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POLITICAL AND BUDGETARY OVERSIGHT OF THE UKRAINIAN INTELLIGENCE COMMUNITY: PROCESSES, PROBLEMS AND PROSPECTS FOR REFORM

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ABSTRACT

This thesis addresses the problem of providing policy and budget oversight of Ukrainian intelligence organizations in accordance with norms and practices developed in contemporary Western democracies. As Ukraine continues the process of democratic consolidation, the issue of intelligence oversight remains vital, to ensure political accountability and financial efficiency. Oversight of intelligence is also important to the political initiatives Ukraine has undertaken to improve ties to NATO and the EU. Official government documents, news reports and other literature on the intelligence system in Ukraine, as well as studies of intelligence oversight within democracies are the primary sources of data. This thesis reviews the principles and problems involved in parliamentary and executive oversight of intelligence in western and transitional democracies. It details the organizations and budgets of the Ukrainian intelligence agencies, as well as the legislative and executive systems for providing financial resources to them and for conducting oversight of them. The most important problems identified include the needs to separate intelligence functions from security and law- enforcement tasks within Ukrainian intelligence organizations, create an all-source intelligence analysis agency and establish independent and well-staffed bodies in the legislative and executive branches dealing exclusively with intelligence and intelligence budget oversight functions.

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I. INTRODUCTION

A. BACKGROUND

Intelligence oversight is an important indicator of the democratic character of a state. After achieving independence on August 24, 1991, Ukraine started building a sovereign, democratic, and law-based state. To affirm and ensure human rights and freedoms became the main duty of the State.[1] Reform of its intelligence sector was an important aspect of this process.

The collapse of the Soviet Union left in place a huge intelligence and security apparatus that needed to be reformed and controlled properly. This had to be done sooner rather than later because the new leadership understood from the past the potential for political abuse of the intelligence services as an instrument in the hands of the state. Supporters of Ukrainian democracy did not want to return to these practices. Therefore, it was essential to secure effective parliamentary and executive oversight of the intelligence services. The young state and its democratic leaders followed the idea that structures and practices for conducting stringent oversight of the intelligence services would be a major prerequisite for establishing a stable democracy.

In an open and free society, there is a tendency among the citizens to mistrust the intelligence community.[2] Mistrust can be avoided if the citizens are ensured, mainly via democratic political accountability, that the intelligence services pursue legitimate and democratically accepted objectives. Thus it is important that the citizens believe that the intelligence services operate within the law and are subject to legal standards and independent oversight.[3]

Studying and analyzing the best norms of western democracies, Ukraine took major legislative actions to reform its intelligence sector. By adopting the laws on March 25, 1992 "On the Security Service of Ukraine" (#2229-XII), on March 22, 2001 "On the Intelligence Organs of Ukraine" (#2331- III), on October 20, 2005 "On the Organization and Total Strength of the Security Service of Ukraine" (#3014-IV), and on December 1, 2006 "On the Foreign Intelligence Service of Ukraine" (#3160-IV), the new Ukrainian democracy established the primary missions of the intelligence and security organizations, their functions and responsibilities. Those laws put into effect the term "Ukrainian Intelligence Community" (UIC) and laid the foundation for the establishment and further development of the system of intelligence oversight and public awareness regarding intelligence activity. Moreover, specialized offices for conducting effective parliamentary and executive intelligence oversight were established in the Ukrainian Parliament, the President's Secretariat and the Cabinet of Ministers.

The Ukrainian intelligence services are growing in importance as an area of governmental activity. Indeed, this sector in Ukraine has now become a multi-million-dollar governmental entity,

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[1] Constitution of Ukraine. 1996. Article 3. Available at http://www.rada.gov.ua/const/conengl.htm (accessed March 28, 2007).

[2] Elizabeth Rindskopf Parker, *The American Experience: One Model for Intelligence Oversight in a Democracy* (Cambridge, Massachusetts: Harvard University Project on Justice in Times of Transition, 2001) 12. Available at https://www.cia.gov/csi/studies/vol48no1/article02.html (accessed March 12, 2007).

[3] Hans Born, "Democratic and Parliamentary Oversight of the Intelligence Services: Best Practices and Procedures," Geneva, May 2002, 2. Available at http://www.isn.ethz.ch/dossiers/ssg/pubs/ Working%20Papers/20.pdf (accessed March 28, 2007).

involving human and signal intelligence units, high-tech equipment, economic, political, social, and military analysts, as well as recruited agents around the world. As announced in December 2006, and according to estimates by international experts, Ukrainian intelligence was ranked among the ten most efficient intelligence communities in the world.[4] Thus, the budget of such an important and costly sector needs to be subjected to democratic oversight as well. In addition, the involvement of parliamentarians and members of the President's Secretariat and the Cabinet of Ministers can help ensure that the use of public money in the defense and security sector is properly authorized and accounted for.[5]

Unfortunately, information regarding the budget of intelligence organizations is mostly classified in western democracies. Many observers argue that as a result of the disclosure of intelligence spending, unfriendly countries and terrorist organizations can take advantage of information about trends in intelligence spending to develop effective countermeasures against democracies.[6] Ukrainian intelligence is no exception to this concern. Information concerning intelligence expenditure is regarded as a state secret according to the Ukrainian law "On State Secrets of Ukraine," and not available to the public.

However, suffering from economic stagnation, and financial and political instability, there are some in Ukraine who raise the issue that intelligence and security sector expenditure should be reduced. They propose that funds cut from the intelligence budget could be better used in other policy areas, due to the low likelihood of future military conflicts. Most people think that the peaceful position of Ukraine in the international arena and national aspirations to join NATO and the European Union, which have been the public declarations of Ukrainian presidents since 2004, minimize the probability of Ukrainian participation in continental wars and regional conflicts.

Additionally, Ukraine's willingness to be an important part of the European security architecture raised the issue of the conformity of Ukrainian budget processes with EU and NATO standards. This suggests that sooner or later, appropriate information regarding the UIC budgeting is going to be disclosed and shared with the intelligence organizations of countries with whom Ukraine has already started planning and conducting joint activities abroad in order to maintain world peace and security. The limited intelligence budget data also needs to be declassified before sharing with those countries with which Ukraine does not have bilateral agreements regarding the state secret protection. Thus, this information becomes non-secret and, according to the Ukrainian Constitution, should be provided to the public. Some intelligence expenditure should be made public as well.

The fundamental issue of the Ukrainian intelligence budget oversight system is whether adequate resources are being committed to intelligence, to the right sectors of the UIC, and whether those resources are properly managed. It is the responsibility of elected officials, cabinet members and military commanders to ensure that these requirements are met. A more immediate issue is how to ensure that there is enough information available to inform public debate without placing the UIC's sources and methods at risk.

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[4] Interview of the Chairman of the Foreign Intelligence Service of Ukraine to the National Newspaper *Facts,* December 2, 2006. Available at http://www.fisu.gov.ua/article.php?lang=en&root=7&item=86 (accessed March 28, 2007).

[5] Ian Leigh, Democratic Control of Security and Intelligence Services: A Legal Framework, 122. In Bryden, Alan and Fluri, Philipp. Security Sector Reform: Institutions, Society and Good Governance. Nomos. Verlagsgesellshaft, Baden-Baden. No. 34, August 2003.

[6] Richard A. Best Jr. and Elizabeth Bazan, February 15, 2007. Intelligence Spending: Public Disclosure Issue, 1. CRS Report for Congress.

The purpose of this thesis is to examine the existing system of parliamentary and executive oversight of the Ukrainian Intelligence Community in general, and the intelligence budget in particular. This case study also describes the common principles (norms) of intelligence and intelligence budget oversight in western democracies and determines the main factors that have influenced the intelligence budget oversight in Ukraine.

B. SIGNIFICANCE OF RESEARCH

First of all, due to the secretive nature of this topic, there are few English language sources available regarding the parliamentary and executive oversight mechanisms of Ukrainian intelligence, and intelligence budget oversight in particular. Political events in Ukraine, including security and foreign policy, continue to evolve, with major differences of opinion being evident. Some favor continued and accelerated partnership with the European Union and NATO countries. Others prefer improved relations with Russia. Ukraine is once again at a political crossroads. Whether Ukraine moves east or west, it will be important for the citizens and government of Ukraine to understand the role played by their intelligence agencies and the cost involved in that role. However, if Ukraine is to continue its initiatives aimed at improving ties to NATO and the EU, the issue of parliamentary and executive oversight of the UIC and its budget is critical.

The dramatic events of September 11, 2001 accelerated security sector reform in many countries that had already begun this process and certainly provided an impetus to European security sector integration.[7] If the foreign policy of Ukraine continues seeking closer relationship with the European Union, NATO, and the United States, with the goal of eventual NATO and EU membership, further budget transparency is important.[8] Partners should know more about each other in order to be successful while performing joint military and security tasks in a complex defense environment. This thesis will benefit both Ukraine and its potential partners in the West in terms of further transparency in the intelligence sector.

Secondly, intelligence oversight is an important indicator of the attitude of a state toward its democratic processes. By conducting this case study the author hopes to demonstrate the extent to which Ukraine has moved toward democratic policies and practices in this important policy area, as well as the areas where further work is needed.

Thirdly, this thesis will benefit Ukrainian policymakers. For a country with acute needs in non-security policy areas such as health and education, appropriate budget oversight procedures and reasonable transparency can be valuable tools for policymakers who are allocating scarce resources.

Finally, no independent case study regarding Ukrainian intelligence and intelligence budget oversight has yet been written. One of the purposes of this research is to provide additional information regarding current intelligence oversight mechanisms and processes in Ukraine to international institutions, such as the Geneva Centre for the Democratic Control of Armed Forces. This case study will allow those international institutions to update their understanding and information regarding the Ukrainian model of intelligence oversight and, as a consequence, assist Ukrainian

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[7] Alan Bryden and Philipp Fluri, Security Sector Reform: Institutions, Society and Good Governance, 9. Nomos. Verlagsgesellshaft, Baden-Baden. No. 34, August 2003.

[8] Steven Woehrel, April 1, 2005. Ukraine's Orange Revolution and U.S. Policy, 2. RL32845. CRS Report for Congress.

transitional democracy and its parliamentary and executive bodies to analyze and correct existing mistakes, while merging with the European security architecture.

C. RESEARCH QUESTION

The primary research question to be addressed in the thesis is: how does the system of parliamentary and executive oversight of the Ukrainian Intelligence Community in general, and intelligence budget oversight in particular operate in Ukraine?

Subsidiary research questions include the following:

- What are the common norms and problems of intelligence and intelligence budget oversight in western and transitional democracies?
- How are the Ukrainian Intelligence Community and its intelligence agencies organized?
- How does the intelligence budget process operate in Ukraine?
- How is the intelligence budget controlled by the Ukrainian parliament and executive branch?
- How does the system of parliamentary and executive oversight of the Ukrainian Intelligence Community operate?
- What mechanisms exist in Ukraine regarding intelligence and intelligence budget oversight and what are the current problems with enhancing this type of control?

D. METHODOLOGY

Firstly, taking into consideration the classified nature of intelligence and intelligence budget oversight, the sensitivity of this topic and the lack of open sources of such information, this thesis will identify the key aspects of common intelligence oversight systems in western democracies. Then, data will be obtained from a comprehensive literature review of Ukrainian legislation, governmental official reports, journals and Internet-based materials (interviews, publications related to the Ukrainian Intelligence Community, its budget, oversight mechanisms, as well as Websites of the intelligence organizations). After that, the existing system of parliamentary and executive oversight of the UIC, and of the intelligence budget in particular, will be evaluated. The thesis will also emphasize the current problems of intelligence and intelligence budget oversight and possible solutions.

E. ORGANIZATION OF STUDY

This thesis is organized as follows: the first chapter explains the rationale for and logic of this thesis. The first part of this chapter provides background information and the importance of the issue of intelligence oversight in Ukraine. It also gives a brief history of important legislation passed by the Ukrainian parliament to advance this type of control. It is followed by the significance and importance of this case study, the research questions to be addressed and a description of the methodology to be employed to develop answers.

The second and the third chapters describe common principles (norms) of intelligence and intelligence budget oversight in western and transitional democracies. They also underline current problems related to establishing and enforcing this type of control.

The fourth chapter examines the Ukrainian Intelligence Community. The chapter is subdivided

into four main sections. First, it discusses the Foreign Intelligence Service of Ukraine, its organization and main tasks. The next section presents the structure of the Main Directorate for Intelligence of the Ministry of Defense of Ukraine and functional responsibilities of its departments. Then, the major functions and organization of the Intelligence Body of the State Border Guard Service of Ukraine will be introduced. Finally, the main tasks and structure of the Security Service of Ukraine will be considered. This chapter also provides data regarding the evolution of the budgets of these intelligence organizations for the period of fiscal years (FY) 2003-2007.

The fifth chapter covers the existing system of parliamentary oversight of the Ukrainian Intelligence Community. It examines the intelligence budget process and parliamentary committees conducting oversight, their jurisdictions and responsibilities. Special attention will be given to parliamentary oversight mechanisms and controlling functions performed by the Accounting Chamber of Ukraine.

The sixth chapter examines executive oversight of the UIC. The organization and oversight activities of the Secretariat of the President, the National Security and Defense Council, the General Inspectorate under the President of Ukraine, as well as the role of the Cabinet of Ministers and its Office of Vice Prime Minister on the Issues of National Security and Defense will be discussed.

The seventh chapter will conclude the thesis with an overall picture of intelligence oversight of the UIC followed by the author's observations, conclusions, and recommendations for further research.

II. OVERSIGHT OF INTELLIGENCE ACTIVITY IN WESTERN AND TRANSITIONAL DEMOCRACIES

A. INTRODUCTION

In order to continue building a stable democracy and not slideback into authoritarianism, Ukraine has attempted to improve the control and transparency of its intelligence systems. In a democracy, the representatives of a people hold the supreme power and no sector of the state should be excluded from their control. They exercise this power through elected representatives. These representatives, in both the executive and legislative branches of government, play a vital role in conducting oversight of intelligence systems.[9] The judicial system and the civilian sector contribute to the oversight of intelligence in other ways.

Western democracies provide oversight of their intelligence communities for several reasons.[10] Firstly, it is crucial for democratic states to find a balance between security and liberty. Intelligence agencies provide services to protect the society and do this by using methods that are not revealed to the public. Those secret means create conditions that may lead to abuse and threaten civil liberties. Liberty refers to privacy and civil rights, which are vital elements of any democracy. If an intelligence service becomes too powerful, it could threaten these rights.

Secondly, people in an open and free society do not trust intelligence organizations. Mistrust can be minimized if the citizens are ensured that proper constraints are in place.

Thirdly, oversight systems help to provide information to citizens that their intelligence community is following and operating within the law and is subject to legal standards and independent supervision.

Fourthly, taxpayers want assurance that intelligence budgets are being properly managed. Intelligence communities in many states are multi-billion-dollar governmental enterprises. This means that financial accountability is crucial. Financial accountability for intelligence spending may become an important factor during the planning and conduct of joint multinational operations. International intelligence partners may need to disclose limited information regarding intelligence budget resources before each operation while acting together.

Finally, democratic oversight of intelligence in transitional democracies can contribute to the transformation of intelligence communities toward the principles of a free and open society. This process involves moving away from a closed and repressive state apparatus toward a transparent and democratically accountable government.

To avoid an "independent security state" inside a democratic society, effective techniques of legislative and executive oversight over the intelligence communities must be established. This requirement for the accountability of the intelligence community is congruent with the democratic rules of good governance and the protection of human rights and freedoms, as well as state security.

There is no one best way or practice of intelligence oversight. Accepted and common practices in one established democracy may not be applicable in another modern or emerging democracy.

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[9] Hans Born, August 2003. Representative Democracy and the Role of Parliaments: An Inventory of Democracy Assistance Programs. In Alan Bryden / Philipp Fluri (eds.). Security Sector Reform: Institutions, Society and Good Governance, 67. Nomos, Verlagsgesellshaft. Baden-Baden. No. 34.

[10] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 2.

The variety of rules and systems of oversight in western democracies reflects the nature of those democracies. Democratic governments are free to build any system of intelligence and security oversight they choose.

The oversight of intelligence is an ongoing process in democracies. The security environment constantly changes and, with it, intelligence organizations must evolve. Governments, in turn, adapt their oversight standards and methods. The process is dynamic and persistent. For example, "the nature of threats to U.S. security has changed since 1978 when Congress passed the Foreign Intelligence Surveillance Act (FISA), which governs intelligence agencies' ability to conduct electronic surveillance in the United States. The law has been amended repeatedly since then, including after the 9/11 attacks."[11] Major events affecting the evolution of oversight of intelligence in the U.S. are depicted in Figure 1 below.[12] Thus, the consensus is that these oversight systems should be clear, workable, efficient and transparent for political leaders and the public.

