 54 decrees concerning arms export operations, some of which were stamped as "not for publication". Moreover, the latest presidential decree in this sphere, which bears the same stamp, assigned these functions entirely to the Presidential Administration. Strange as it is, this does not raise objections on the part of the authorities. For example, the assignment of the export control function to the Presidential Administration was positively assessed by National Security and Defence Council Secretary Y. Marchuk.

In my view, such an approach to the division of functions in the field of export control reflects the distance Ukraine should cover by implementing political reform before it can be called a parliamentary republic. Such a state of affairs also reflects the tempo of our movement towards the European Union. EU requirements to export control parameters have already been presented here. Arms export issues are debated by Western parliaments; information about export operations is published in Government annual reports and other sources. In Ukraine, this information is

classified, so Ukraine's export control system cannot be called transparent. This is another explanation why we strive to join the EU.

There are many reasons for such a state of affairs and they are not limited to the desire of enriching the state budget. In particular, taking into account the existing nomenclature and quality of arms that either remained after the dissolution of the Soviet Union or are still produced by Ukrainian defence enterprises, as well as the high level of competition on the arms markets, Ukraine is unable to trade its products profitably and in a transparent manner. This is why non-transparent schemes are often used, which allow the receipt of proceeds in either legal or illegal ways. Such non-transparency creates corruption, promotes bureaucracy and negatively affects the image of Ukraine. Unfortunately, this has taken deep root in the practices of Ukrainian authorities.

Questions naturally arise: For how long will such a practice continue in Ukraine? For how long can we operate in a non-transparent manner? For how long will Ukraine continue to give causes for scandals? We seem to be inviting a situation where, after a shoot down of an Apache or Phantom aircraft somewhere in Iraq with an Iraqi weapon, the West would begin looking for suppliers of this weapon not only in Russia but also in Ukraine. And sooner or later, a pretext for accusation would be found, following which the reaction of the West would not be limited to semi-tough sanctions that could be remedied by sending a chemical defence battalion to a conflict zone. Thus, the consequences of non-transparency may be substantial for Ukraine.

Therefore, I believe that today's discussion is very important. However, it must be heard not only by experts, but also by Government officials responsible for export control issues in Ukraine. Changes should take place not only in the mentality, which influences our activity, but also in legislation which defines the mechanisms of this activity. ■



Oleksandr HRYSHUTKIN,
*First Deputy Chairman,
State Export Control Service of Ukraine*

Organisational and legislative principles of the export control system in Ukraine

The state export control system of Ukraine is comprised of a complex of measures intended for the control of international transfers of goods, designated for military purposes and dual-use goods; their use by legal entities and individuals. This system is carried out by the State Export Control Service of Ukraine — an executive body specifically authorised for handling export control issues — and other state agencies in order to protect national interests and meet international commitments of Ukraine.

The state export control system aims to achieve the following objectives:

- ❖ ensuring national security interests and establishing international authority of Ukraine;
- ❖ honouring Ukraine's international commitments associated with non-proliferation of weapons of mass destruction, their delivery systems and restrictions on conventional arms supply;
- ❖ preventing the use of goods, designated for military purposes and dual-use goods, as well as other goods subject to state export control, for terrorist and other illegal purposes;
- ❖ introducing implementation mechanisms for international treaties and common non-proliferation policy geared towards execution of UN Security Council sanctions in respect of certain countries and against terrorism.

The legislative principles of state policy in the field of state export control are defined by the Verkhovna Rada of Ukraine.

As provided by the Constitution of Ukraine, the President of Ukraine carries out overall management of state policy on export control.

The National Security and Defence Council of Ukraine and the Committee on Military-Technical Co-operation and Export Control Policy under the President of Ukraine co-ordinate and control the operation of executive bodies in the sphere of export control.

The Cabinet of Ministers provides for the execution of state export control policy.

The implementation of export control policy is carried out by the State Export Control Service, ministries and other central executive bodies duly authorised by law to regulate export controls. Said executive bodies can involve in implementation of export control measures other central executive bodies, Ukraine's representation offices abroad and, on consent of their managers, legal entities that are not directly involved in export control.

The State Export Control Service, either independently or jointly with other central executive bodies, facilitates the activity associated with international transfers of goods when this meets national interests, e.g., by creating new and preserving existing workplaces in hi-tech industries. On the other hand, the State Export Control Service can restrict or prohibit such activity when this damages the national interests of Ukraine, its international commitments, anti-terrorism objectives, and in cases where there is a reason to believe that the goods to be exported are either components of weapons





STRUCTURE OF EXPORT CONTROL SYSTEM OF UKRAINE



* Ministry of Economy and European Integration, Ministry of Foreign Affairs, Ministry of Defence, Ministry of Industrial Policy, State Customs Service, Security Service, State Committee on Nuclear Regulation, National Space Agency and others.

of mass destruction or are intended for creating such weapons or means of their delivery, or in the absence of adequate guarantees regarding the end use of such goods.

The main components of the export control system are companies' export control departments or company officials who are specifically appointed for this purpose by company management. Such departments and officials ensure that companies comply with the requirements of export control law at all stages of international transfers of goods. The structure of the export control system of Ukraine is shown in the Figure.