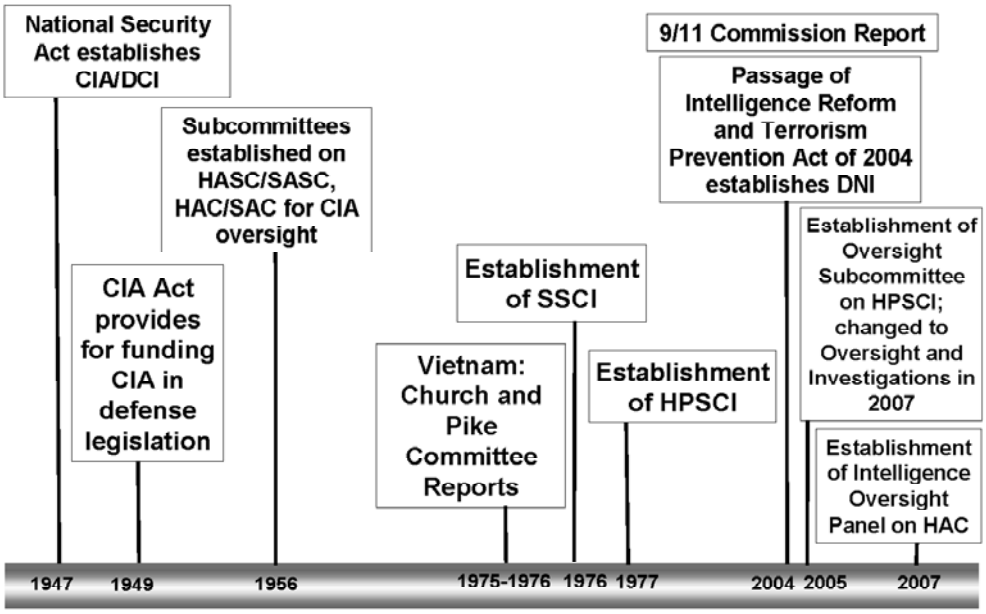

Figure 1. Evolution of Congressional Oversight of the U.S. Intelligence Community

This chapter describes the common principles of legislative and executive oversight used by western and transitional democracies to regulate the activities of their intelligence agencies. Major oversight problems will also be identified. These principles are worth studying and implementing by emerging democracies that wish to build an effective system of intelligence oversight.

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[11] Fixing FISA. May 7, 2007. The rules for domestic electronic surveillance need a careful updating. The Washington Post Company. Available at http://www.washingtonpost.com/wp-dyn/content/article/2007/05/06/AR2007050600847.html (accessed May 7, 2007).

[12] Created by Professor Richard Doyle. 2007. Naval Postgraduate School. Graduate School of Business and Public Policy. Monterey. California. From: Congressional Research Service (CRS) Report. Congressional Oversight of Intelligence. Current Structure and Alternatives. Intelligence Spending: Public Disclosure Issues. Updated February 15, 2007.

B. PRINCIPLES AND PROBLEMS OF INTELLIGENCE OVERSIGHT IN WESTERN AND TRANSITIONAL DEMOCRACIES

Thomas Jefferson, one of the principle architects of American democracy, was concerned about the dangers of concentrated power in the new American republic.[13] His concerns were based upon the power of government bureaucracy. By its very nature, bureaucracy has a tendency to accumulate immense power over time. This also applies to intelligence organizations. There is evidence that it is dangerous for a country to give the intelligence and security community autonomous power within the state or power to shape important parameters of civil and political society.[14] Intelligence communities should be politically neutral. Politicization of the intelligence community can jeopardize the integrity of their product as well as the political system itself.

In western democracies, laws are developed regarding the activity of intelligence communities. Intelligence legislation usually defines the status, purview, operations, cooperation, tasking, and reporting duties of intelligence agencies.[15] For example, the U.S. was one of the first countries that enacted a public law for its intelligence agencies; this act was unprecedented.[16] In Argentina, the law prohibits intelligence agencies from conducting activities related to domestic political affairs.[17] The use of specific means of acquiring information and keeping records containing personal details, as well as the status of the intelligence services employees, are addressed by law in Germany, Poland, and the Czech Republic.[18] Thus, the law is the major prerequisite for effective legislative and executive oversight of the intelligence community. It achieves this by separating intelligence from law enforcement and by professionalizing intelligence practices.

1. Functional and Structural Changes in Intelligence Communities

a. Separation of Intelligence and Law Enforcement

Tasking is an important tool for elected authorities in directing intelligence services to focus their attention on gathering information within desired areas of intelligence. That is, for better oversight, western democracies separate national intelligence (foreign and domestic [security] intelligence) from the functions of the law-enforcement agencies (national police).

Law enforcement agencies such as the police have different purposes from intelligence agencies, and thus their functions should be separated. Intelligence services collect relevant information regarding the potential threats to national security, while the police maintain law and order. Police work should not be intermingled with intelligence work and police personnel should not be allowed

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[13] Loch Johnson, "The CIA and the Question of Accountability," *Intelligence and National Security*, Summer 1998, 178.

[14] Alfred Stepan**,** 2005. *Brasilia's Case: The Brazilian Intelligence System in Comparative Perspective, Ch. 2. Rethinking Military Politics, Brazil and the Southern Cone* (Princeton: Princeton University Press) 18.

[15] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," Chapter III, 4.

[16] Rindskopf Parker, *The American Experience*, 15.

[17] Hans Born, Loch Johnson and Ian Leigh, *Who's Watching the Spies* (Washington, D.C.: Potomac Books, 2005) 162.

[18] Intelligence Services Act of the Czech Republic. Available at http://portal.gov.cz/wps/portal/_s.155/699/place (accessed April 3, 2007).

to practice "preventive intelligence activities" before they have evidence that a crime is committed. Intelligence services, likewise, should not arrest citizens they suspect, thus involving themselves in spying against their citizens.[19]

This functional division has been practiced effectively in Germany.[20] The separation of functions between foreign and domestic (security) intelligence and law enforcement agencies is enacted by law in that country. Separation of intelligence and law enforcement functions is also typical for such western democracies as France, the United Kingdom, Switzerland, Austria, and the United States, as well as the transitional democracies of Bulgaria and Romania.[21]

However, due to substantial threats posed by international groups, the United States' Federal Bureau of Investigations (FBI) has combined some of the law enforcement and domestic intelligence functions after the tragic events of 9/11. The Canadian Security and Intelligence Service (CSIS) involved various national defense units in domestic intelligence collection.[22] An overlap of functions remained due to the necessity of increasing the level of security and public protection.

Currently the FBI handles counterintelligence, law enforcement, and security intelligence functions within the U.S., while the Central Intelligence Agency (CIA) maintains responsibility for intelligence gathering and counterintelligence outside the country.[23] Although the Director of the CIA could be a military officer, the CIA is not placed under military control. The CIA does not have any domestic role or police powers.[24]

In order to separate domestic and foreign intelligence functions from the functions of law enforcement agencies, the United Kingdom, France, and Australia have created specialized intelligence agencies that are focused on domestic and international threats.[25] Following this idea, both Canada and Romania created additional intelligence services: Criminal Intelligence Service (in Canada)[26] and the Ministry of Justice's General Directorate for Protection and Anticorruption (in Romania).[27] Those agencies are responsible for collecting data on delinquency and organized crime within their prison system as well as corruption and the protection of state secrets.

According to a national strategy to defeat serious crime and with the purpose of avoiding a mix of intelligence and law enforcement functions, the British Intelligence Community assists law

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[19] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 5.

[20] Robert Livingston, "Germany's Intelligence Failure," *The Washington Post,* October 19, 2001.

[21] Intelligence Services. March 2006. Bibliographique Details, 7. DCAF. Available at http://se2.dcaf.ch/serviceengine/FileContent?serviceID=DCAF&fileid=F6E3356F-E85E-214F-40BD-6E0D779248D3&lng=uk (accessed April 26, 2007).

[22] Report (online). 2003. Office of the Auditor-General of Canada. Chapter 10, section 10.121-10.137. Available at www.oag-bvg.gc.ca/domino/reports.nsf/html/20031110ce.html (accessed May 6, 2007).

[23] Thomas C. Bruneau and Kenneth R. Dombroski, "Reforming Intelligence: The Challenge of Control in New Democracies," (proceedings from an international roundtable on intelligence and democracy, Center for Civil-Military Relations, Naval Postgraduate School, Monterey, California, August 26-27, 2004), 15.

[24] Mark M. Lowenthal, *Intelligence: From Secrets to Policy.* 2nd Ed. (Washington, D.C.: CQ Press, 2003) 20.

[25] Peter Chalk and William Rosenau, *Confronting the 'Enemy Within': Security Intelligence, the Police and Counterterrorism in Four Democracies* (Santa Monica, California: The Rand Corporation, 2004) Chapters 2, 3, and 5. Available at http//www.rand.org/ (accessed April 26, 2007).

[26] Canadian Criminal Intelligence Service is tasked with unifying criminal intelligence units of Canadian law enforcement agencies in the fight against the spread of organized crime in Canada. Available at http://www.cisc.gc.ca/about/about_cisc_e.htm (accessed April 26, 2007).

[27] Craig S. Smith, "Eastern Europe Struggles to Purge Security Services," *New York Times,* December 12, 2006. Available at http://majority.com/news/nyt12_12_6_1.htm (accessed April 26, 2007).

enforcement agencies in the United Kingdom through specialized services. In this case, the National Criminal Intelligence Service (NCIS) serves as the main interface between the national intelligence community and police criminal investigation departments.[28]

The Directorate of Territorial Security (DTS) in France, which handles domestic intelligence, maintains an extremely close working relationship with French law enforcement agencies, the National Police and the National Gendarmerie. However, their functions are reasonably separated. The interaction between intelligence and law enforcement agencies is largely conducted through the Anti-Terrorism Coordination Unit, a working-level coordination group that includes agencies from the Ministries of the Interior and Defense.[29]

b. Functional Professionalization of Intelligence Agencies

A common norm of western democracies in the oversight of its intelligence is to separate it into different agencies, each with a different function.[30] "Where security and intelligence are combined in a single agency there is a fear that questionable techniques and operations may be undertaken domestically because much intelligence-related work is outside the law in any way. The point is even stronger concerning the separation of military intelligence."[31] Thus, each intelligence service should have just one mission. If an intelligence agency performs too many missions, it accumulates power that is difficult to control.

Such separation divides tasks and responsibilities clearly among intelligence organizations in order to prevent any single agency from having a monopoly on intelligence production or use.[32] Foreign and domestic (security) intelligence functions are separated in many western democracies for precisely this reason. It also precludes the emergence of multifunctional intelligence structures and the possibility of the appearance of a "state within the state."[33]

For instance, in order to enhance oversight, most western democracies organize intelligence functions so that only one intelligence agency in a country is responsible for signals intelligence (SIGINT).[34] In the U.S., the main agency that conducts SIGINT activity is the National Security Agency (NSA); in the United Kingdom, it is the Government Communications Headquarters;[35] in Germany, it is the Federal Intelligence Service (BND);[36] in Italy, it is the Intelligence and Military

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[28] Intelligence and Security Committee (ISC). June 2002. Annual Report 2001-2002. Cmnd.5542, 26. London: Her Majesty's Stationery Office.

[29] Chalk and Rosenau, *Confronting the 'Enemy Within'*, 20.

[30] Kenneth R. Dombroski, "Introduction to Intelligence and Democracy: The Challenge of Control in New Democracies," p. 16. (proceedings from an international roundtable on intelligence and democracy, Center for Civil-Military Relations, Naval Postgraduate School, Monterey, California, August 26-27, 2004), 16.

[31] Born, Johnson and Leigh, *Who's Watching the Spies*, 8-9.

[32] Bruneau and Dombroski, "Reforming Intelligence: The Challenge of Control in New Democracies," 16.

[33] Peter Gill, *Policing Politics: Security Intelligence and the Liberal Democratic State* (London: Frank Cass, 1994) 82.

[34] Lowenthal, *Intelligence: From Secrets to Policy*, 199.

[35] Ian Leigh, "Accountability of Security and Intelligence in the United Kingdom." Available in *Who's Watching the Spies,* 80.

[36] Federation of American Scientists. Intelligence Services of Germany. Federal Intelligence Service (BND). Available at http://www.fas.org/irp/world/germany/bnd/org.htm (accessed April 3, 2007).

Security Service (SISMI);[37] in Canada, it is the Canadian Forces Information Operations Groups (FIOG);[38] and in Australia, it is the Defense Signal Directorate (DSD).[39]

In an effort to make national intelligence agencies more accountable, both Canada and Australia enacted a division of the functions of their intelligence agencies in the early 1980s.[40] The United Kingdom, Switzerland, France, Austria, Belgium, Germany, and Sweden have also minimized the number of all-source intelligence agencies, establishing their functional professionalization.[41]

Many transitional democracies use the experience of western democracies in making structural and functional changes. Before joining the European Union and NATO, Romania reformed its intelligence system with the purpose of establishing better oversight and transparency. It created the Special Telecommunication Service (STS),[42] a single intelligence service that is solely responsible for SIGINT.[43] The Republic of Bulgaria and the Czech Republic also minimized the number of their all-source intelligence agencies, having their SIGINT services separated from other members of the national intelligence community.[44]

Intelligence oversight in democracies also requires functional professionalization in regard to covert and paramilitary operations. This is important because these capabilities allow a government to be both a perpetrator and a target.[45] No single solution exists regarding the best principle of establishing such oversight. However, as a general principle, only one agency should be assigned to conduct these operations, not the intelligence community as a whole.[46] Moreover, it does not have to be done by intelligence.[47]

Because of accountability problems with the CIA, which is responsible for conducting covert operations, some American experts argue that this activity should be assigned to the Department of Defense. According to their point of view, this functional redirection would allow a better means of control over covert and paramilitary actions.[48]

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[37] Information regarding the SISMI available at http://www.serviziinformazionesicurezza.gov.it/ pdcweb.nsf/ pagine/ee_sismi (accessed April 26, 2007).

[38] Stuart Farson, "Canada's Long Road from Model Law to Effective Political Oversight of Security and Intelligence." Available in *Who's Watching the Spies,* 101.

[39] Chalk and Rosenau, *Confronting the 'Enemy Within'*, 36.

[40] See Canadian Security Intelligence Service Act of 1984. Available at http://laws.justice.gc.ca/ en/showdoc/ cs/C-23/bo-ga:l_I//en (accessed April 18, 2007). Australian Security Intelligence Organization Amendment Act 1986. Available at http://www.austlii.edu.au/au/legis/cth/num_act/ asioaa1986n1221986586/ (accessed April 7, 2007).

[41] Intelligence Services. March 2006. Bibliographique Details: DCAF, 7. Available at http://se2.dcaf.ch/ serviceengine/FileContent?serviceID=DCAF&fileid=F6E3356F-E85E-214F-40BD-6E0D779248D3&lng=uk (accessed April 26, 2007).

[42] Information regarding the structure and tasks of the Romanian Telecommunication Service. Available at http://www.stsnet.ro/prezentation.htm (accessed April 27, 2007).

[43] Born, Johnson and Leigh, *Who's Watching the Spies*, 101.

[46] Intelligence Services. March 2006. Bibliographique Details. Table: Intelligence Services in Some European Countries, 7. DCAF. Available at http://se2.dcaf.ch/serviceengine/FileContent?serviceID= DCAF&fileid=F6E3356F-E85E-214F-40BD-6E0D779248D3&lng=uk (accessed April 26, 2007).

[45] Lowenthal, *Intelligence: From Secrets to Policy,* 263.

[46] Michael Herman, *Intelligence Power in Peace and War*, 8th ed. (Cambridge: Cambridge University Press, 2006) 55.

[47] Ibid., 54-56.

[48] CRS Issue Brief for Congress. May 9, 2006. Intelligence Issues for Congress, 12. Library of Congress.

Among other agencies of the United Kingdom's Intelligence Community, MI5 is assigned to fight "covertly organized threats to the nation" such as terrorism, espionage, and the proliferation of weapons of mass destruction.[49] Some western democracies, such as Canada and Australia, have no experience in conducting such operations, so they do not have a specially assigned agency to perform such activity. In ad hoc situations, the Canadian SIS has a close liaison with the Canadian Police, which can act inside the country by national law.

Romania has a sour history in the conduct of covert actions. Romanian intelligence agencies conducted covert operations both abroad and against their own people during the Communist period. Officially, no information is available that specifies which organization of the Romanian Intelligence Community can conduct clandestine operations. However, Romania still has some "secret" intelligence organizations that have not been made public, even after joining NATO and the EU.[50]

c. Creation of All-Source Analysis Intelligence Organization

The issue of oversight of the final intelligence product is crucial for a democracy, as it gives important knowledge and power to the decision-making process. It is clear that the greater the number of IC agencies, the more difficult it would be to conduct effective oversight of their final intelligence products.[51] In terms of effective control, it is better to have final intelligence produced in one place or by a single all-source analysis agency.

It is accepted in the West's best-known intelligence institutions that it is vital and effective to first establish an organizational division between collection and all-source analysis.[52] Some western ideas of intelligence objectivity come from the fact that the collectors of intelligence should not have the final responsibility for evaluating their product.[53] That separation allows better analysis and oversight of the final national intelligence estimation, which is sent to the policymakers.[54] Moreover, the analysis of threats also requires that data from all intelligence sources (informational "pipes") should be brought together so that analysts will have access to it on a timely basis.[55]

After the tragic events of 9/11, western democracies realized the need for such a center in order to accumulate and control the flood of information and have a "single voice" assessment for policymakers.[56] For example, the Integrated National Security Assessment Center was established in Canada in 2003 as an interagency analysis branch both to provide a single intelligence product and to enable Canada to respond more effectively to existing and emerging threats to its national

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[49] Cabinet Office (UK). Security Service. The Security Service: MI5, n.d., 6. London: Her Majesty's Stationery Office.

[50] Cris Matei, "Romania's Transition to Democracy: Civil Society and the Press' Role in Intelligence Reform," 4. Published in Naval Postgraduate School. Center of Civil-Military Relations. Monterey. California, 2005.

[51] Ian Leigh, "More Closely Watching the Spies: Three Decades of Experience," 9. Available in *Who's Watching the Spies*.

[52] Herman, *Intelligence Power in Peace and War*.

[53] Ibid., 112.

[56] U.S. National Commission on Terrorist Attacks Upon the United States. 2004. The 9/11 Commission Report. Washington. Government Printing Office.

[55] CRS Issue Brief for Congress. May 9, 2006. Intelligence Issues for Congress, 5. Library of Congress.

[56] Recommendation of the 9/11 Commission. 2004. Washington. Government Printing Office.

security.[57] That increased Canada's capacity to oversee and analyze all-source foreign intelligence, which has traditionally fallen on organizations within the Privy Council Office and the Department of Foreign Affairs.[58]

In the U.S., the creation of the Joint Intelligence Center (JIC) under the Office of the Director of National Intelligence was a significant development with respect to oversight of the U.S. Intelligence Community. Actually, the position of Director of the Joint Intelligence Center was created to enhance the system of oversight over the final national intelligence product as well as to reduce data waste and unnecessary duplication within the intelligence community.[59]

In Australia, the Office of National Assessments (ONA) was established in 2003. This all-source analysis think tank reports directly to the Prime Minister's Office, which provides oversight of the final strategic intelligence product.[60]

In Romania, its transitional democracy created a National Intelligence Community Center in 2005, which functions as an all-source analysis agency. The purpose of this reform was to increase control over the national intelligence estimations and report information promptly and directly to the National Defense Supreme Council and to the President.[61]

Overall, functional division and structural changes inside intelligence communities are based on common principles that western and transitional democracies use to enhance the oversight of their intelligence agencies. The separation of intelligence from the law enforcement function, professionalisation of intelligence agencies, and creation of all-source analysis intelligence are common norms that help democracies to control organizations within the intelligence community. This oversight is more effective if those norms are established within a legal framework and spelled out in accordance with to a national legislature.

2. Legislative Oversight

Western democracies pay a great deal of attention to the effective conduct of legislative oversight of their intelligence communities. Parliaments should make certain that the civil rights of citizens are not impaired by the operations of the IC. This oversight is vital for transitional democracies because it gives an elected government full power over the intelligence community and access to the information about intelligence agencies' activities and their final intelligence product.

Legislative oversight concerns the policies and administrative aspects of intelligence agencies, the efficiency of the intelligence community, and its budget, which gives a parliament power over intelligence.[62] Western and transitional democracies look at this type of control through the prism

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[57] Information regarding the National Security Assessment Center. Available at http://www.csis-scrs.gc.ca/en/newsroom/backgrounders/backgrounder13.asp (accessed April 27, 2007).

[58] Canadian Security and Intelligence Community. 2001. Annual Report, 14. Privy Council Office. Ottawa. Government of Canada.

[59] Richard A. Posner, *Uncertain Shield: The U.S. Intelligence System in the Throes of Reform* (Stanford University: Hoover Institution, 2006) 178.

[60] Chalk and Rosenau, *Confronting the 'Enemy Within'*, 36.

[61] Matei, "Romania's Transition to Democracy," 2.

[62] Lowenthal, *Intelligence: From Secrets to Policy*, 199.

of the common principles of intelligence oversight.[63] The majority of these principles are identified and discussed in the following paragraphs of this chapter.

a. Organization and Mandate of Parliamentary Committees on Intelligence

Permanent committee(s), usually known in western parliaments as the Intelligence and Security Committee (ISC), should be created by national legislatures to deal primarily with intelligence oversight. This Committee should have a legal mandate where the power to control the entire intelligence community is emphasized.[64]

For example, in Canada, the legal basis for the Intelligence Oversight Committee is the Parliamentary Act of February 3, 1995, and supplementary Instructions issued by the Parliament on May 30, 1995. Together they form a detailed set of rules as to how oversight procedures are to be conducted, as well as the establishing the Committee's powers of inquiry.[65] The activities to be scrutinized by the Committee are defined functionally, and not solely in reference, to the agencies of the intelligence community. Should other governmental bodies conduct intelligence, they will also fall within the competence of the Committee. This mandate also allows a parliamentary oversight body or other independent bodies of the state to conduct oversight, such as the National Audit Office, the Inspector General, an Ombudsman or a court.

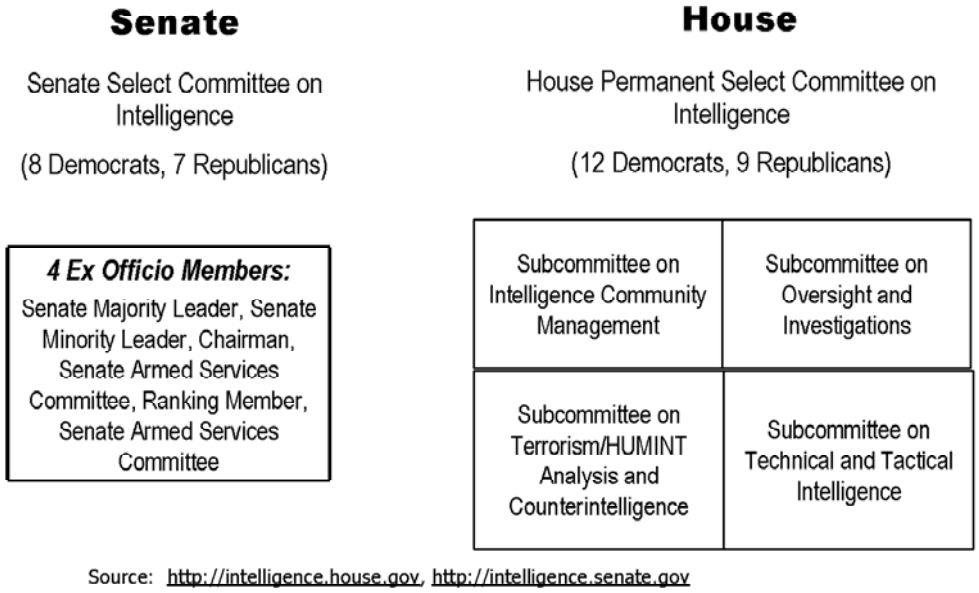

Figure 2. Congressional Intelligence Committees, 110th Congress (2007-2008)

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[63] Hans Born and Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies* (Oslo: Publishing House of the Parliament of Norway, 2005) 125-126. Available at http://www.dcaf.ch/_docs/legal_intel_oversight/Overview_of_Best_Practices.pdf (accessed April 26, 2007).

[64] Ibid. Overview of Best Practices. The Role of Parliament: The Mandate of Parliamentary Oversight Bodies, 125.

[65] Stuart Farson, "Canada's Long Road from Model Law to Effective Political Oversight of Security and Intelligence." Available in *Who's Watching the Spies*, 124.

In the U.S., the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) have broad jurisdiction over the national intelligence community. The organization of these committees can be seen in Figure 2 above.[66] Established in 1977 and 1978 respectively, both committees report authorization and other legislation for consideration by their chambers. "Most of the jurisdiction of the current intelligence committees is shared. The select committees hold exclusive authority and legislative powers only for the CIA, the Director of National Intelligence, and the National Foreign Intelligence Program. This leaves the intelligence components in the Department of Defense, Homeland Security, Justice, and Treasury, among other agencies, to be shared with other standing committees of Congress," notably the Senate Armed Service Committee (SASC) and the House Armed Services Committee (HASC).[67] These committees and their jurisdiction are displayed in Figure 3 below.[68]

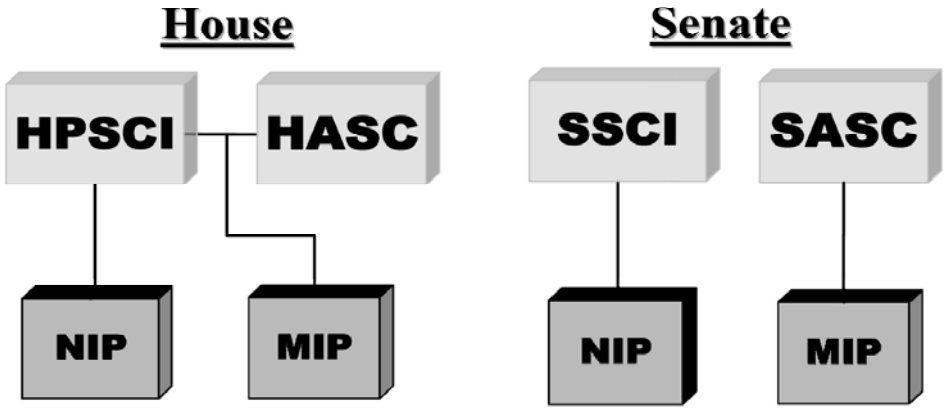

Figure 3. Oversight of Intelligence Authorization Legislation: House vs. Senate

An Intelligence and Security Committee was also established in the United Kingdom under the Intelligence Services Act of 1994.[69] The Committee is a statutory committee and is tasked to examine the expenditure, policy, and administration of all three intelligence and security services.[70] Its mandate also identifies periodicity to conduct oversight and time to report results.

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[66] Created by Professor Richard Doyle. 2007. Naval Postgraduate School. Graduate School of Business and Public Policy. Monterey. California. Available at http//intelligence.house.gov and http//intelligence.senate.gov (updated February 2007).

[67] Frederick M. Kaiser, February 15, 2007. Congressional Oversight of Intelligence: Current Structure and Alternatives. Chapter: House and Senate Select Committees on Intelligence, 2-3. CRS Report for Congress. Updated. Library of Congress.

[68] Created by Professor Richard Doyle. 2007. Naval Postgraduate School. Graduate School of Business and Public Policy. Monterey. California. From: Congressional Research Service (CRS) Report. Congressional Oversight of Intelligence. Current Structure and Alternatives. Intelligence Spending: Public Disclosure Issues. Updated February 15, 2007.

[69] The United Kingdom Intelligence Services Act of 1994. Available at http://www.opsi.gov.uk/ ACTS/acts1994/Ukpga_19940013_en_1.htm (accessed May 6, 2007).

[70] Leigh, "Accountability of Security and Intelligence in the United Kingdom," 87.

In both New Zealand and Australia, such committees have a statutory basis as well. New Zealand established a specific parliamentary committee under the Intelligence and Security Committee Act of 1996 to examine the policy, administration, and expenditure of each intelligence agency.[71]

The Norwegian model of intelligence oversight has a strong emphasis on legislative (as opposed to executive) oversight, conducted on behalf of the legislature by the Committee for Oversight of the Intelligence, Surveillance, and Security Services. This Committee is appointed by and reports directly to the Norwegian parliament. Within its mandate, the Committee has extensive investigative powers over the whole of Norwegian intelligence.[72]

In Romania, legislative oversight over intelligence agencies is carried out through the Committees for Defense, Public Order and National Security in both chambers of the Parliament. The Senate committee is comprised of two parliamentarians. Seven members make up the committee in the lower House of Deputies. These committees are empowered to verify constitutional and legal compliance of the services' activities, investigate illegal intelligence collections, hold hearings on the presidential nominees for director positions, and assess the director's annual reports, submitting their reviews to the full parliament. Committees can also request data and investigate directors of intelligence agencies, and their staff members, as well as conduct unannounced visits with full access to the services.[73]

In terms of enhancing parliamentary oversight of intelligence, some experts claim that a single (or joint) committee has the potential to be more effective than two (or separated) committees, due to its ability to concentrate and consolidate legislative and budgetary oversight authority.[74] Accordingly, the U.S. 9/11 Commission proposed that Congress create a single Joint Intelligence Committee from the Senate and the House of Representatives. This committee would have legislative and budgetary authority over the intelligence community.[75] This proposed reform is also intended to "increase general oversight and force the CIA to meet planning and reporting obligations, as all other intelligence agencies do."[76] To date, however, Congress has not established such a joint committee.

To be efficient, the ISC should also have the power to demand that heads of intelligence organizations, both civilian and military, testify at hearings. Hearings are essential to intelligence oversight as a means of obtaining information from responsible officials and alternative views from outside experts.[77] If necessary, hearings could be organized behind closed doors (for security purposes).

In order to increase the effectiveness of oversight, intelligence committees use experts from the public, academia, and non-governmental organizations. Committees such as these stimulate

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[71] Farson, "Canada's Long Road," 112.

[72] Frederik Sejersted, "Intelligence and Accountability in a State without Enemies: The Case of Norway." Available in *Who's Watching the Spies*, 120.

[73] Matei, "Romania's Transition to Democracy," 7.

[74] Kaiser, Congressional Oversight of Intelligence, 2-3.

[75] Final Report of the National Commission on Terrorist Attacks Upon the United states. July 22, 2005, 420-421.

[76] Kaiser, Congressional Oversight of Intelligence, 2-3.

[77] Elizabeth Rindskopf Parker and Bryan Pate, 2006, Rethinking Judicial Oversight of Intelligence: the Paradox of Foreign Intelligence Oversight. CRS Report for Congress. Library of Congress.

independent "think tanks" to provide financial support and lowering the bureaucratic barriers for conducting research in this area of intelligence oversight and security studies.[78]

Furthermore, legislative oversight systems frequently create independent agencies, such as the Bureau of Audit and Inspection in South Korea, the National Accounting Office in the United Kingdom and the Government Accountability Office in the U.S. These agencies are tasked to check the intelligence community appropriations and management practices without having access to classified intelligence products. For example, the creation of the institutionalized system (officers) of the Inspector General and Auditor General were very helpful in South Africa, aiding in investigations regarding intelligence activity and monitoring of the intelligence budget.[79]

The ISC may also disclose information after determining that the public interest would be better served by such disclosure. It does not limit itself to the information that is requested. On its own initiative, the intelligence organizations should provide information to the committee that is appropriate for complete understanding.

b. The Composition of the Oversight Committee and its Power to Obtain Information

The representation of parliamentary oversight bodies should be cross-party.[80] Parliament should be responsible for appointment and, where necessary, the removal of members of an oversight body exercising the oversight functions in its name.

In the U.S., members of the congressional oversight committees are appointed by the House and Senate leaders.[81]

The two panels also differ in size (21 on the House panel and 15 on the Senate counterpart, plus ex officio members on each), tenure, and other membership features, including partisan composition and leadership arrangements. Since its inception, the Senate panel has had only one more Member from the majority party than the minority (an eight-to-seven ratio); and its vice chairman, who takes over if the chair is unavailable, must come from the minority party. The House select committee, in contrast, reflected the full chamber party ratio when it was established in 1977: two-to-one plus one, resulting in an initial nine-to-four majority-minority party membership on the panel. In the meantime, however, the minority party has been granted additional seats on the committee and the majority-minority party ratio in the full House has grown closer. The result is a select committee membership party ratio of 12-to-9 in the 1l0th Congress.[82]

Comprised of members of both political parties, the Congressional oversight committees are authorized to fund intelligence activities, and to conduct investigations and audits. The committees have a staff of around sixty members, and broad access to information. The Director of National

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[78] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 12-13.

[79] Kenneth R. Dombroski, 2005, "Transforming Intelligence in South Africa." Published in the Center of Civil-Military Relations. Naval Postgraduate Institute. Monterey. California. Printed in *Journal of Democracy*. Vol. 17, no. 3 (2006). Also "South Africa After Apartheid," 43-57. Available at http://muse.jhu.edu/journals/journal_of_democracy/v017/17.3dombroski.html (accessed April 11, 2007).

[80] Born and Leigh, *Making Intelligence Accountable*, 125.

[81] Kaiser, Congressional Oversight of Intelligence, 3-4.