The legislative foundation for state export control consists of the Constitution of Ukraine, the Law "On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods" and other Ukrainian laws, presidential decrees and Cabinet of Ministers resolutions, other legislative documents, as well as international treaties to which Ukraine is a party, binding character of which is approved by the Verkhovna Rada of Ukraine.

Government policy of state export control is based on the following principles:

- ❖ the priority of Ukraine's national interests including political, economic and military interests, the protection of which is necessary to ensure national security;
- ❖ observance of Ukraine's international commitments associated with non-proliferation of weapons of mass destruction, their delivery systems and establishment of state control over international transfers of goods designated for military purposes and dual-use goods, as well as implementation of measures preventing the use of such goods for terrorist and other illegal purposes;
- ❖ legality;
- ❖ exercising export control only to the extent needed for the achievement of set objectives;
- ❖ harmonising Ukrainian procedures and rules of export control with international legislative norms and practices;
- ❖ co-operation with international organisations and foreign countries in export control to strengthen international security and stability, in particular, to prevent proliferation of weapons of mass destruction and means of their delivery.

Export control procedures envisage:

❖ preliminary identification of goods by intra-company export controls or, on appropriate commission by production companies, by organisations that have been duly authorised to perform preliminary identification of goods;

❖ preliminary examination by the State Export Control Service and registration of companies that are going to carry out international transfers of goods, designated for military purposes and dual-use goods;

❖ official authorisation for carrying out international transfers of goods designated for military purposes, and goods which embody information that constitutes state secret;

❖ examination and identification of goods in order to establish that particular goods, which are subject to international transfer, correspond to the name and description of goods included in the corresponding control lists;

❖ the issuance of permits, expert opinions or documents related to guarantees in respect of international transfer of goods designated for military purposes and dual-use goods or carrying out negotiations on concluding foreign economic agreements (contracts) on export of such goods;

❖ performing customs clearance and customs examination of goods in accordance with the Customs Code of Ukraine;

❖ in case of necessity, obtaining (giving) appropriate guarantees regarding the product's end use and place of use;

❖ exercising control over the customer's end use of goods and, if necessary, inspecting places of declared use or storage of goods;

❖ providing companies with written reports, which give account of international transfers of goods actually performed and state that the goods were used for specified purposes;

❖ responsibility for violation of the established procedure of international transfers of goods.

Names and descriptions of goods international transfers whereof are subjected to state export control are entered in the lists of control.

Lists of particular groups of goods are compiled by the State Export Control Service with the help of relevant central executive bodies. Company representatives, scientist and researchers may be involved in making such lists too. The Cabinet of Ministers of Ukraine approves the lists, as well as export control procedures of international transfer of listed goods.

Main export control procedures are defined by the Law "On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods" adopted by the Verkhovna Rada of Ukraine on February 20, 2003.

**In particular, the main provisions of this Law:**

❖ clearly interpret basic export control terms and notions that take into account experience of other countries;

❖ define principles of state export control policy;

❖ establish a procedure of obtaining permission for holding negotiations on concluding foreign economic agreements (contracts) on export of goods designated for military purposes and dual-use goods or international transfers of such goods;

❖ ensure prevention of breaches in state export control;

❖ institute fines and sanctions against violators of export control legislation.

It should be emphasised that the Law provides for control of intermediary (brokering) activity, in particular, any operations of business entities in Ukraine, which facilitate international transfer of goods designated for military purposes, including operations connected with financing, transporting or forwarding of cargoes irrespective of the origin of such goods and the territory on which such activity is carried out. According to the provisions of this Law, all intermediaries (brokers) should operate on the basis of permits and expert opinions provided by the State Export Control Service.

The Law stipulates that the State Export Control Service of Ukraine provides permits, expert opinions or guarantees only to those companies which are duly registered with the State Export Control Service. Meanwhile, general permits and expert opinions are provided only after a company has created a system of internal export control and certified it with the State Export Control Service. The introduction of the registration principle is in line with best international export control practices.

The Law defines time periods for consideration of applications, which are established depending on the category of goods but cannot exceed (from the date of receiving all necessary documents):

❖ 45 days — for export or re-export of goods designated for military purposes;

❖ 30 days — for export or re-export of dual-use goods and temporary export (re-export) of any goods under control;

❖ 15 days — for import and transit of goods and temporary import or export of goods for exhibitions, fairs, advertisement, tests or other similar purposes if this does not envisage transfer of property right.

Time needed for receiving additional information from the company involved in international transfers or interdepartmental elucidation of a possibility to carry out a particular international transfer of goods is not included in the above terms.

Another important issue regulated by the Law is conclusion of foreign economic agreements (contracts). Foreign economic agreements (contracts) on international transfers of goods are concluded by subjects of foreign economic activity in accordance with law, taking into account the Cabinet of Ministers of Ukraine requirements for such transfers.

Ukrainian subjects of foreign economic activity are prohibited to conclude foreign economic agreements (contracts) on international transfer of any goods or otherwise participate in execution of such agreements if they come to know that such goods can be used by a foreign country or foreign economic entity with the aim of creating weapons of mass destruction or means of their delivery.