[82] Kaiser, Congressional Oversight of Intelligence, 4.

Intelligence has a statutory duty to keep the committees "fully informed of all intelligence activities." However, "the committees' activity should not place intelligence sources and methods at risk."[83]

The Canadian Security Intelligence Review Committee is comprised of three to five members who are Privy Councilors (but not members of the House of Commons or Senate) appointed by the Canadian Governor. It reviews the performance of the CSIS and investigates complaints. It has a staff of twelve members and wide access to information under the control of the CSIS, except for Cabinet confidences.[84]

A Parliamentary Control Panel is responsible for scrutinizing the work of the German intelligence community. The Bundestag itself decides on the number of its members, its composition and its working methods. At present, it is comprised of nine members from different political parties. The Panel can demand the submission of detailed information by the Federal Government on the general activity of the Federal Intelligence Services and on operations of particular importance.[85]

The parliamentary Joint Committee on the Intelligence Service is the main external oversight body for intelligence agencies in Australia. The committee was established as part of the September 2001 Intelligence Service Act. The new structure has been vested with vastly expanded powers of intelligence oversight and is mandated to conduct investigations, either at its own behest or in response to a specific request from Parliament or the Attorney General into virtually all aspects of intelligence administration and finance.[86]

The British parliament does not have a direct channel in monitoring the intelligence agencies. Instead it monitors them indirectly by studying the reports of a statutory oversight committee — the Intelligence and Security Committee. "Although all nine committee members are parliamentarians and representatives from different political wings, the committee does not report to the Parliament. The committee instead reports to the Prime Minister who appoints the members of the committee."[87]

An interesting oversight system exists in France. Actually, there is no separate parliamentary system of intelligence scrutiny in France. Accountability is provided through the Ministry of the Interior and is largely viewed as an ongoing, routine function of agency management instituted through the Interministerial Liaison Committee Against Terrorism.[88] "This high-level body is empowered to establish ad hoc investigative commissions in the event that problems are found, but does not act as a conduit to the national legislature for the purposes of independent intelligence oversight. The lack of parliamentary control in France, and difficulties with obtaining access to information, is indicative of the country's political structure and the degree of discretion that it contains across many areas of its governance."[89]

An Italian Parliamentary Committee is composed of four deputies and four senators. They are appointed by the chairmen of the two chambers in proportion to the strength of parties in the two chambers. The Committee may request that the President of the Council of Ministers and

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[83] Richard Best Jr. and Elizabeth B. Bazan, 2007, Intelligence Spending: Public Disclosure Issue, 1. CRS Report for Congress. Updated February 15, 2007.

[84] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 18.

[85] Ibid., 18.

[86] Chalk and Rosenau, *Confronting the 'Enemy Within'*, 39-40.

[87] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 19.

[88] Chalk and Rosenau, *Confronting the 'Enemy Within'*, 22.

[89] Ibid.

the Inter-Ministerial Committee on Intelligence provide information on the essential issues of the Services.[90]

Many transitional democracies have established parliamentary oversight resembling the above mentioned principles. For example, in South Korea, the ISC has both ruling and opposition party members.[91] Each of the parties in the Romanian parliament is represented on Committees for Defense, Public Order, and National Security in both chambers of the Parliament. However, "as members of committees have been selected more on political affiliation and less on professional interests, the activity of parliamentary oversight is sometimes affected by political interests."[92]

It is worth mentioning that the legislative oversight system works more effectively if members of the committee are empowered to have access to classified documents and a "black budget" of classified programs.[93] In Canada, members of the SIRC decide upon their own work plan, when and how to conduct investigations of the intelligence sector and its budget programs. They have full access to intelligence agencies.[94]

Members of congressional intelligence oversight committees in the U.S. and the Committee for Oversight of the Intelligence in Norway are very independent from executive bodies. They can investigate what they choose to, within their own mandate. In addition to intelligence services, parliamentarians of these countries also have unlimited access to all intelligence service documents.[95] In Argentina, the members of the intelligence oversight committee are appointed by the Parliament. They are completely independent from the executive branch and have full access to the intelligence agencies and their information without prior notification.[96]

The process of the nomination of the chairman of the ISC is important for many democracies. In Western countries the chairman of the ISC should be elected by a parliament and approved by a president rather than appointed by the government.[97] This allows the committee to be independent of the president.

As a norm, the chairman should be a senior member of a parliament in the field of defense and security policy. In some western democracies, the ISC chairman serves as a "watchdog" for the national intelligence community. One of his primary tasks is to reduce political influence over the intelligence community. For example, in Norway the chairman of the ISC should be politically "neutral" and, therefore, members of the ISC and its elected chairman are not members of the

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[90] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 19.

[91] Jonathan Morgan, "The Role of the Security Services in Democratization: South Korea's Agency for national Security Planning. Legislative Oversight Bodies. The Parliamentary Oversight Committee." Available in *Who's Watching the Spies*, 191-192.

[92] Matei, "Romania's Transition to Democracy," 7.

[93] Alice C. Maroni, Alice C. October 24, 1989. CRS Issue Brief. Special Access Programs and the Defense Budget: Understanding the 'Black Budget'. Foreign Affairs and National Defense Division. Congressional Research Service. Library of Congress.

[94] Hans Born and Loch Johnson, "Balancing Operational Efficiency and Democratic Legitimacy: Good Practices. Table: Elements of Strong Oversight Based on Expert Assessments." Available in *Who's Watching the Spies*, 237.

[95] Ibid.

[96] Eduardo E. Estevez and Andrzej Zybertowicz, "Executive and Legislative Oversight of the Intelligence System in Argentina," and "An Unresolved Game: The Role of the Intelligence Services in the Nascent Polish Democracy." Available in *Who's Watching the Spies*, 145-180.

[97] Born and Leigh, *Making Intelligence Accountable*, 125.

national Parliament. The oversight they conduct is of a legalistic and professional rather than political nature.[98]

Moreover, the period of duty should be increased and fixed for the members of the ISC in a way that their rotation will be in the midterm period between elections. Parliamentarians assigned to serve in the ISC usually learn intelligence management in the beginning of their parliamentary career. Once they have become knowledgeable and effective, they are nearing the end of their terms.[99] This produces ineffective oversight.

Finally, it is necessary to underline that in some western democracies parliamentarians may not be interested in serving on the ISC and supervising the intelligence community.

> For such parliamentarians, intelligence is a distraction from their other duties and from those issues likely to be of greatest interest to their constituents. Once involved in scrutinizing intelligence activity, parliamentarians can not discuss in public what they have accomplished. Dealing more with oversight issues, members on the committees have few opportunities to help their constituents.[100]

Constituents usually prefer that parliamentarians address areas which are more understandable and relevant for them. Furthermore, if something happened with intelligence and the situation went wrong, members of the ISC would be asked why they did not make important decisions to avoid this situation. The case becomes even worse for them when a national disaster such 9/11 occurs. Thus, the system of legislative oversight of intelligence could be jeopardized, except in cases of national emergencies and scandals.

3. Executive Oversight

In modern states, intelligence services play a vital role in serving and supporting the government in its foreign policy by supplying and analyzing relevant intelligence and countering specified threats. However, it is essential that the agencies and officials who carry out these roles be under democratic control, rather than being accountable only to themselves. "Executive oversight is needed in order to keep intelligence agencies effective and well-managed, like any other entity or public sector bureaucracy." For this particular purpose, it is vital for democracies to establish a centralized executive body to control the operations and management of the intelligence community, as well as access to the final intelligence product at different stages of the intelligence cycle.

a. The Establishment of a Centralized Executive Body (National Security Council) for Intelligence Oversight

A centralized executive body should be established under the authority of the President in order to provide effective executive oversight of the intelligence community.[101] In western democracies, such functions are performed by the National Security Council (NSC), which coordinates and controls all the activity of intelligence agencies. This body also serves as the highest-

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[99] Born, Johnson and Leigh, *Who's Watching the Spies,* 120.
[99] Lowenthal, *Intelligence: From Secrets to Policy*, 211.
[100] Lowenthal, *Intelligence: From Secrets to Policy*, 210.
[101] Herman, *Intelligence Power in Peace and War*, 257.

level organization within the executive branch that provides day-to-day oversight and policy direction of intelligence.[102] In some countries, General Inspectors under the President and Cabinet of Ministers carry out these duties.

The U.S. was the first country that established a NSC and provided a legal framework for its activity.

> The U.S. NSC was established by the National Security Act of 1947 (PL 235 - 61 Stat. 496; U.S.C. 402), and in two years was amended by the National Security Act Amendments of 1949 (63 Stat. 579; 50 U.S.C. 401 et seq.). In 1949 the Council was placed in the Executive Office of the President. The U.S. NSC is chaired by the President. Its regular attendees (both statutory and non-statutory) are the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, and the Assistant to the President for National Security Affairs. The Chairman of the Joint Chiefs of Staff is the statutory military advisor to the Council, and the Director of National Intelligence is the intelligence advisor.[103]

The NSC's power over intelligence is considerable. "The NSC evolved in symbiosis with the U.S. intelligence system, has a close working connection with it, and may perhaps have been influenced by it."[104]

Concerning executive oversight of intelligence, the Canadian Deputy Prime Minister (CDPM) is responsible not only for the Cabinet Committee (such the NSC) dealing with all matters of national security, but also for a new and expanded security and intelligence portfolio (like the chief of the intelligence community). He is Canada's first national security advisor and reports directly to the Prime Minister.[105] The Canadian Security Service Act also established the Executive Directorate of the Inspector General (EDIG), which reports to the Deputy Solicitor General, reviewing the performance of the intelligence services' duties, functions, and funding.[106]

Executive control of British intelligence is based on the Cabinet structure and its supporting Cabinet Office.[107] The Prime Minister is responsible for all intelligence issues with the support of the Ministerial Committee on the Intelligence Services, which serves an oversight and policy review function. The Prime Minister chairs the committee, which also includes the deputy prime minister.

> Each Cabinet ministry has a permanent undersecretary, its senior civil servant who has power over administrative and budget issues. The relevant permanent undersecretaries make up the Permanent Secretaries' Committee on Intelligence Services (something like the NSC), which is chaired by the Cabinet Secretary. The Committee provides periodic advice on collection requirements, budgets, and other issues. A security and intelligence coordinator, who is also a career civil servant, supports the ministerial committee, assists the permanent

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[102] Lowenthal, *Intelligence: From Secrets to Policy*, 192-193.

[103] Information regarding the U.S. National Security Council is available at http://www.whitehouse.gov/nsc/ (accessed April 29, 2007).

[104] Herman, *Intelligence Power in Peace and War*, 278.

[105] Born, Johnson and Leigh, *Who's Watching the Spies*, 110.

[106] Chalk and Rosenau, *Confronting the 'Enemy Within'*, 30.

[107] Lowenthal, *Intelligence: From Secrets to Policy*, 292.

> undersecretaries in dealing with the intelligence budget, and oversees the Joint Intelligence Committee (JIC) and the Cabinet Office Intelligence and Security Secretariat. The JIC serves as a link between policy makers and the intelligence components to establish and order priorities, which are then approved by the ministers. The JIC also periodically reviews agency performance in meeting established requirements.[108]

In France, there was no executive branch organization to coordinate the intelligence services until 1993. Low effectiveness, poor quality analysis, and difficulties of acceptance by policy-makers had afflicted the intelligence community.[109] After the creation of the Committee of Ministers (like the NSC), coordination among national intelligence agencies has increased.

In Romania, the NSC has supreme power in coordinating the activity of the national intelligence community. The Council reports directly to the President. However, "the Prime Minister is empowered to exercise control over the intelligence community in crisis situations. He also may, in coordination with the President and the NSC, summon the directors of the agencies to solve important national issues where intelligence is needed." [110]

In western democracies, the NSC tasks intelligence services to report to the relevant authorities, such as the President, Prime Minister, and relevant ministers. The intelligence services also send a public report to the Parliament, for debate during the plenary gatherings. In the U.S., for example, Congress often mandates that the intelligence executives should report to Congress on a regular basis (usually annually). Usually, reports are related to specific issues, such as human rights practices in foreign nations, the arms control impact of new weapon systems or, after 9/11, international terrorism.[111]

In the Netherlands, the intelligence services provide an annual report to the Parliament (the Second Chamber) regarding their activity and final results. The overall report, in the form of a hearing, is usually delivered behind closed doors.[112] In Norway, by law, intelligence organizations can inform the parliament about certain issues. According to the Parliamentary Act of February 3, 1995, reports to Parliament must be unclassified.[113] In addition, in some western countries, the NSC is responsible for sending a classified report to the parliamentary intelligence oversight committee. In this case, the report should be reviewed behind closed doors.[114]

Furthermore, many governments, such as the United Kingdom and Canada, have established boards of officers who oversee the intelligence services' activities. These governmental oversight committees are staffed with highly respected and qualified individuals, such as former members of parliament and experts from ministries and academia. They periodically review intelligence services in terms of efficiency, legality, and managerial decisions regarding information and expenditure.

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[108] Ibid., 292.

[109] Douglas Porch, "French Intelligence Culture: A Historical and Political Perspective," *Intelligence and National Security*. 10(3) (July 1995): 486-511.

[110] R. Ionesku, "Civil and Democratic Oversight of an Intelligence Sector" (materials from Round Table: Ukraine-NATO. Chapter 1: Mechanisms of Legislative, Executive, and Civil Oversight of Intelligence Sector. Experience of Democratization of Intelligence Sector in Romania). Available at http://www.dcaf.ch/_docs/oversight_intel_ukraine_nato/file08.pdf (accessed May 7, 2007).

[111] Lowenthal, *Intelligence: From Secrets to Policy*, 201.

[112] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 19.

[113] Sejersted, "Intelligence and Accountability in a State Without Enemies," 130-132.

[114] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 5.

Some transitional democracies have been suffering from the lack of executive control. For example, inadequate executive control at the ministerial level and absence of production of intelligence community final assessments, such as national intelligence estimates, negatively influences the decision-making process in the Russian Federation.[115] The special clusters under the NSC and Cabinet of Ministers (inspectors, specialists) provide executive control over the intelligence agencies in South Africa (checking duties, responsibilities, spending, function coordination, etc). However, these clusters do not have direct access to the intelligence agencies and cannot perform executive control duties over the intelligence process without prior notice to the chief of intelligence and authority to interrupt it.[116]

b. Control of the Final Intelligence Product

Executive control usually seeks to determine if the intelligence agency/community functions efficiently and performs its duty properly, and in accordance with to the law. To execute this type of control, executives should have access to the final intelligence product — information which goes to policy-makers.[117] This data should be "locked" inside the intelligence organization. One of the main issues involved in this type of oversight is the need to supervise information at each stage of the intelligence cycle (collection, processing, analysis and dissemination) to avoid situations where the data leaves the system without approval by the top organizational management.

Leaks of intelligence information and classified data from intelligence organizations are the main features that indicate failure of intelligence executives to control the final intelligence product. Usually, civil society agencies (like the mass media) operate as an ad hoc form of accountability that "registers" these leaks and informs society about them.[118]

Western democracies have been using advanced informational technologies to protect intelligence data, as well as strict operational procedures to work with it, which had been established during the Cold War nuclear stalemate. No leaks related to this issue were registered in Canada, Norway and the United Kingdom.[119] Occasionally, intelligence information or secret data leaks to the press from intelligence organizations in Poland. Leaks happen very rarely in the U.S.[120]

Inability to control the final intelligence product or intelligence data is a common weakness within intelligence agencies in transitional democracies. Sometimes an agency's management does not have strict regulations and computerized mechanisms for checking and controlling access to intelligence products. The situation becomes even worse if this information can be easily "found" by hackers or corrupt officers and servicemen who oppose the democratically elected leaders and state interests.

A situation of this kind took place in Ukraine in June 2006, when two million electronic files of top-secret and highly confidential information regarding the operational activity of the Secret Service

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115 Mikhail Tsypkin, "Russia and the Legacy of the Counter-Intelligence State," (proceedings from an international roundtable on intelligence and democracy, Center for Civil-Military Relations, Naval Postgraduate School, Monterey, California, August 26-27, 2004), 6.

116 Dombroski, "Transforming Intelligence in South Africa," 7.

117 Born and Leigh, *Making Intelligence Accountable*, 122.

118 Chalk and Rosenau, *Confronting the 'Enemy Within'*, 37.

119 Born, Johnson and Leigh, *Who's Watching the Spies,* 237.

120 Ibid.

of Ukraine (intelligence and law enforcement agency) were stolen by illegally copying from the main Service's server.[121] The internal investigation found that intelligence data protection should be part of strict executive control. The lesson learned was that executive supervision over the intelligence product (as well as its archives) should be enforced at the different stages of the intelligence cycle in order to protect data acquired from highly sensitive sources.

C. SUMMARY

Analysis of common principles of intelligence oversight in western and transitional democracies suggests that these norms are workable and effective for political leaders, parliamentarians, and the public. Intelligence agencies must be increasingly transparent and accountable to the public through oversight.

Western democracies have developed a set of common norms in conducting oversight of intelligence communities. Those norms are related to the framework, functional definition and professionalization of intelligence agencies, as well as the establishment of strict legislative and executive oversight mechanisms and procedures.

Most western and transitional democracies have separated national intelligence functions from the tasks of law-enforcement agencies. It allows them to minimize the number of all-source intelligence organizations and establish functional definition and intelligence professionalization among the agencies of the national intelligence community. The principles also show the importance of the creation of an all-source analysis intelligence agency that helps democratically elected leaders to control the final intelligence product and minimize different estimations in the decision-making process.

Parliamentary oversight for intelligence is vital for democracy, as it provides legislative procedures for accountability. Legislative oversight primarily concerns budgets and the scope and nature of intelligence gathering. It gives elected officials power over the operations of intelligence agencies, as well as their products and their budget.

As a norm, the democratic parliaments establish specialized committees that deal with intelligence issues. The committee should have a legal mandate to conduct oversight and represent the views of all political parties. Their views should not place methods and sources of intelligence at risk.

Western democracies have strengthened executive oversight of their intelligence communities, which allows them to obtain timely information regarding the use of intelligence resources and allocation of their funds. The most important principles of executive oversight are the establishment of the national executive centralized body and enhancing control over the final intelligence product at the different stages of the intelligence process.

Executives should periodically report to the parliament concerning intelligence activity and supervise clear tasking of intelligence agencies. Executive oversight also maintains strict managerial control of the intelligence community and administrative procedures regarding spending.

The budget control mechanism is the key element of successful oversight of intelligence. The next chapter will describe how some western and transitional democracies oversee the intelligence budget and what procedures they use to control the expenditure for intelligence activities.

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[121] Ukrainian newspaper *Ukraina Molodaya*. Available at http://www.utro.ua/news/ 2006/06/09/4839.shtml (accessed June 5, 2006).

III. INTELLIGENCE BUDGET OVERSIGHT IN WESTERN AND TRANSITIONAL DEMOCRACIES: COMMON PRINCIPLES AND PROBLEMS

A. INTRODUCTION

Budget control is one of the main tasks of parliamentary and executive oversight of the intelligence community (IC). It is obvious that most western democracies have developed national systems of conducting this type of control and try to use it efficiently and continually. No single answer exists as to which system of intelligence budget oversight is good and which is not. The norms of this type of oversight in western democracies vary from country to country. However, it is widely thought that the intelligence budget oversight mechanism is efficient if it provides correct and timely information to the parliament and executives regarding the effectiveness of the allocation and use of intelligence funds.

Most western and transitional democracies conduct intelligence budget oversight primarily through their parliaments, because their intelligence oversight systems are usually designed to monitor executive decisions inside the IC. Executives mainly perform managerial control over the appropriateness of intelligence budget spending. The level of political inventiveness and willingness to perform this role is also different among western democracies. Quite different patterns of intelligence budget oversight have emerged in the established democracies of the U.S., the United Kingdom, Australia, Canada and New Zealand.[122] However, those patterns have common principles or key elements of effective intelligence budget oversight. Those oversight principles are unique for the "majority of countries of the Euro-Atlantic area"[123] and call for enhancing the level of intelligence budget transparency and accountability. The principles will be outlined in this chapter.

B. COMMON PRINCIPLES OF INTELLIGENCE BUDGET OVERSIGHT IN WESTERN AND TRANSITIONAL DEMOCRACIES

1. Laws and Parliamentary Access to Obtain Intelligence Budget Information

The rights of parliaments to oversee intelligence and security budgets should be clearly spelled out in the national laws.[124] Based on these laws, most western parliaments have mandated special committees to execute this type of control and enacted official procedures to obtain information from the intelligence executives.

In Australia, the Statutory Parliamentary Committee was established according to the Security Organization Act of 1979. This law gives the committee the authority to oversee secret budgets and to obtain information regarding the expenditure of the Australian Security Intelligence Organization

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[122] L. Lustgarten and I. Leigh, I. *In From the Cold: National Security and Parliamentary Democracy* (Oxford: Oxford University Press, 1994) Chapters 15-16.

[123] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 11.

[124] Born and Leigh, *Making Intelligence Accountable*, 122.

(ASIO), as well as other agencies (DSD — the signal intelligence agency and ASIS — the secret intelligence service).[125]

The Canadian Security Intelligence Service Act of 1984 established the Security Intelligence Review Committee. This committee has an official mandate to conduct intelligence and intelligence budget oversight.[126] It can monitor the intelligence budget and has the authority to request and obtain information regarding intelligence expenditure.

The Intelligence and Security Committee was established in the United Kingdom under the Intelligence Services Act of 1994. Its nine members, drawn from both the House of Commons and the House of Lords, can examine the expenditure, policy and administration of all three intelligence and security services.[127] However, the committee scrutinizes intelligence finance issues together with the Public Accounts Committee and has no power of authorization.

In Norway, a special committee was appointed in 1994 to draft legislation for intelligence and intelligence budget oversight. In 1995, the Norwegian parliament adopted the Parliamentary Act of February 3, which established the new Intelligence Oversight Committee with a mandate for oversight of the Intelligence, Surveillance, and Security Services. This committee began work in the spring of 1996 with the legislative authority to also conduct intelligence budget oversight.[128]

Article 13.9 of the Argentinean National Intelligence Law No. 25520 of 2001 specifies that the established Joint Congressional Oversight Committee (JCOC) has the right to approve the National Intelligence Plan and conduct control over expenditure for intelligence activities.[129] According to this law, the Secretariat of Intelligence should submit its budget requirements to the JCOC and is responsible for executing the specific budget for intelligence. The law emphasizes that the Secretariat of Intelligence should also provide information to the JCOC regarding the classified appendix, comprised of the purposes of the intelligence program and its cost.

In Belgium, the parliamentary Committee on Intelligence, by law, ensures the coordination and efficiency of intelligence and its budget. Its staff is able to obtain the necessary information and documents from the intelligence services and has access to their installations without prior notification. The intelligence services must disclose information to the committee.[130]

"The House and the Senate committees on intelligence are responsible for oversight of the U.S. Intelligence Community and, by law, must take very seriously their obligation to hold intelligence officials accountable to the public for the activities they manage and conduct."[131] Only a small part

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[125] See: Australian Security Intelligence Organization Act 1979; Australian Security Intelligence Organization Amendment Act 1986, and Intelligence Service Act 2001, available at http://ejp.icj.org/ IMG/ASIOAct1979.pdf, http://www.austlii.edu.au/au/legis/cth/num_act/asioaa1986n1221986586/, and http://en.wikipedia.org/wiki/Intelligence_Services_Act_2001 (accessed April 7, 2007).

[126] Canadian Security Intelligence Service Act. 1984., "Delicate Balance: A Security Intelligence Service in a Democratic Society. Special Committee on the Canadian Security Intelligence Service. Senate of Canada Ottawa: Ministry of Supply and Services, 32.

[127] Ian Leigh, "Accountability of Security and Intelligence in the United Kingdom." In *Who's Watching the Spies*, 87.

[128] Sejersted, "Intelligence and Accountability in a State without Enemies," 124.

[129] Estevez, "Executive and Legislative Oversight of the Intelligence System in Argentina." In *Who's Watching the Spies*, 170.

[130] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 19.

[131] Dan Elkins, *Managing Intelligence Resources. The Committees Involved in Intelligence Oversight,* 2nd ed. (Alexandria, Virginia: DWE Press, 2006) 8-11.

of the U.S. intelligence budget is made public. However, "spending for most intelligence programs is described in classified annexes to intelligence and national defense authorization and appropriation legislation. Members of Congress have access to these annexes, but must take special arrangements to read them."[132]

Thus, for successful budget oversight, a legal base should be adopted by a democratically elected parliament. This legislation should give parliamentarians power to oversee an intelligence budget and the exclusive right to have access to obtain secret information regarding intelligence expenditure.

2. Oversight through Parliamentary Participation in the Intelligence Budget Cycle

Western democracies have made transparency and accountability the most important constitutional requirements, especially with regard to the national and intelligence budget process. This common principle is based on the assumption that parliamentarians can be effective in intelligence oversight through active participation and by controlling the four main phases of the typical budget cycle: preparation, approval, execution, and audit (review).[133]

a. Budget Preparation

Budget preparation is the phase when intelligence executives propose funding for intelligence programs. In western and some transitional democracies, parliamentarians contribute to this process through different formal and informal procedures. Usually, they conduct informal consultations and hold official meetings with intelligence executives to discuss budget preparation issues.

In the United Kingdom, members of the relevant committee and the government assist each other and sometimes work together on the issue of the preparation of the intelligence budget. The committee can scrutinize intelligence finances and has access to information regarding general intelligence expenditure without authorization power.[134]

One area in which the intelligence oversight committee and the government of the United Kingdom have had a long-running disagreement, concerns the publication of the intelligence budget. The committee has consistently argued that publication of the information is not sensitive, as long as it is not done every year and has the official agreement of the agency heads for its publication.[135]

In Poland, the parliamentary Commission for Secret Services does not check the effectiveness of intelligence services. However, it has the power to participate in drafting the intelligence budget

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[132] Richard A. Best Jr., April 12, 2007. Intelligence Issue for Congress. CRS Report for Congress. Congressional Research Service.

[133] Handbook for Parliamentarians, No. 5. 2003. Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices. Parliament and the Budgetary Process in Relation to Security, 132. Centre for the Democratic Control of Armed Forces (DCAF). Geneva.

[134] Born and Johnson, "Balancing Operational Efficiency and Democratic Legitimacy. Table: Comparison of the External and Parliamentary Oversight Bodies in Eight Selected Countries," 230.

[135] Annual Report for 1999-2000. November 2000. The United Kingdom Intelligence and Security Committee. Cm. 4897. Paras. 43 ff.

and checking its implementation.[136] The commission also examines reports concerning annual intelligence budget expenditure.[137]

A key feature promoted by Argentinean legislators is that parliament actively participates in oversight of the secret intelligence budget and expenditure. For this purpose the Joint Congressional Oversight Committee may intervene in the discussion of the intelligence budget.[138] The intelligence executives are obliged to submit every document, as needed, to responsible parliamentarians, as well as discuss with them the amount of money needed for approval. They should also provide information regarding the classified appendix, comprised of the purpose of the intelligence program and the subject of the future expenditure.

According to Romanian law, a Special Commission over Intelligence Services can participate in drafting the intelligence budget. Services submit reports to the commission at its request.[139]

In the U.S., during the intelligence budget preparation stage, the intelligence executives have a certain freedom in planning and requesting the budgets of their intelligence agencies. The formalized budget requests should be submitted to the Office of Management and Budget, which reviews them before submitting the final intelligence budget proposals to Congress.

Both the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) possess authorization power over the intelligence budget. By its nature, authorization is an oversight function. That is, during this period, the committees are empowered to conduct consultations with intelligence executives, investigations, and even audits and inquiries as may be required. Moreover, HPSCI and SSCI both have exclusive oversight jurisdiction, in their respective chambers, over the CIA budget, including the CIA Programs and the CIA Retirement and Disability System.[140] "Congress's budgetary authority implies the authority to scrutinize how the money that Congress has appropriated is being spent – whether it is being spent prudently and on the activities for which it was appropriated."[141] The House and Senate committees can not make an appropriate conclusion during the budget preparation stage on "how much money to appropriate for intelligence, or for particular intelligence agencies or programs…without knowing a great deal about how, and how well, the intelligence system operates."[142]

Despite the fact that the members of the respective committees do not influence the process of intelligence budget preparation (only intelligence executives are highly involved in this process), "the parliamentarians provide essential oversight responsibilities in the next budget phases, in order to assist the intelligence community in the establishment of priorities from the many possible ways to spend the annual intelligence dollar."[143]

The intelligence budget preparation phase is more important for countries which exercise a

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[136] Born and Johnson, "Balancing Operational Efficiency and Democratic Legitimacy. Table: Comparison of the External and Parliamentary Oversight Bodies in Eight Selected Countries (Poland)," 230.

[137] Andrzej Zybertowicz, "An Unresolved Game: The Role of the Intelligence Services in the Nascent Polish Democracy." In *Who's Watching the Spies*, 151.

[138] Estevez, "Executive and Legislative Oversight of the Intelligence System in Argentina," 173.

[139] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 19.

[140] Elkins, *Managing Intelligence Resources*, 8-11.

[141] Posner, *Uncertain Shield*, 196.

[142] Ibid.

[143] Loch K. Johnson, "Governing in the Absence of Angels: On the Practice of Intelligence Accountability in the United States." In *Who's Watching the Spies*, 61.

one year budget cycle. Informal consultations and formal meetings can reduce time spent negotiating with parliamentarians during the approval stage of the intelligence budget process.

b. Budget Approval

Budget approval is the phase when the parliamentarians should be able to study and determine public interest in the money allocation and may, in certain contexts, complement intelligence-related appropriations with specific guidelines.[144] This phase requires highly qualified specialists and discussions inside the parliament's committees.

During this phase parliamentarians, particularly members of the responsible committees, can ask intelligence executives to explain the necessity of financing certain intelligence programs. Hearings usually take place within the committees responsible for oversight. If the justifications are not satisfactory, the parliamentarians can call executives to defend intelligence budget propositions during the open parliamentary session, or during closed meetings with representatives of intelligence, budget, appropriation, financial, and economic committees.

It is important to obtain high-quality input during the intelligence budget approval process. In the U.S., the intelligence budget oversight system is complicated but workable, as it provides significant amounts of information to the parliamentarians regarding the budgets of intelligence agencies.

For budgetary and oversight purposes, the U.S. Intelligence Community's spending is divided between the National Intelligence Program (NIP) and Military Intelligence Program (MIP). The national intelligence programs support "national-level decision making and are conducted by the Central Intelligence Agency (CIA), Defense Intelligence Agency (DIA), National Security Agency (NSA), the National Reconnaissance Office (NRO), National Geospatial-Intelligence Agency (NGA) and other Washington-area agencies. The military intelligence programs are those undertaken by DOD agencies in support of defense policymaking and of military commanders throughout the world."[145]

The NIP budget is submitted and justified to the Congress by the Director of National Intelligence. The MIP budget is developed and justified by the Secretary of Defense. The budget requests for the NIP and MIP are very detailed funding plans, broken down into major program categories and, then, into specific elements under each major grouping.[146]

While the House and the Senate select intelligence committees are the focal point for any discussion of congressional intelligence budget oversight (as noted in Chapter II), they are not the only committees involved in scrutinizing intelligence funds during the approval stage of the intelligence budget cycle. In the U.S. Congress, four other committees are also heavily involved in this function. These are the House and Senate Armed Services Committees (HASC and SASC), and the House and Senate Appropriations Committees (HAC and SAC).[147]

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[144] Handbook for Parliamentarians, 132.

[145] Richard A. Best Jr. and Elizabeth B. Bazan, February 15, 2007. Intelligence Spending: Public Disclosure Issue, 3. CRS Report for Congress. Congressional Research Service.

[146] Legislative Oversight of Intelligence Activities: The U.S. Experience. October 1994. Report. Prepared by The Select Committee On Intelligence. 103rd Congress. 2nd Session. The U.S. Government Printing Office. Washington, D.C.

[147] Dan Elkins, *Managing Intelligence Resources*, 8-11.

The Senate and House Appropriations Subcommittees have parallel jurisdictions. Under the Senate and House Appropriations Committees, jurisdiction over appropriations for the sixteen agencies of the U.S. Intelligence Community is split among five subcommittees.[148] In the U.S., "all of the intelligence agencies and units are administratively part of various U.S. departments, except two: the CIA and the Office of the Director of the Central Intelligence. Appropriations for all other intelligence agencies and units are reported by the subcommittees with jurisdiction over the parent department."[149] The major parts of intelligence appropriations are under the jurisdictions of the House and Senate Defense Appropriations Subcommittees, which have jurisdiction over all Department of Defense (DOD) intelligence programs, which account for approximately eighty percent of all U.S. spending for intelligence.[150]

Thus, several congressional committees are involved in intelligence budget oversight and appropriations during the approval stage of the intelligence budget cycle in the U.S. In order to enhance oversight during this stage,

> The House and Senate appropriations subcommittees hold hearings on the segments of the budget under their jurisdiction. They focus on the details of the agencies' justifications, primarily obtaining testimony from agencies officials. After the hearings have been completed and the House and Senate appropriation committees have generally received their spending ceilings, the subcommittees begin to mark up the regular bills under their jurisdiction and report them to their respective full committees.[151]

To help expedite the budget process, legislative and executive staffs can meet to discuss the economic outlook, projected spending and any other relevant issues. However the hearings for the intelligence budget are closed.