A company is required to withdraw from a foreign economic agreement (contract) on international transfer of any product if the company comes to know that this product will be used for purposes or by an end user other than stipulated in the agreement or related documents on the basis of which the company received permission, expert opinion or international import certificate.

The Law also requires obtaining a consent (expert opinion) from the State Export Control Service for

concluding export agreements (contracts) with foreign countries if the delivery of certain goods to such countries is restricted by a partial embargo. Furthermore, the Law stipulates basic principles of exercising control over the end use of goods.

The fact that the Law contains provisions geared toward preventing violations and establishing responsibility in the sphere of export control deserves special merit. This is facilitated by:

❖ conducting investigations and verifications prompted by violations of export control legislation, including verification of the delivery of goods to stated end users, correspondence of the actual use of goods to stated purposes and legislative conformity of documents which regulate international transfers of goods. Such investigations and verifications can be made by the State Export Control Service of Ukraine, as an executive body specifically authorised to exercise state export control, and by central executive bodies within their competence;

❖ compiling a list of the biggest violations of export control law and establishing responsibility for such violations.

For example, the Law envisages the imposition of fines on companies involved in international transfers of goods in an amount of 150% of the value of goods intended for such transfers, for such violations as making transfers of goods under control in the absence of appropriate permitting documents; falsification of such documents; conclusion of foreign economic agreements (contracts) on international transfer of any goods or participation in the execution of such agreements in any other way when a company knows that such goods can be used by a foreign country or foreign economic entity with the aim of creating weapons of mass destruction or means of their delivery.

The fine also constitutes 150% of the value of goods intended for a given international transfer in case of such breaches as making international transfers of goods under control in violation of the end user or end-use principle; deliberate withholding of information which is important for making a decision on whether to provide permission, expert opinion or international import certificate; violation of terms stipulated by permits, expert opinions or international import certificates, in particular, introducing changes, without consulting the State Export Control Service, to foreign economic agreements (contracts) regarding the names and requisites of exporters, importers, brokers and end users, as well as the names of goods, instructions for their end use and provision of documents ensuring relevant guarantees.





Thus, illegal international transfer of goods becomes economically inefficient for companies because the fine considerably exceeds possible profit. Moreover, sanctions instituted by the Law (in the form of cancelling the company registration, which entails the refusal to provide permission, expert opinion or documents on guarantees) proved to be a highly effective tool, sometimes even more effective than fines.

In order to ensure due execution of export control requirements and procedures by private individuals, the Verkhovna Rada adopted the following amendments:

- ❖ to Article 333 of the Criminal Code of Ukraine, which envisages both the imposition of fines on offenders and their imprisonment for up to three years;

- ❖ to the Administrative Code regarding administrative responsibility of individuals for export control violations in the form of fines imposed on offenders by the State Export Control Service.

The adoption of the above laws by the Verkhovna Rada and their strict observance by all entities involved in the export of goods, designated for military purposes and dual-use goods will undoubtedly raise the efficiency of export control in Ukraine. ■



Theodor H. WINKLER,
*Director, the Geneva Centre
for the Democratic Control
of Armed Forces*



Democratic control is one of the key of the security sector reform

A decision of the Geneva Centre for the Democratic Control of Armed Forces (DCAF) to support financially, and to contribute intellectually, to the Ukrainian edition is of a strategic, long-term nature. It reflects our deep conviction that free access to information, and an ability to engage in an informed debate, are a precondition for democracy, stability and peace.

We are very happy with the book we can present to you today, to which DCAF has contributed two chapters devoted to: an analytical look at the role of security sector reform; and a political look at its relevance for international order in a world marked by profound and rapid change.

DCAF is an international foundation, established in October 2000. 42 governments are represented in the Centre's Foundation Council, Ukraine being a founding member. The Centre is financed by the Swiss Government, and counts today some 50 staff members, including experts from Ukraine. It looks into security sector reform and democratic oversight over the security sector.

The Centre has two key tasks: (1) to systematically collect, analyse, document and publish the lessons learned and the experience gained in transition countries in our area of work; (2) to provide to our partner countries tailor made assistance on the ground.

DCAF is a close partner of Ukraine, which is reflected in:

- ❖ Our partnership with SIPRI and the Razumkov Centre for the Yearbook.
- ❖ Co-operation with the Verkhovna Rada on democratic control of armed forces, several conferences having already taken place.
- ❖ Legal reform: we have been asked to collect, translate into English the existing Ukrainian legislation on civil-military relations and to organise discussions amongst Ukrainian and international experts on this issue. The result is a draft law on the issue.
- ❖ Assistance in the area of border guarding (together with NATO).

- ❖ Collaboration with universities such as Lugansk, Simferopol.

- ❖ Last and not least, today's conference.

Reform and democratic oversight of the security sector are a key precondition for peace, stability and democracy. There are the two sides of the same medal. Indeed, without democratic, civilian, governmental, and parliamentary oversight over the security sector, "power ministries" will define reality that can evolve into genuine "states within states" that rival with each other instead of co-operating.

This was the case, for example, in Yugoslavia under Milosevic. Confronted with such "states within the state", democracy has no chance. The people and the political parties will be constantly aware of the threat that such an uncontrolled security sector represents. Even, if these shadowy power structures do not openly interfere in the political process, they will inevitably overshadow it and impact on it. There cannot be a genuine rule of law. And there will be no chance to participate in European integration. There is, consequently, also no economic perspective.