Similarly, the Netherlands Second Chamber, which has a standing committee responsible for intelligence services, meets behind closed doors to discuss intelligence budget appropriations. The committee and the Chamber have a right to request any data regarding the intelligence budget and can influence the process of intelligence budget approval and execution.[152]

c. Budget Execution

Budget execution (spending) is the phase when a parliament reviews and monitors government spending for the intelligence sector and may require procedures that allow for transparency and accountability. Active participation in this phase allows parliamentarians to be familiar with the current intelligence programs and the processes of their funding.

However, in practice, parliaments are not really involved in the execution stage and give intelligence executives broad power to manage intelligence funds. Thus, parliament's power to

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[148] Sandy Streeter, October 29, 2004. Consolidating Intelligence Appropriation And Authorization In a Single Committee: 9/11 Commission Recommendation and Alternatives. Existing Committee Jurisdiction Over Intelligence: Appropriations Jurisdiction, 3. CRS Report for Congress. Congressional Research Service.

[149] Streeter, Consolidating Intelligence Appropriation And Authorization In a Single Committee, 3.

[150] Commission on Terrorist Attacks. 2004. The 9/11 Commission Report, 86. Government Printing Office. Washington, D.C.

[151] Streeter, The Congressional Appropriation Process: An Introduction, 6-7.

[152] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 19.

oversee and control the intelligence budget lies in reviewing intelligence agencies' budgets when proposed (budget preparations), and then deciding what to approve (budget approval).

For example, the United Kingdom, the Netherlands, Poland and Argentina provide intelligence budget oversight systems that allow parliamentarians to examine current intelligence service reports regarding budgets and to check their implementation.[153] However, in practice, parliamentary influence during the execution phase is minimized in many western and transitional democracies.

During the budget execution phase in the U.S., Congress controls the budget of the executive branch.

> But it does not follow that Congress can condition the grant of essential funds to executive agencies on the agencies' submitting to congressional management of their activities. Congress controls the budget of the federal courts too, but it could not say to them you may not have any money unless you agree to submit all your decisions to Congress for its approval before issuing them. It is not as if congressional control of the [intelligence] budget implied congressional control over the details of spending. The contrary has long been assumed, specifically with reference to intelligence.[154]

Thus, Congress requires certifying what sums intelligence agencies have spent, but allows intelligence executives to conceal both the purposes and recipients of payments from the funds.[155]

d. Budget Audit

To get full information regarding the propriety of intelligence expenditure, the parliament can call for audits and additional reviews during or after the budget execution process. Budget audit (or review) is the phase when parliamentarians determine whether there has been inappropriate use of money allocated by the government to the intelligence sector. Parliaments should periodically evaluate the entire intelligence budget to ensure accountability, efficiency and accuracy of its spending.[156]

For this reason, many western and transitional democracies have institutionalized Inspectors General or General Auditors — special parliamentary officers with statutory powers of access to information, staff and budgets — in order to check on the activities of intelligence agencies.[157] The Auditor General should be appointed by the parliament and have resources to function independently. As a rule, the Auditor General should have authority to report either to the parliament or its budget and intelligence oversight committees on any matter of suspicious intelligence expenditure at any time.

In the U.S., each organization within the IC has an Inspector General (IG), either administrative (appointed by the agency) or statutory (established by law), with the responsibility for insuring that funds made available to that organization are used properly. These IGs usually carry out "inspections,

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[153] Ibid.

[154] Posner, *Uncertain Shield*, 186.

[155] Christopher Andrew, *For the President's Eyes Only: Secret Intelligence and the American Presidency from Washington to Bush II* (Portland, Oregon: Quimby Warehouse, 1995).

[156] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 14-15.

[157] For comparison of the powers of Inspector Generals in different countries see: Intelligence and Security Committee: Annual Report for 2001-2. Cm 5542, Appendix 3. Bryden, Alan and Fluri, Philipp (eds.). August 2003. Security Sector Reform: Institutions, Society and Good Governance. No. 34. Nomos, Verlagsgesellshaft, Baden-Baden.

investigations, and audits of the intelligence activities under his or her purview. Large intelligence elements, including the CIA, have their own IG; smaller ones come under the IG of their parent organization. Several intelligence components of the Department of Defense have their own IG and also are within the purview of the DoD IG."[158]

The Intelligence Reform and Terrorism Prevention (IRTP) Act of 2004 provided the newly established Director of National Intelligence (DNI) the authority to establish an IG within the Office of the Director of National Intelligence.[159] The DNI has, in fact, used this authority (see Figure 4).[160] This IG is charged with planning, conducting, supervising and coordinating "inspections, audits, investigations, and other inquiries relating to the programs and operations of the ODNI and the authorities and responsibilities of the Director of National Intelligence."[161]

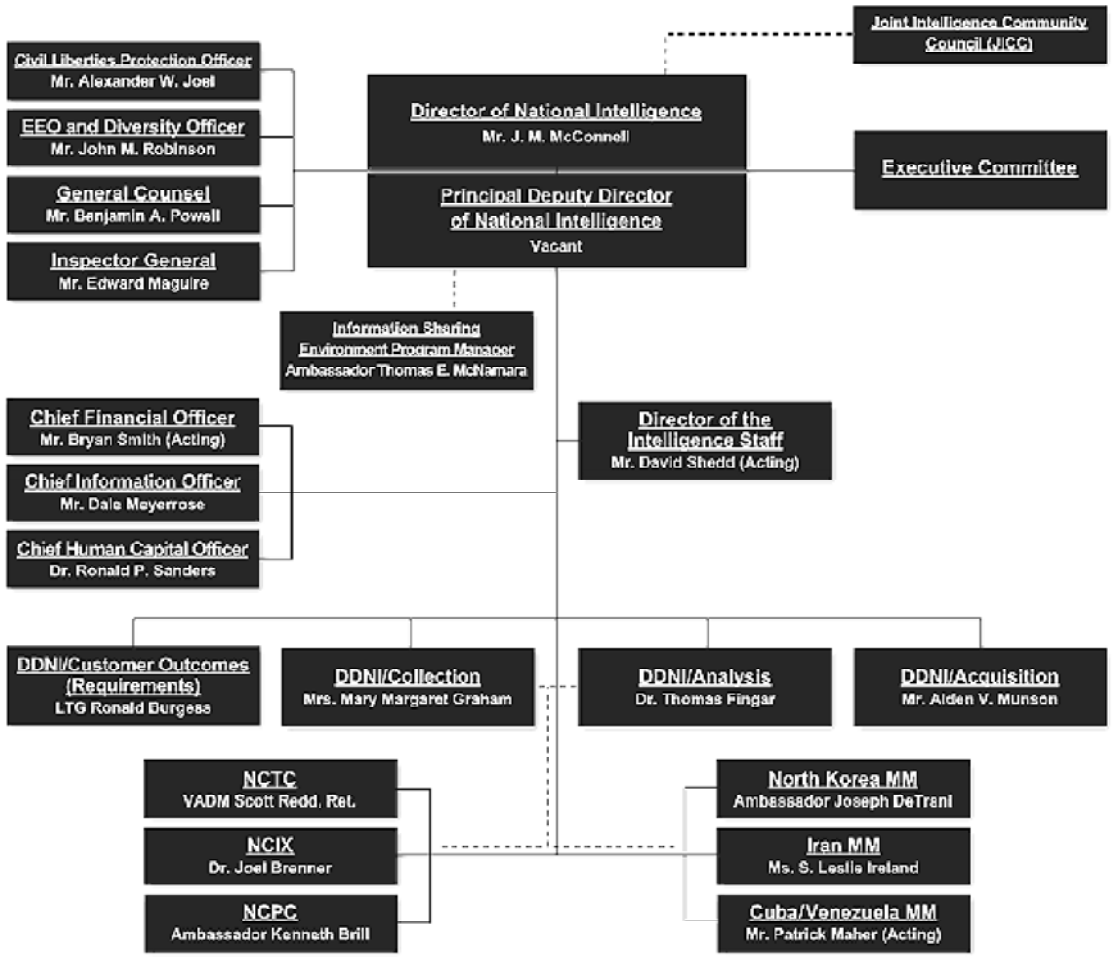

Figure 4. The Organization of the Office of the Director of National Intelligence

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[158] Commission on the Roles and Capabilities of the United States Intelligence Community. March 1, 1996. Preparing for the 21st Century: An Appraisal of U.S. Intelligence, 145.

[159] Section 1078. Dec 17, 2004. P.L. 108-458.

[160] Office of the Director of National Intelligence. 2007. Organizational Structure. Available at http://www.dni.gov/aboutODNI/organization.htm (accessed May 28, 2007).

[161] Office of the Inspector General. 2007. Responsibilities of the Inspector General. Available at http://www.dni.gov/aboutODNI/organization/InspectorGeneral.htm (accessed May 28, 2007).

The office is also charged with "detecting fraud, waste, and abuse; evaluating performance; and making recommendations to promote economy, efficiency, and effectiveness in the ODNI and the Intelligence" as a whole.[162] In addition, within the White House the President's Intelligence Oversight Board "conducts independent oversight investigations as required and reviews the oversight practices and procedures of the inspectors general and general counsels of intelligence agencies."[163]

One of the recommendations of the 9/11 Commission regarding the enhancing of intelligence budget oversight was "to expand the independent authority of the Government Accountability Office over the intelligence community, particularly the CIA, and increase the coordinative power among relevant inspectors generals improving their reporting capabilities to Congress, where needed."[164]

> The GAO is an independent agency in the legislative Branch, headed by the Comptroller General of the United States. It performs audits of executive agencies and departments to ensure accountability of funds appropriated by the Congress. Its staff also collects, tests, and analyzes data to provide oral briefings, testimony, and written reports to congressional committees. One of its main operational elements, the National Security and International Affairs Division (NSIAD), performs studies and analyses and issues reports covering a broad range of programs concerned with national security, international political, economic, and military interests of the U.S. The NSIAD evaluators support congressional intelligence oversight through systems-oriented budget reviews of a wide range of contracts for intelligence and defense systems. They review the accuracy of estimates, the continuing validity of assumptions, the appropriateness of contract modifications, and the like, as well as adjudicating bid protests. The Division also does performance oriented, broad management reviews of entire intelligence agencies.[165]

The work of GAO auditors includes compliance, operational, and financial audits.[166] These assignments include audits of any governmental agencies, including intelligence organizations, to determine that their spending programs follow the intent of Congress and operational audits to evaluate the effectiveness and efficiency of selected intelligence programs. The auditors also conduct examinations of corporations holding government contracts to verify that contract payments by the government have been proper.

The National Audit Office (NAO) in the United Kingdom monitors the execution of the intelligence budget. The NAO responds to parliamentary requests for intelligence budget information and produces reports for public consumption.[167]

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[162] Office of the Inspector General. 2007. Responsibilities of the Inspector General. Available at http://www.dni.gov/aboutODNI/organization/InspectorGeneral.htm (accessed May 28, 2007).

[163] The United States Intelligence Community. Official Website. 2007. Relationship With Other Government Organizations http://www.intelligence.gov/1-relationships.shtml (accessed May 28, 2007).

[164] Kaiser, Congressional Oversight of Intelligence, 23.

[165] Elkins, *Managing Intelligence Resources*, 7-10, 7-11.

[166] Ray O. Whittington and Kurt Pany, *Principles of Auditing And Other Assurance Services. Fifteen Edition. The Role of the Public Accountant in the American Economy* (Columbus, Ohio: McGraw-Hill, Irwin, 2007) 12.

[167] Budget Influencing Parliaments. September 2006. Parliament's Role in Defense Budgeting, 4. Backgrounder. DCAF. Available at http://www.dcaf.ch/publications/kms/details.cfm?lng= en&id=25263&nav1=4 (accessed April 12, 2007).

In some transitional democracies, independent organizations outside the executive branch are established in the constitution to perform audits, such as the Court of Audit in Romania.[168] The institution of the Auditors General is established and effective in South Africa. Together with the Standing Committee on Public Accounts, the Auditors General monitor the relevant intelligence budgets and have purview over the financial management of the services.[169] Moreover, information regarding the intelligence budget and the proceedings of the committee is available to the public from the official intelligence Website.

Western democracies have recognized that a modern Audit Office should ensure the proper use of public funds based on three criteria: "the value of money (to ensure that the resources used were put to optimal use, both qualitatively and quantitatively), effectiveness (to measure to what extent objectives and aims were met), and efficiency (to measure whether the resources used were used optimally to obtain the results obtained)."[170] Based on these criteria, the Auditor General can approve or disapprove expenditure used for intelligence gathering. For example, in 2003 the Canadian Auditor General identified three units within the Department of National Defense involved in intelligence gathering and their expenditure were approved for this activity.[171] Thus, the essence of these budget audits is that they help parliaments oversee and, if necessary, change the government's policies regarding intelligence activity and its budget.

Furthermore, an effective audit and intelligence budget oversight can occur if parliament requires that all expenditure for intelligence be presented in one single consolidated budget document.[172] The principle of periodicity in Generally Accepted Accounting Rules also suggests the need for specifying the time-frame during which allocations for intelligence will be spent.[173]

For better audit and budget control, the number and description of every budget item should result in a clear overview of the government's expenditure.[174] Some western parliamentary systems (the German and Dutch) and initiate hundreds of budgetary amendments each year and review budget proposals in detail, including intelligence.[175] In other democracies (Denmark, Luxembourg), the parliament is even provided with information on the line items of the budget for the Armed Forces and intelligence agencies, the most detailed level of budgeting. In France, Greece, and Poland, the parliamentary committee on security and defense is the only one to be presented with information on the intelligence budget items.[176] No prior notification is required to check intelligence budget expenditure for members of the intelligence

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[168] Matei, "Romania's Transition to Democracy."

[169] Information available from the official Website of the National Intelligence Agency of South Africa www.nia.org.za (accessed May 2, 2007).

[170] Handbook for Parliamentarians, 143.

[171] Office of the Auditor General of Canada, Report, 2003: Chapter 10 section 10.123. Available at www.oag-bvg.gc.ca/domino/reports.nsf/html/20031110ce.html (accessed April 7, 2007).

[172] Handbook for Parliamentarians, 129.

[173] Charles H. Gibson, *Financial Reporting Analysis: Using Financial Accounting Information*, 10th ed. (Stamford, Connecticut: Thomson South-Western, 2007) 10-18.

[174] Born and Leigh, *Making Intelligence Accountable*, 129.

[175] Budget Influencing Parliaments. September 2006. Parliament's Role in Defense Budgeting, 6. Geneva Centre for the Democratic Control of Armed Forces. Backgrounder. Available at http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=25263&nav1=4 (accessed April 12, 2007).

[176] Ibid., 136.

oversight committee in the parliaments of Argentina, Canada, South Africa, South Korea, and the United Kingdom.[177]

In the U.S., spending for intelligence programs is depicted in classified intelligence budget annexes. All members of Congress, as well as authorized staff of the oversight committees, have access to these annexes. Yet, they must make special arrangements to get this information.[178]

Finally, in order to carry out an effective audit of intelligence expenditure, the parliament should provide an opportunity for experts from specialized audit offices to express judgments regarding the intelligence budget. This means that all intelligence budget documents should have a user-friendly structure that can be easily read by those individuals or organizations. There is no information available on how this norm is achieved by western and transitional democracies. An audit of intelligence spending along with intelligence budget oversight will be more effective if authorized qualified experts conduct analyses and provide their conclusions to the parliament. However, the user-friendly structure of the intelligence budget must not place the intelligence community's sources and methods at risk.[179]

Regarding the issue of IC budget transparency, the U.S. Congress recently considered new intelligence budget oversight procedures that would make information related to intelligence budgets more transparent to the public. The Senate Select Committee on Intelligence launched an effort to aggressively examine a full range of intelligence program spending in Iraq, Iran, North Korea and counter-terrorism programs of the CIA and NSA. This procedure would streamline the budget process and improve oversight of key intelligence programs.[180] This was part of the fiscal year 2007 authorization bill "that called on the president to make public what the National Intelligence Program costs on an annual basis."[181] However, that bill never became law — one of the few times that Congress failed to complete its annual intelligence authorization legislation.

C. COMMON PROBLEMS OF INTELLIGENCE BUDGET OVERSIGHT

1. Lack of Information Regarding Intelligence Expenditure

One common problem of intelligence budget oversight is a lack of transparency and information on intelligence expenditure.

> A lack of transparency in intelligence budgeting is often connected to archaic budget designs or poorly-defined intelligence objectives. This also relates to the absence of multidisciplinary expertise in the national statutory audit

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[177] Born and Johnson, "Balancing Operational Efficiency and Democratic Legitimacy. The Revolution in Intelligence Oversight. Table: Comparison of the External and Parliamentary Oversight Bodies in Eight Selected Democracies," 230.

[178] Richard A. Best Jr., April 12, 2007. Intelligence Issues for Congress. CRS Report for Congress. Congressional Research Service.

[179] Best Jr. and Bazan, Intelligence Spending: Public Disclosure Issues, 43.

[180] Senator Rockefeller Outlines New Agreement to Streamline Intelligence Budget Process. For Immediate Release. The Senate http://www.senate.gov/~rockefeller/news/2007/pr030507.html (accessed April 12, 2007).

[181] Walter Pincus, May 28, 2006. Panel Requires Annual Disclosure of Intelligence Budget, A06. *Washington Post*. Available at http://www.washingtonpost.com/wp-dyn/content/article/2006/ 05/27/AR2006052700805.html (accessed April 12, 2007).

> organizations, weak constitutional requirements for the provision of information for the public examination of decisions, and a bureaucratic attitude, which prefers confidentiality to accountability.[182]

In order to enforce transparency in intelligence expenditure, in 1998, Ravinder Pal Singh proposed that the U.S. parliamentarians established three levels of classification for intelligence budgets. These three levels are as follows: "general budget information presented to Congress; classified capital and operating expenditure, which may be scrutinized by a special oversight subcommittee; expenditure relating to higher levels of military classifications, which may be scrutinized by a representative group of members of a scrutiny committee. The scrutiny committee should be given access to classified documents in accordance with established procedures set out in a national secrecy act."[183]

This three-level classification system of the budget of intelligence agencies can be adopted by most transitional democracies as a reasonable tool for the disclosure and control of intelligence expenditure. It should be in keeping with the law, more specifically the law on freedom of information, and help in finding the appropriate balance between secrecy and transparency. This technique also avoids negative public debates concerning intelligence budgets and provides an appropriate way to check that information "without placing the intelligence sources and methods of operational activity at risk."[184]

Some intelligence budget oversight problems are connected to difficulties in obtaining information regarding spending for intelligence. Intelligence expenditure can be "hidden" inside non-intelligence budgets. Intelligence spending on infrastructure, transportation and logistics is often transferred to the budgets of other organizations and ministries, such as welfare, housing, acquisition, and supply. These "hidden" appropriations misrepresent the data for the intelligence budget in some democracies and degrade the ability of the parliament to make valid assessments regarding the real expenditure for intelligence.

The Romanian Intelligence Community has a complicated structure. "It is difficult to monitor the intelligence community's funds because money for intelligence activity is sometime taken from non-budgetary resources."[185]

Finally, in some countries, the complicated intelligence budget structures can create cases where parliamentarians are not able to determine the exact amount of funds dedicated to the intelligence agencies. Parliamentarians, in those cases, must make their decisions regarding final appropriations based on the data about defense and intelligence allocations that is mixed. Such complexity raises the question of when and where parliamentarians in western and transitional democracies actually cast effective votes for the entire intelligence budget.

2. Lack of Clear Legislation

Finding the right balance between secrecy and transparency is not the only problem confronted

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[182] Handbook for Parliamentarians, 135.

[183] Ravinder Pal Singh, *Arms Procurement Decision Making Processes,* vol. 1. (Oxford: Oxford University Press, 1998).

[184] Best Jr. and Bazan, Intelligence Spending: Public Disclosure Issues, 43.

[185] Matei, "Romania's Transition to Democracy."

during intelligence budget oversight in western and transitional democracies.[186] By law, parliaments of western democracies have a key role to play in adopting and overseeing budgetary provisions related to intelligence. But in practice, many of them are poorly equipped to exert any decisive influence on intelligence budgets, and their action is "further hampered by secrecy and opacity in relation to certain security allocations and spending."[187] A poor framework for overseeing the budgets of the intelligence sector and the use of strategic resources makes it difficult for parliamentarians to exercise oversight. A few countries have clear legislation for intelligence budget oversight (the U.S., Canada, Australia, Norway, Belgium, Argentina, and Poland).[188] In some transitional democracies, these legislative procedures are very poor and far from efficient.

3. Limited Time for Scrutiny of the Intelligence Budget

Many parliaments do a poor job of oversight of intelligence budgets due to their limited time for scrutiny. This time constraint pushes parliaments to follow general budgetary routines and makes it difficult to investigate details of the complex intelligence budget structure.

Most western and transitional countries have a one-year budget cycle. Actually, it is enough time for the parliaments officially to go through all national budgetary procedures and oversee (analyze) the intelligence budgets in particular. However, very often national budgets in some countries come to the parliaments for further scrutiny at the last moment, when the current fiscal year is almost over and the decision regarding the new budget must be made promptly. In such situations, the oversight committees are "forced" by a minimized timeframe to accelerate the process of intelligence budget authorization and appropriation. They also have difficulties in analyzing recent and future intelligence expenditure. Thus, some parliaments could fail to obtain clear understanding of intelligence budgets, diminishing their capacity to use the budget to provide appropriate policy guidance.

According to Marina Caparini, intelligence oversight bodies generally aim to assess one of two things — either the "efficacy" of the intelligence service or the "propriety" of its activities.[189] Due to the limited time for scrutiny of intelligence budgets, in some western and transitional democracies intelligence budget oversight is almost entirely focused on "propriety," leaving "efficacy" to the intelligence executives and an Auditor General's office.

Moreover, sometimes parliamentarians have neither the competence nor the qualifications to evaluate the intelligence product presented by the intelligence agencies and the time constraint decreases their ability to understand intelligence budgets. Thus, it is also crucial for parliaments to enhance parliamentary expertise in intelligence budget oversight through the hiring of professional staff who have special education, advanced knowledge and personal experience.

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[186] Handbook for Parliamentarians, 138.

[187] Ibid.

[188] Born and Johnson, "Balancing Operational Efficiency and Democratic Legitimacy. Table: Comparison of the External and Parliamentary Oversight Bodies in Eight Selected Countries (Comparison of Mandate of Oversight Body). In *Who's Watching the Spies* (Washington, D.C. Potomac Books, 2005) 230.

[189] Marina Caparini, October 2002. Challenges of Control and Oversight of Intelligence Services in a Liberal Democracy. Geneva Centre for the Democratic Control of Armed Forces. Available at https://pforum.isn.ethz.ch/legal_wg/ev_geneva_10.02_caparini.pdf (accessed April 11, 2007).

D. SUMMARY

An intelligence budget oversight system should require intelligence executives to disclose data regarding intelligence expenditure including classified intelligence programs. As a norm, an effective parliament enacts laws and procedures for oversight mechanisms, giving the parliamentarians the power to enforce transparency and accountability.[190]

A national legislature should give parliamentarians the power to conduct intelligence budget oversight, as well as the access to obtain secret information. The parliament ensures, by specified means, that all appropriate budget documents are available to the designated parliamentary committee on intelligence. Members of the intelligence oversight committee should also have access to the secret budgetary appendices of the intelligence community, but must take special arrangements to read them.[191]

Intelligence budget oversight will be successful if the parliamentarians have an incentive to participate in developing systematic approaches for the evaluation and approval of intelligence budget proposals. To do this, an effective parliament participates at each stage of the intelligence budget cycle: budget preparation, approval, execution and review.

Legislators, government officials, and the public need to know whether intelligence executives manage public resources and use their authority properly and in compliance with laws and regulations, intelligence programs are achieving their objectives and desired outcomes, and intelligence executives are held accountable for their use of public funds.[192] In western and some transitional democracies, the parliamentary committee on intelligence can demand that external governmental auditors review the intelligence budgets and expenditure of the national intelligence community. This information also helps parliamentarians to appropriate or amend budgets (allocating funds), as well as approve or disapprove any supplementary budget proposals presented by the intelligence executives.

A lack of accurate and complete information regarding intelligence budget expenditure, inefficient legislation and limited time for intelligence budget scrutiny are common problems that reduce the effectiveness of intelligence budget oversight. To avoid these problems, transitional and emerging democracies should establish statutory procedures and a timeframe for scrutinizing intelligence budgets. For better oversight, it is also important that all intelligence budget articles should have a clear structure and be presented in one single document understandable to the parliamentarians. Moreover, intelligence spending should not be "hidden" inside other national budgets.

These common principles of intelligence budget oversight are adhered to in most western democracies and could be adopted by emerging and transitional democracies. The essence of budget oversight of the IC is that the parliament can oversee and, if necessary, change the government's policies regarding intelligence activities by adjusting the budget. By changing the governmental budget proposals and conducting hearings, the parliament is able to redefine the priorities of the intelligence agencies. Parliaments can simply block the intelligence services from certain activities by denying funds. They can also qualify or limit funds granted to the intelligence services.

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[190] Born, "Democratic and Parliamentary Oversight of the Intelligence Services," 14.

[191] CRS Issue Brief for Congress. May 9, 2006. Intelligence Issues for Congress, 6. Congressional Research Service.

[192] Government Auditing Standards. January 2007 Revision. Chapter 1: Generally Accepted Government Auditing Standards, 5. United States Government Accountability Office. GAO-07-162G.

The next chapter will describe the organizational and functional structure of the Ukrainian Intelligence Community and its intelligence agencies, as well as their main tasks and responsibilities. The roles and position of intelligence agencies in the system of Ukrainian national security and defense will be emphasized. Further chapters will examine the model of oversight of the Ukrainian IC. Thus, it will be possible to see how far Ukraine has improved in developing a system of intelligence oversight and how close it has approached the principles of democratic oversight that exist in western and transitional democracies.

IV. THE ORGANIZATION OF THE UKRAINIAN INTELLIGENCE COMMUNITY

A. INTRODUCTION

The Soviet Union's collapse left Ukraine with an enormous intelligence and security apparatus in need of reform. The division of functions among intelligence agencies' tasks and responsibilities was the first major problem to address in developing advanced oversight mechanisms. The leading agency with regard to intelligence and counterintelligence in Ukraine was the Security Service of Ukraine (SSU), the successor of the Soviet KGB. In addition to the political intelligence duties performed by the SSU, the Ukrainian Ministry of Defense conducted military intelligence operations and the Ministry of Internal Affairs had responsibility for criminal intelligence activities. Moreover, many other structures such as the Tax Police, the State Border Service, the State Guard Administration and the Customs Service also had, and currently have, some intelligence functions within their narrow specializations. All these organizations are considered highly conservative institutions and, as such, highly resistant to reform. However, they have undergone certain structural changes since Ukraine declared independence.

The SSU lost the function of border control in 1992. The function of conducting intelligence and counterintelligence operations along Ukraine's border and at border crossings and in Ukraine's territorial waters was given to a new intelligence organization — The Intelligence Body of the Specially Authorized State Executive in the Issues of State Border Protection of State Border Guard Service.[193] At the same time, the SSU also lost some of its powers and authorities in conducting foreign intelligence activity.

This reform preceded the establishment in 2004 of the Foreign Intelligence Service of Ukraine (FISU). It also allowed the SSU to focus on counterintelligence activities and created an additional powerful component to fight terrorism and corruption. As far as reform of military intelligence is concerned, the Main Directorate for Intelligence (MDI) of the Ministry of Defense of Ukrainian has optimized its structure and has been given new functions, tasks and responsibilities, especially after the tragic events of 9/11.

The new iteration of the law "On the Intelligence Bodies of Ukraine" (#2331-III), adopted by the Ukrainian Parliament on March 22, 2001 defines intelligence agencies as "Special agencies that have a right to conduct intelligence activity by law and may function as an independent state body, as well as within executive bodies of central government."[194] The law defines three agencies that are allowed to conduct intelligence related activities. According to Article 6 of the law

> intelligence agencies conduct intelligence activities in the following spheres: (1) The Foreign Intelligence Service – in political, economic, military-technical, science-technical, informational, and ecological; (2) Intelligence Organ of

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[193] Information available at http://www.globalsecurity.org/intell/world/ukraine/org.htm (accessed April 13, 2007).

[194] Translated from the Law "On the Intelligence Bodies of Ukraine." Amended in 2005. Article 1. Available at http://www.sbu.gov.ua/sbu/control/uk/publish/article?art_id=38932&cat_id=38881 (accessed April 14, 2007).

> Ministry of Defense – in military, military-political, military technical, military-economic, informational, and ecological; (3) Intelligence Body of the Specially Authorized State Executive in the Issues of State Border Protection of State Border Guard Service [or the Intelligence Body of the State Border Guard Service] – in border and immigration issues, as well as other spheres that relate the issue of Ukrainian border protection and the state's sovereign rights in the executive (maritime) economic zone and continental shelf. [195]

The 2005 version of the law does not include the Security Service of Ukraine in the list of agencies that are allowed to conduct intelligence activities. This law transfers SSU activities to a set of law-enforcement agencies. Thus, only the three above-mentioned intelligence organizations are established in law as agencies of the Ukrainian Intelligence Community (UIC).

However, because it conducts a wide spectrum of intelligence gathering regarding international terrorism (domestically and abroad) and its counterintelligence activities, the SSU could theoretically be included within the UIC. Although the SSU is not mentioned by the law as an intelligence body of Ukraine, its activities fit within and relate to functions of the official Ukrainian intelligence agencies, which are underlined by Article 4 of this law — fighting against terrorism, organized crime, money laundering, illegal narcotics trafficking, illicit weapon selling and migration.[196]

In fact, the SSU actively participates in fighting against international organized crime, including terrorism, illegal drug trade, arms trafficking and technologies for arms manufacturing and illicit migration.[197] Performing those important tasks, the SSU influences the Ukrainian national intelligence cycle (intelligence gathering, analysis and dissemination). Security organizations such as the Federal Bureau of Investigation in the U.S. or the Federal Intelligence Service in Germany perform these same functions and are included within their national intelligence communities as independent agencies. Consequently, the SSU can be included within the family of intelligence organizations of the UIC.

Thus, taking into consideration the law "On the Intelligence Organs of Ukraine" and the value of each intelligence organization in the national intelligence production and estimation process, it can be concluded that the UIC consists of four organizations (see Figure 5). They are as follows:

- The Foreign Intelligence Service of Ukraine (FISU);
- Main Directorate for Intelligence (MDI) of the Ministry of Defense of Ukraine;
- Intelligence Body of the State Border Guard Service (IBSBGS) of Ukrainian;
- Security Service of Ukraine (SSU).

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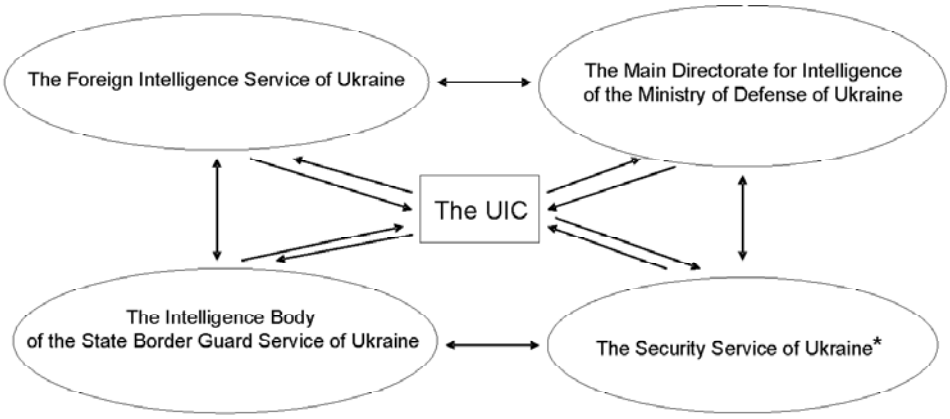
[195] Ibid.

[196] Translated from the Law "On the Intelligence Organs of Ukraine." Amended in 2005. Article 4. Available at http://www.sbu.gov.ua/sbu/control/uk/publish/article?art_id=38932&cat_id=38881 (accessed April 14, 2007).

[197] The information was extracted and translated from the materials of the conference "Actual problems of Development of the SSU." March 16, 2007. Available at http://www.sbu.gov.ua/_sbu/control/uk/publish/article?art_id=57823&cat_id=47863 (accessed July 21, 2007); and materials of the interview of the deputy head of the SSU to the Ukrainian Informational Agency "24 Hours" regarding the international day of fighting against illegal narcotics trafficking. June 26, 2007. Available at http://www.sbu.gov.ua/sbu/control/uk/publish/article?art_id=63884&cat_id=47863 (accessed July 21, 2007).



Source: The law "On Intelligence Bodies of Ukraine ". Amended in 2005. #2331-III.
* The law does not refer to the Security Service of Ukraine as an intelligence organization. However, it is a law-enforcement agency with intelligence functions.