Inversely, without an efficient and integrated security sector — in which each element of the security sector has a clear and well-defined role and is closely co-operating in a transparent way with the other components of the security sector, much the same will happen. If a country's security sector is not efficiently organised (which includes close co-operation between the various elements of the security structures), organised international crime and armed gangs will take root and gain the upper hand — leading to a situation such as in Columbia and eventually such as in Somalia. The state monopoly of legitimate force will be undermined step by step. Again democracy and the rule of law will then have no chance. Again, there will be no economic progress and no participation in Euro-Atlantic integration.

The new threats and challenges of the post cold war period — so vividly illustrated by 9/11 — only underline the need for effective security sector reform and the democratic oversight over the security sector.

Security sector reform is indeed the key to peace, rule of law, development and democracy. Without it we are likely to be confronted by disorder, internal strife, a criminal threat reaching strategic dimensions, the problem of eternal war and inability to conclude peace.

There is no unique model on how a country should organise its security sector. Each nation must find its own solution, that is based on its history, its geographic location, its national interests, and the threats it faces. But if there is not single model, there must be — in Europe which is growing together again — common standards. It is not possible for NATO and the EU to have different standards in this area. We witness currently in all European and Trans-Atlantic institutions a growing awareness that such common, integrated standards for the security sector are indeed urgently needed.

This includes also the governmental and parliamentary oversight and control of sensitive exports — the topic of our conference today. ■





Alyson J.K. BAILES,
Director, SIPRI



The major aspects of the SIPRI activities

The Stockholm International Peace Research Institute (SIPRI) was created in 1966 as a (political science) research institute with a mandate to collect and distribute objective, unclassified information on disarmament, arms control and other security processes. It was clear right from the start, when SIPRI set out to provide an impartial view of *both sides'* actions in the Cold War, that the Institute's role should not be to take sides or campaign for specific policies — though we can certainly make suggestions about alternatives to be considered. I like to say that **our job is not to tell people what to think, but how to think about the crucial issues of peace, security and international order.**

The Yearbook has always been SIPRI's main instrument of transparency, information and public education. Although our day-to-day activities in Sweden and our staff of some 50 persons cannot realistically represent the whole world, the Yearbook is a truly global instrument and aims to address the activities and interests of all the world's nations in an equally serious way. It provides a potentially valuable tool for governments, especially in small countries who do not have access to large information resources of their own. It is also designed to help representative institutions, NGOs, academics and students — I personally place great emphasis on our duties towards young people. With the Yearbook as well as our other publications and actions, we are consciously trying to encourage democratic activism on defence, while trying to ensure that this activism starts out from a firm and independent basis of fact.

The Yearbook has now grown to a heavy volume of 700-900 pages. It falls into three main parts which in turn reflect the three main lines of SIPRI's research:

- ❖ the collection and analysis of comprehensive global data on military expenditure, arms production, arms transfers, and the pattern and effects of armed conflicts;
- ❖ the discussion and analysis of developments in the fields of arms control, non-proliferation, and export control (covering all types of weapons), together with an effort to foresee the new challenges emerging;

❖ political and institutional developments involving the world's leading security actors, institutions and strategic regions, together with developments in active conflict management.

The Yearbook is being translated this year into Ukrainian, Russian and Chinese and this autumn should appear for the first time in Arabic. A mini-version of the Yearbook is produced in English and Swedish.

The efforts made for some years now to produce a Ukrainian edition of the Yearbook did not come about by chance. They were the fruit of a close partnership deliberately built up between SIPRI, the Razumkov Centre and the Geneva Centre for the Democratic Control of Armed Forces (DCAF). SIPRI's interest in Ukraine is also a recognition of this country's own strategic importance and its potential role as a testing-ground and model for modern security concepts and processes. From the beginning, the newly independent state of Ukraine has had to grapple with more than its share of security challenges, including major tasks of defence and defence industrial reform as well as weapons disposal. But it has also shown an exceptional will and commitment to find the most up-to-date ways possible of tackling these challenges, making use of its new opportunities, the new potential range and balance of its international partnerships, and its chance to set new standards in the whole field of international co-operation including security-building. We should not forget that the birth of the new Ukraine was accompanied by a very successful exercise in de-nuclearisation and de-proliferation, achieved through the renunciation of nuclear weapons accompanied by solemn guarantees from the other recognised nuclear powers. This model is now again attracting strong interest and speculation as we search for possible solutions to the latest challenges like those of North Korea, and of keeping Iraq nuclear-free after Saddam.

Having mentioned here one current issue, I will end with examples of three more which are examined in the Yearbook you have before you and will be further developed in our new Yearbook for 2003:

First — the impact of September 11, 2001, which is superbly dealt with in my predecessor Professor Rotfeld's Introduction to the 2002 Yearbook and has been mentioned by him again today. It brought home the reality of terrorism as a truly global threat, but one to which we have no effective global remedy yet in our possession, and on which the world's democracies do not even have a full consensus. As you know, there are very difficult debates even among close allies on whether terrorism should be seen as a single phenomenon or more complex, whether it is more important to be prepared for military strikes or to use a wider range of measures to attack terrorism's "roots", and so on. One thing is clear, however: whether or not 9-11 was a world-changing event, it was certainly an America-changing one. As the world's single greatest power the U.S. is now determined to go out actively to block the possible threats to its people and its authority, and if we care about that and want to have any influence over the consequences, a French "*Non*" or German "*Ohne mich*" is not the way to change things. Dialogue with the U.S. is the necessary start for any true international solution, and I believe that Ukraine — which has had a constant, if never simple, dialogue with U.S. partners ever since independence — understands this perhaps even better than many others in Europe.

My second point has already been well made by previous speakers: the importance of the security challenges remaining for us here in Europe, including security sector reform. The contribution made by DCAF both in its Yearbook chapters and its other productions has left us in no doubt either of the importance of this topic or of how tough it is to do the right thing — when even the question of what to do and how to do it can be contentious. Without giving away too much about the next Yearbook, I would like to hint that DCAF will be developing this debate even further to take account of two important new aspects: how will the democratic standards of the new NATO/EU members be measured and maintained after Enlargement, and how can the "new neighbours" of the enlarged EU and NATO best be encouraged to keep up the struggle for reform on their own territories? From both viewpoints, it is clearly important to minimise the impact of new dividing lines and to make full use of the European aspirations of countries like Ukraine to maintain a sense of continuing progress in the right direction. I cannot think of a better model of the way to solve these challenges than the event we have witnessed today, in which Poland has so strongly underlined its determination to go on working with Ukraine — in partnership with a fine group of other states — across the new boundaries of the Union.



The third issue, which deserves a day's discussion in itself, is how to keep arms control alive and effective for tackling the new generation of global problems. We still need good treaties and other international legal regimes: we must work tirelessly to strengthen them, update them and expand their support. But treaties alone do not produce good arms control and they never did. Even in the Cold War there were always other threats and incentives, other "sticks and carrots" involved in the relations between strategic rivals. Today, the letter of arms control clearly needs to be supported by actions in other fields, starting with the effective international and national export controls to which we have devoted so much attention today. When states remain unwilling to obey the international law, and when they ignore all our other pressures to get them to obey it, forceful measures cannot be excluded from our armoury. But we must all hope that they will be used as rarely as possible, as briefly as possible and with the strongest possible international authority and consensus. We cannot realistically hope for that unless we are ready to throw our full weight into all the other, more "peaceful" methods that need to be explored beforehand.

Ladies and gentlemen, dear friends, I cannot end without offering my warmest thanks and congratulations on this excellent achievement to our friends and partners at the Razumkov Centre and DCAF. And since I have deeply appreciated the whole of today's events, I would like to add my thanks to all those other institutions and nations whose generous contributions have made this meeting possible. ■



Leonid POLYAKOV,
*Director, Military Programmes,
Razumkov Centre*



The contribution of analytical centres to strengthening security

The Stockholm International Peace Research Institute (SIPRI) performs an extremely important mission — making the world safer through the development of the international expert community, dissemination of the best expert knowledge and the most open, complete, and independent statistics.

Human history (and the present era is not an exception) is replete with cases where persons who took up the reigns of state government, whether by the will of the people or in its absence, appear unable — for different reasons — to guarantee the security of their nations. And the peoples themselves do not always have the power to influence their leaders.

One method of doing away with these problems proposed by SIPRI lies in publication of, so to say, a basic, unprejudiced and authoritative view on different security problems. The presence of such a view in the form of dedicated analytical materials helps officials of different rank in different countries to be fit for the powers vested in them. Furthermore, such materials help rank-and-file people to become not just citizens but conscientious citizens of their countries, interestedly and critically viewing the activity of the state authorities in the security domain.

The quality of the materials forming the commonly acceptable approach to the solution of security problems depends on the experience of experts. Without unnecessary flattery, I dare say that the team involved in preparation and publication of the SIPRI Yearbook has all necessary capabilities and the experience securing its deserved respect in the world. SIPRI surveys involve active and former state officials of different countries, influential international organisations, respected independent experts immediately engaged in the national and international decision-making process. Many of them are present at this conference: SIPRI Director Dr. A.Bailes; the Geneva Centre for the Democratic Control of Armed Forces (DCAF) Director Ambassador Dr. T.Winkler; former SIPRI Director, present Deputy Minister of Foreign Affairs of Poland Professor A.D.Rotfeld; former First Deputy Minister of Defence

of Poland, present senior political advisor to DCAF Dr. A.Karkoszka; Leader of the SIPRI Export Controls Project, Chief Editor of the SIPRI Yearbook, regular participant of international forums on export control issues Dr. I.Anthony.

The existence of high quality, open and unbiased expert assessments allows us to obtain certain knowledge and set benchmarks and milestones. Their impartiality depends on the quality of SIPRI studies and the responsibility of different governments for responding to SIPRI inquiries about national statistical data on security issues. The formation of knowledge is promoted by summarisation, systematisation and annual renewal of vast databases in the spheres of defence expenditures, arms production, stockpiling and sale, control of their proliferation on the part of SIPRI experts and their partners. SIPRI materials give not only an assessment of the problems in various spheres of the security domain but also the dynamic of their conception, manifestation and solution, the tendencies in the situation development in the regions and all over the world. This lays down the basis for forming rather steady benchmarks for regional and global security system development (proven by the high degree of coincidence of SIPRI forecasts with the events presently taking place in the world).

The SIPRI materials contain extremely important information about different approaches to the solution of problems, the positive and negative consequences. To be sure, due to national and regional specificity, these approaches cannot be used as a model of removing the obstacles for development in every country. However, the coverage and analysis of these approaches enable sensible politicians and officials to avoid ill alternatives when taking responsible decisions. This helps citizens see shortcomings in the state policy and mistakes of the authorities, too.

One of the unfortunate examples dealing with Ukraine is the discrepancy between SIPRI figures and the data on arms exports published (with delay) by the Ukrainian authorities and organisations: SIPRI

estimated Ukraine's arms exports in 2000 and 2001 at \$198 million and \$430 million, respectively, while the state company *Ukraspetsexport* — at \$500 million a year. One of the main reasons for such discrepancy, in addition to some difference in the assessment methods, lies in Ukraine's neglect of SIPRI's requests coming to official institutions — Ukraine does not give SIPRI information on arms sales.

SIPRI publishes not only traditional rubrics but keeps up with the times, performing studies in the most critical spheres of security, for the time being. In particular, the latest edition of the Yearbook carries very interesting articles by Ambassador Dr. T.Winkler and Dr. A.Karkoszka — on the security sector reform, and by Dr. I.Anthony — on problem issues of export control.

I believe that with the publication of this Yearbook, the Stockholm Institute, the Geneva Centre, the Razumkov Centre and all other participants of SIPRI projects will make a significant contribution to the cause of strengthening global security. ■





Mykola SINGUROVSKIY,
Programme Co-ordinator,
SIPRI Yearbook Publication Project Manager,
Razumkov Centre



Contemporary trends and problems of global security in SIPRI Yearbook

Today, the Razumkov Centre presents the Ukrainian edition of the *SIPRI Yearbook 2002: Armaments, Disarmament and International Security*. It contains the results of studies, reflecting dramatic developments that took place in the world in 2001. The terrorist attacks on the USA on September 11, and the response to them marked a watershed in international security policy. Unresolved problems, colliding interests and conflicts are now analysed from a different point of view — with account of new challenges and priorities. These events gave an impetus for the reassessment and redefinition of security policy in nearly all countries and influential international organisations. Those developments sped up the process of formation of a new global security system.

I would like to draw the attention of the conference participants, in the first place, to the basic results of studies by the Stockholm International Peace Research Institute, and, second, to the problems of security system transformation that require deeper study and discussion.

Main subjects of the SIPRI Yearbook 2002

If one makes a cursory review of the main headings and results of the surveys published in the SIPRI Yearbook 2002, one will find the following categories:

Major armed conflicts: data on the number, endurance, regional distribution, reasons and consequences of armed conflicts in 2001, including the number of deaths, refugees, influence on regional security and stability.

Conflict prevention: the present state of ongoing international preventive missions and new multilateral actions against terrorism; description of current measures taken to stop international terrorism; general conclusions on what the world community should concentrate in terrorism-prevention activities — cut off the financial, political and military sources for terrorist support and, where possible, apprehend terrorists before they commit acts of terror.

The military dimension of the European Union: EU activity aimed at perfection of the Common Foreign and Security Policy and establishment within its framework

of the European Security and Defence Policy (ESDP). Emphasis is made on unresolved problems, in particular — on the political and financial obstacles to the support for the European Rapid Reaction Force (in terms of intelligence, logistics, communication, and strategic airlift), as well as the EU access to NATO resources and capabilities.

The challenges of security sector reform: political and resource factors that promote or hinder reforms in the security sector. The conclusion is drawn regarding the importance of the security sector reform and proposals are made for the improvement of the process.

Sanctions applied by the European Union and the United Nations: an analysis of the effectiveness of a wide range of UN and EU sanctions, and efforts for their improving. The conclusion is drawn about the existence of many obstacles to transformation of the UN sanctions into an efficient instrument of conflict resolution and an effective means of influence on the behaviour of the targeted actors, especially where sanctions are applied in isolation from other means. There are positive examples of the EU own approach to sanctions as an element of its Common Foreign and Security Policy.

Military expenditure: summarised data on the structure and volume of military expenditures all over the world, the reasons behind their increase, their main trends and effects for the national economies.

Arms production: key arms production indicators from all over the world, the trends in the defence industry of the developed and transitional countries on the background of the globalisation processes, and the prospects of defence industry internationalisation.

International arms transfers: world exports and imports of arms, their structure and volumes. The conclusion is drawn about the need of enhancing the transparency of arms transfers.

Arms control after the attacks of 11 September 2001: a review of the specific features of arms control, major events in biological weapon arms control under the

increased sense of vulnerability caused by the attacks of September 11 and series of letters containing anthrax spores.

Ballistic missile defence and nuclear arms control: an analysis of the U.S. BMD programme, as well as interaction between the USA and Russia in the control of strategic nuclear arms. Particular attention is paid to the apparent disinterestedness of the USA in multilateral agreements, which is a cause of significant concern for many countries, as it makes uncertain the prospects of building an international security system based on the principles of stability, restraint in the development of national security systems and substantial reduction of arms.

The military uses of outer space: the structure and quantitative indicators of space programmes of world leaders, the trends and prospects of activity aimed at the prevention of an arms race in outer space and its connection with the U.S. BMD programme.

Conventional arms control: the process of control of conventional arms and security and confidence-building measures in Europe and Asia; an analysis of the effectiveness of the basic agreements in that sphere.

Multilateral export controls: the capability and opportunity to take difficult but necessary decisions in the framework of the export control regimes because of a heightened awareness of the need to reduce the risk after the terrorist attacks on the U.S. The main means for increasing effectiveness of export control regimes are: the development of the procedures for sharing information related to licensing and enforcement; the development of common approaches to end-user controls; and an application of controls to new forms of trade in a changing market.

Present-day problems

The SIPRI Yearbook 2002 deals with the events of 2001. On the surface, it may seem that the events dating back two years have lost or are gradually losing their significance and influence on the formation of present-day tendencies, solution of present-day problems. To some extent, this is true, if one views every event and its environment separately, without an idea of the all-embracing ties, in isolation from the historic, political, economic and social context. But the difficulty of the search of mankind's new paradigm of existence and development lies in the fact that concentration on separate problems, no matter how important they may be, makes it impossible to go beyond the limits of the existing rules, norms and habits. Changes, reforms, and transformation are needed, particularly in the security sector. From this viewpoint, close acquaintance with the materials of *the SIPRI Yearbook 2002* and its predecessors offers a brilliant opportunity to feel the interrelation among all spheres of security, the connection between acts and their consequences; to reveal the trends of the world development. It makes possible to correlate the summarised knowledge with the present situation, to assess this situation more impartially, to search for the ways of solution of the existing problems in the right direction.

The creation of effective systems of global and regional security is a significant problem of the present, particularly in view of many aspects of world globalisation trends. The acts of terrorism against the USA demonstrated that the norms, procedures, mechanisms



and institutes of the existing security system are not ready to effectively counteract this threat. The terrorists' actions are more systematic. Their co-ordination covers all stages of general cycle from motivation to preparation and realisation. At the same time, the actions against terrorist network activity cannot brag about such systemic attributes. First, the prevention of terrorism acts and conflicts, forces and means, are dispersed between many international organisations, and between separate countries. Second, they are poorly co-ordinated, and their improvement depends on inconsistent political and economic restrictions. Third, they are under the pressure of bureaucratic procedures.

In this sense, there are both negative and positive aspects in the USA's inclination towards unilateral actions, in its attempts "to draw" for itself the central role in the fight against terrorism. On the one hand, the attempts to confirm a uni-polar model for the world, that was established after the end of the Cold War, have to be dealt with. Unilateral actions (even with the collaboration of a coalition) strengthen not only the political, but also the economic positions of the USA in problem regions. This moves problems from the military and political spheres into the sphere of economic relations, into a level of international economic competition. In many cases the latent problems lie exactly in the economic sphere. In compliance with dialectic laws, such a situation creates opposition from the other pole (or poles), which is not always constructive. It breaks the balance of the international system and results in antagonism not only from the opponents, but also from the rest of the world, and even from allies (for example, the contradiction between the USA and France and Germany on Iraqi issues). Such a model does not strengthen stability, but contributes to its weakening. The USA is, first of all, interested in the preservation of the existing situation, especially from the point of view of strengthening their presence in problem regions.

On the other hand, no international organisation, including the UN (and separate countries moreover), has the capabilities to conduct either full-scale activities aimed at maintaining global security (in all its aspects), or to lead this struggle, or to co-ordinate the activities of the many organisations and countries, without the participation of the USA. The concentration of these functions by the USA, as the leader in the security sphere, gives these functions efficiency, resource support, and the most effective application of military capabilities. Moreover, ideally, research on the various aspects of such model functioning can promote the formulation of the requirements and directions of the greater improvement of the UN, regional centres, and the security system on the whole.

Another problem is concerned with the answers to the questions: what is the struggle directed against; what is more acceptable and effective — prevention or response to negative occurrences and their consequences? The results of the study of the Carnegie Commission on Preventing Deadly Conflict prove that the international community has spent around \$200 billion on seven major military interventions in the 1990s, and that preventive actions in each case would have saved the international community almost \$130 billion. Actually, it is necessary to note a significant increase of international organisations', and countries' interests in conflict and terrorism prevention.

Let us take a closer look at the SIPRI definition. It reads: "Conflict prevention can be defined as political, economic or military actions taken by third parties to keep inter- or intra-state tensions and disputes from escalating into violence". From my point of view, an accent on *the keeping from escalating into violence* narrows this sphere of activity and limits its effectiveness.

Turning tensions and disputes into violence is preceded by their occurrence. How should we deal with them? There are international programmes of assistance, development, as well as forums discussing and solving those problems. However, these measures are poorly co-ordinated among themselves, as well as with the activities in the spheres of force conflict resolution and combating terrorism. I.e. they are not of systemic character and consequently they have no systemic result which is badly needed for achieving the necessary level of security. **But it is precisely this kind of a challenge — systemic, well co-ordinated and timed, and forestalling — that international terrorism presents to the world community today.**

It is impossible to agree completely with some experts' conclusions, which are reduced to three main statements: first, terrorism is not a war against globalisation; second, the terrorists' actions were not a form of a fight of the poor against the rich; and consequently, third, in searching for an adequate answer to this new threat, it is important to avoid decisions, which are based on the belief that the root of the threats are concrete internal conditions or fundamental problems, such as the standard of living, or the unfair gap between the rich and the poor. Certainly, it is not true that all paupers support terrorism. But not all the rich are in delight from modern methods of struggle against this threat. It is necessary to realise that the global stratification in standards of welfare is a fostering environment for the occurrence of contradictions, and



increases in the number of indignant individuals, from which the terrorist elements are recruited and are brought up. The flagrant contrasts in development and incomes between a small number of countries with a high level of living standards and the rest of the world are important in understanding the root of conflicts. If this problem is not solved, it will be impossible to seriously expect a success in the counteraction against challenges to global security.

The answer to the question about the methods and directions for counteracting threats. First, as always, the question about the support of security measures with resources (human, financial, material, information, legal) arises. Therefore, the breadth and depth of the complex of measures, as a rule, cover only part of the complete cycle of the negative factors (origin, occurrence, escalation, impact, consequences), for which existing resources are enough. Secondly, it is impossible to always counteract threats in their early stages because each of them has a temporary line and structural features: one threat may be in the origin stage of contradictions; the root of another threat has a century of history; the basis of one threat is in economic divergences between the interests of parties, and other threats are based on a complex of ethnic, economic and political contradictions, and revealing these contradictions in the early stages is very difficult (though it is possible); practically all actors of international activity are interested in the counteraction against one threat (for example, terrorism), however the struggle against another threat (for example, atmospheric industrial emissions), negatively influences the interests of other actors. Therefore, approaches to security problems should be first, systemic, secondly, concrete, and third, based on the responsibility of nations.

In regards to the adaptation of the security system to new challenges, it is necessary to determine the directions for their reform, along with the principles and general rules. It concerns both collective and national security systems, where there are many problems in this sphere. One of them is a parity between functional expediency in the security sphere and orientation in democratic transformations. In contrast to development of democratic societies, measures that are caused by functional expediency (for example, creating power structures, improvement of their activity, etc.) have, as a rule, a short time for their realisation and come to

an end with appreciable results. If these measures are accompanied by an appropriate increase of the role of social democratic institutes, then the democratic control of power structures (and of the state on the whole) — is beyond the question. But if the state does not adhere to this rule, if the authorities are only worried about the preservation of their positions, and for the sake of these aims, they strengthen the machinery of compulsion, justifying these actions as being directed at functional expediency — society could be faced with great difficulties.

Under these conditions, the machinery of compulsion becomes self-sufficient, transforming into a “state within a state”, receiving levers of decisive influence on the situation within a country, while keeping its own interests at the forefront. Certainly, there is no sense to speak about democracy in such conditions. It is very dangerous when society begins to perceive justifications for actions directed at the suppression of political opposition, which are carried out under a mask of expediency for the struggle against terrorism.

Arms proliferation control remains a problem area.

It is closely connected with other problem areas, such as: observance of human rights in the regions hit by conflicts; compulsion of separate countries, regimes or political forces into that; reform of the security and disarmament systems; arms production and its adaptation to globalist tendencies in the economy. Export control regimes sometimes prove ineffective. They often depend on political fluctuations, collision of the interests of influential international actors, and the nuances of economic competition. Many rules and procedures of export control regimes (but for those established by international treaties) are of a political rather than legal nature. Hence, their effectiveness to some extent depends on the effectiveness of the national systems. From that viewpoint, the expansion of the club of democratic countries is not a goal-in-itself but a means of making the world safer.

Summary

It is not necessary to have a wild imagination in order to see that the majority of the mentioned problems concern Ukraine to some extent. Domestic and foreign experts have many questions concerning the effectiveness of the export control system, and probable consequences of the acceptance of the law on antiterrorist activity in Ukraine that in fact confer emergency authority to some power structures.

The issue is not in the poor quality of the mentioned system or law — they are sustained in Western standards and, basically, achieve the necessary results. But the



submission of all power vertical to the uniform centre (the President), accompanied with real or artificial occasions to mistrust organisational solvency of this centre, and the absence of effective mechanisms of civil control of power structures and authority on the whole, will always cause suspicion in an opportunity for the infringement of citizens' democratic norms, rights and freedom, and in default by Ukraine in its international obligations.

The Ukrainian authorities' account of the analysis of the events carried out by SIPRI experts, as well as the revealed trends and conclusions in which attempts are made to find adequate answers to modern challenges, could significantly increase the quality of state decision-making in the field of international politics, in restructuring of the economy, particularly, the defence industry, in peacekeeping, export control and security on the whole. The possession of such information is not excessive for the NGOs too, if they want to do relevant estimates of the international situation and if they try to structurally influence the formation of the state policy.

Therefore, one may hope that regular publication of the SIPRI Yearbook in Ukraine will help form an effective state policy and democratise the security sector. ■