Figure 5. The Structure of the Ukrainian Intelligence Community

Due to the understandably secret nature of intelligence organizations in Ukraine, it is very difficult to find unclassified information regarding their activities or budgets. Such information is highly classified in Ukraine and not available for public debate; however, "The White Book of Ukrainian Intelligence," expected to be published by the end of 2007, should provide some useful public information.[198]

This chapter will focus on identifying and describing the structure of the Ukrainian Intelligence Community. The main tasks and budgets of these agencies will be emphasized. The chapter is comprised of four main sections. First, it will discuss the newly created Foreign Intelligence Service of Ukraine, its main tasks and organization. The next section presents the structure of the Main Directorate for Intelligence of the Ministry of Defense of Ukraine and the functional responsibilities of its departments. Then, the major functions and organization of the Intelligence Body of the State Border Guard Service of Ukraine will be addressed. Finally, the main tasks and structure of the Security Service of Ukraine will be considered. Thus, it will be possible to see the responsibilities of the agencies and their roles in the system of Ukrainian national security and defense.

B. THE FOREIGN INTELLIGENCE SERVICE OF UKRAINE

1. History of the FISU

In 1991, after the proclamation of Ukrainian independence, the Main Headquarters of Intelligence was created within the Security Service of Ukraine. The organization and the staff of the headquarters were approved by the decree of the Head of the SSU on December 28, 1991. Taking into consideration new challenges and threats, the Main Headquarters quickly elaborated new approaches to modern intelligence activities, determined a strategy for its further development, designed its legal underpinning,

[198] Ukrainian Independent Agency "RBK." May 17, 2007. "The White Book of the Ukrainian Intelligence Community will be Issued at the End of 2007." Available at http://daily.com.ua/news/ page.php?id=36972, and http://www.podrobnosti.ua/power/rest/2007/05/08/421607.html (accessed May 17, 2007).

designated forms and methods of intelligence operations and ensured regular dissemination of data on the sensitive issues to the highest decision and policy-makers of Ukraine.

Several strategic radio interception units of the USSR Committee of State Security and USSR Armed Forces General Staff Central Intelligence Headquarters had been located on the territory of the Ukrainian Soviet Socialist Republic. In the early 90s, the General Directorate of the Radio-electronic Intelligence (SIGINT) and Counterintelligence of Ukraine (the "K" General Directorate) were established at these facilities.

At the end of 2000, the Main Intelligence Headquarters of the SSU gained the status of national intelligence body. This allowed for the coordination of all intelligence activities of the SSU. In February 2004, in accordance with the Ukrainian President's Decree, and on the basis of the Main Intelligence Headquarters and "K" General Directorate, the Intelligence Department of the Security Service of Ukraine (the future FISU) was created.[199]

The FISU started its activity the same year, on October 14, 2004, the day when the President of Ukraine signed its decree "On the Foreign Intelligence Service of Ukraine" (#1239/2004).[200] Since then, building on the basis of the intelligence components of the SSU, the FISU has been functioning as an independent state body. On December 1, 2005, the Verkhovna Rada (Ukrainian Parliament) approved the law "On the Foreign Intelligence Service of Ukraine," clarifying and consolidating its legal structure within the UIC.

2. The Main Tasks of the FISU

According to the Presidential Decree #3160-IV of 2005, the FISU is an independent state body, which carries out its intelligence activities in political, economic, military and technical, scientific and technical, information and ecological spheres.[201] These laws, along with the Constitution of Ukraine and the law of 2001 "On the Intelligence Bodies of Ukraine" (#2331-III), are the principle legal basis for the FISU activities. The original tasks and responsibilities of the FISU are assigned as follows:[202]

- collecting, evaluating, analyzing and disseminating intelligence to the heads of the highest decision-making bodies of Ukraine in accordance with the applicable law;
- implementing special measures to further state policy of Ukraine in political, economic, military and technical, ecological and information spheres, as well as to contribute to national defense, foster economic development, and promote science and technology;
- safeguarding Ukrainian missions abroad, providing security to the staff and their family members in the host country as well as attached officers who have access to state secrets;
- participating in international operations addressing such high-priority issues as organized crime, terrorism, drug trafficking, illegal trade of arms and respective technologies, and illegal migration; and
- providing counter measures to external threats that can affect the national security of Ukraine, the lives and health of its citizens, and state establishments abroad.

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[199] History of the Foreign Intelligence Service of Ukraine, translated from http://www.fisu.gov.ua/ cms/ua/index/history/5.html (accessed April 14, 2007).

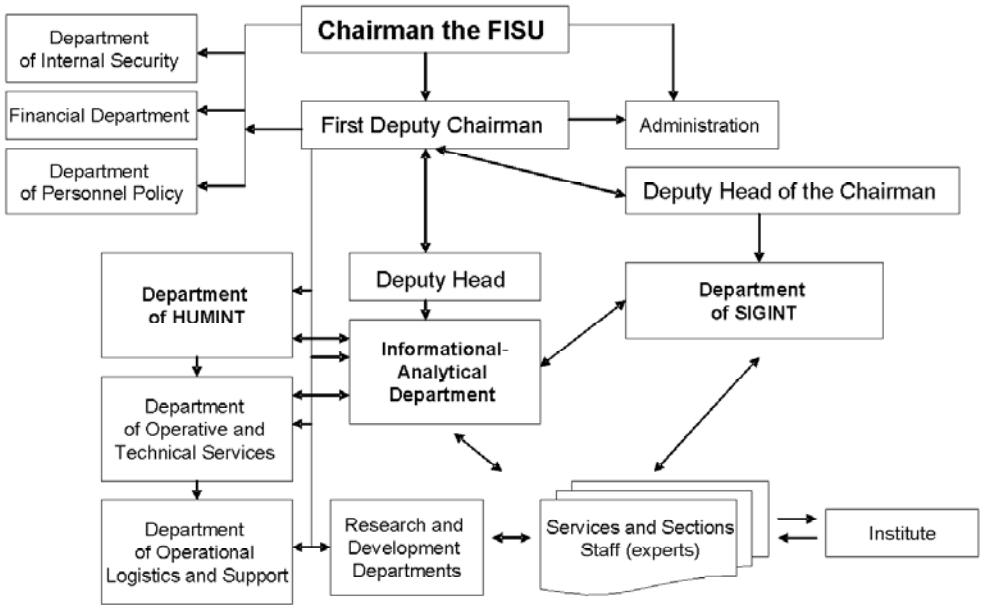
[200] This information is translated from the legal base documents of the FISU, available at http://www.fisu.gov.ua/base.php?lang=en&item=3&page=1 (accessed April 14, 2007).

[201] Ibid.

[202] Translated from Presidential Decrees #1239/2004 "On the Foreign Intelligence Service of Ukraine," #3160-IV "On the Foreign Intelligence Service of Ukraine," and Law #2331-III "On the Intelligence Organs of Ukraine", available at http://www.fisu.gov.ua/base.php?lang=en (accessed April 14, 2007.

3. Organization of the FISU

The FISU organization was formed to meet the principle demands for intelligence in Ukraine, in keeping with the general practices of such organizations within democratic society. The legal basis for the FISU underlines the main tasks and responsibilities and therefore provides the information used to display the functional structure of the FISU (see Figure 6).



Source: Created from the Presidential Decree #3160-IV "On the Foreign Intelligence Service of Ukraine." Available at http://www.szru.gov.ua/base.php?lang=ua&item=1&page=1 (accessed July 7, 2007).

Figure 6. The Organization of the FISU

The FISU comprises operative (HUMINT — human intelligence), analytical, technical (SIGINT — signal intelligence), financial, research and development departments, as well as elements for legal support, human resources, logistics and administration. Article 5 of the presidential decree #3160 obligates the FISU to have the following units: (1) The Administration Department; (2) the Department of HUMINT (human intelligence); (3) the Department of SIGINT (signal intelligence); (4) the Department of Operative and Technical Services; (5) the Informational-Analytical Department; (6) the Department of Internal Security; (7) the Department of Operational Logistics and Support; (8) the Financial Department; and (9) several training and research establishments (for example, the FISU's Institute, which is responsible for initial research programs, training and refresher courses for Ukrainian foreign intelligence officers).[203]

By the decree, the total strength of the FISU is 4350 serviceman, 4010 of whom are military personnel. The FISU is subordinated to the President of Ukraine, who appoints the Chairman of the Service. The service operates under the supervision of the Ukrainian Parliament. The Accounting Chamber of Ukraine monitors budget expenditure of the FISU, and the Attorney General of Ukraine also provides control over certain FISU activities.

The FISU is allowed to cooperate with other intelligence organizations of the UIC, security

[203] Extracted and created from the Presidential Decree #3160-IV "On the Foreign Intelligence Service of Ukraine." Available at http://www.szru.gov.ua/base.php?lang=ua&item=1&page=1 (accessed July 7, 2007).

and law-enforcement agencies, as well as state authorities, institutions, and establishments. As of 2007, the FISU has established official contacts and maintained partnership relations with 111 foreign intelligence and special services from 67 countries.[204] Within the framework of the EU-Ukraine integration program, the FISU participates in actions aimed at combating terrorism, countering organized crime, monitoring illegal migration, eliminating drug trafficking and trafficking in human beings and, by law, is allowed to establish representations (liaison offices) in other international intelligence and security organizations.

The FISU gained the status of an independent state body when it was detached from the Security Service of Ukraine (national law-enforcement agency). It became an independent state budget entity as well.[205] The budget of the Service has been increasing even since its establishment (see Figure 7).

Year	2003	2004	2005-1*	2005-2*	2006	2007
Budget in grivnas (Ukrainian currency)	28000000	**N/A**	109800000	123200000	170804100	248227100
Budget in U.S. dollars (currency conversion rate is 5.05 grivnas for 1 dollar)	5,544,555	**N/A**	21,742,574	24,396,040	33,822,594	49,153,882
Increase (%)	**N/A**	**N/A**	**292.2**	**12.2**	**38.6**	**45.3**

*The budget was amended in 2005 after the "Orange Revolution" and new presidential elections.
** The FISU became an independent budget entity in FY2005. In FY2003, its budget was included within the budget of the Security Service of Ukraine. There is no data for FY2004.
Source: Created from the analysis of the State Budget of Ukraine (FY2003-2007). Available at http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=820241&cat_id=304, http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=812978&cat_id=69625, http://ru.proua.com/inform/137.html (accessed May 17, 2007) and http://ru.proua.com/inform/138.html (accessed July 8, 2007).

Figure 7. The Evolution of the FISU Budget

In comments for the Ukrainian Information Agency "UNIAN" on December 1, 2006, the Chairman of the FISU, Colonel-General Mykola Malomuzh, noted the strengthening of the role of the intelligence service in the protection of national interests. He also stressed that the major impact of the service's reorganization would be the creation of an effective and democratic oversight system for the FISU. This, he stated, would ensure against use of the Foreign Intelligence Service for purposes not identified by the laws of Ukraine.[206]

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[204] Translated from the interview of the chairman of the FISU to the Ukrainian information agency "UNIAN". December 2006. Available at http://www.szru.gov.ua/messages.php?lang= ua&item=31&page=1 (accessed July 22, 2007).

[205] Ukrainian Independent Informational Agency. December 28, 2005. Interview of the Chairman of the FISU to the Agency: "This Year Ukrainian Foreign Intelligence Became an Independent State-supported Agency." Available at http://www.szru.gov.ua/messages.php?lang=en&item=20&page=1 (accessed July 7, 2007).

[206] Interview of the Chairman of the Foreign Intelligence Service of Ukraine to the Ukrainian Information Agency (UNIAN), 1 December 2006. available at: http://www.fisu.gov.ua/article.php?lang= en&root=7&item=86 (accessed March 28, 2007).

This view was tested during the period of the Ukrainian political crisis of 2006-2007. As of July 2007, the international and Ukrainian mass media have not reported any information regarding the FISU. In addition, there is no evidence that the service compromised itself in any way or was involved in the resolution of the political issues during that crisis.

C. THE MAIN DIRECTORATE FOR INTELLIGENCE OF THE MINISTRY OF DEFENSE

1. Legislation and the Main Tasks of the Main Directorate for Intelligence

The primary organization responsible for Ukrainian military intelligence was established on September 7, 1992 when the President of Ukraine issued his decree to establish the Military Strategic Intelligence Department within the Ministry of Defense. On July 6, 1993, based on a presidential decree, the General Military Intelligence Directorate of the Ministry of Defense of Ukraine was organized by merging the organizational structures of the Military Strategic Intelligence Department of the Ministry of Defense and the Reconnaissance Department of the General Staff of the Armed Service of Ukraine. Later, according to an executive order of the President on April 14, 1994, the General Military Intelligence Directorate was renamed as the Main Directorate for Intelligence (MDI) of the Ministry of Defense.[207]

The MDI's activities are regulated by the laws "On the Intelligence Bodies of Ukraine" of March 22, 2001 (#2331-III), "On counter-intelligence activity" of December 26, 2002 (#374-IV), and "On Fundamentals of National Security of Ukraine" of June 19, 2003 (#964-IV). Moreover, such presidential edicts as "On the Activity Enhancement of the MID" of October 2, 2003 (# ct1138) and "On the Activity Enhancement of Intelligence Services of Ukraine" of April 7, 2003 (#298/2003) play an important role in directing the main tasks and responsibilities of the MDI.

According to the law "On Intelligence Bodies of Ukraine," the MDI conducts reconnaissance activity with the purpose of providing for the national security, sovereignty protection, territorial integrity and national interests of Ukraine, and protecting it from external threats in military, political-military, technical-military, economical-military, informational and environmental areas. Article 4 of the law authorizes the MDI to fight against organized crime, terrorism, drug trafficking, illegal trade in arms and certain technologies, and illegal migration. It is also allowed to participate in international intelligence and security operations against those transnational threats.[208]

The President of Ukraine appoints the chief of the MDI. The President also conducts the general coordination of the MDI according to the Constitution of Ukraine and the law "On Intelligence Bodies of Ukraine."

The MDI is an independent state budget entity. Its budget does not belong to the budget of the Ministry of Defense of Ukraine. The budget of the MDI has been continually increasing since its establishment (see Figure 8).

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[207] The information is extracted and translated from the Booklet of the Main Directorate for Intelligence. 2004. Issued under the responsibility of the chief of the MDI by the Ukrainian Newspaper *Vartovi Neba*. Special Edition.

[208] Translated from the law #2331-III "On the Intelligence Organs of Ukraine." Amended in 2005. Article 4. Available at http://www.fisu.gov.ua/base.php?lang=en (accessed July 7, 2007).

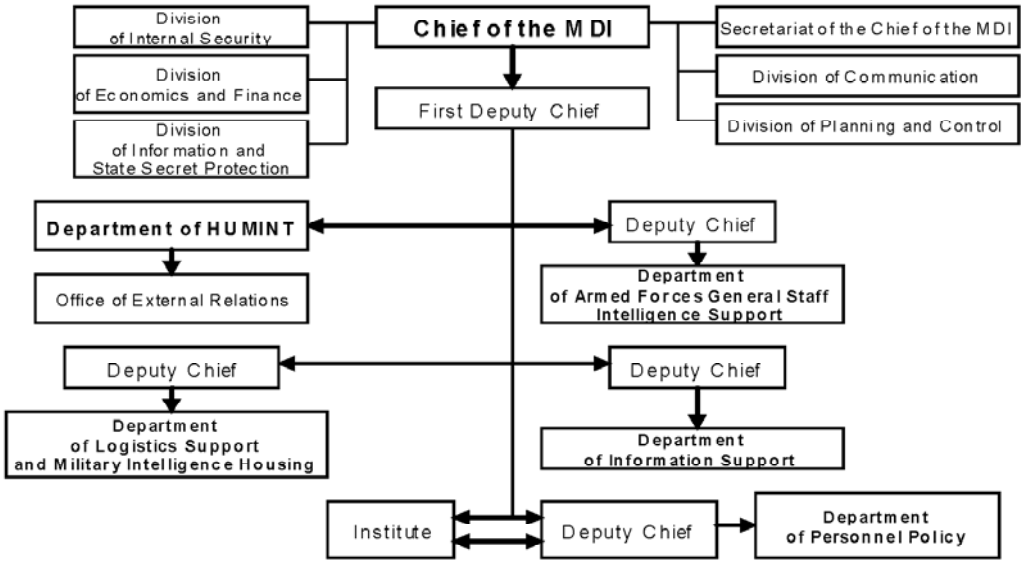
Year	2003	2004	2005-1*	2005-2*	2006	2007
Budget in grivnas (Ukrainian Currency)	71900000	120300000	130300000	142800000	158641500	208193000
Budget in U.S. dollars (currency conversion rate is 5.05 grivnas for 1 dollar)	14,237,624	23,821,782	25,801,980	28,277,228	31,414,159	41,226,337
Increase (%)	**N/A**	**67.3**	**8.3**	**9.6**	**11.1**	**31.3**

*The budget was amended in 2005 after the "Orange Revolution" and new presidential elections.
Source: Created from the analysis of the State Budget of Ukraine (FY2003-2007). Available at http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=820241 &cat_id=304, http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=812978 &cat_id=69625, http://ru.proua.com/inform/137.html (accessed May 17, 2007) and http://ru.proua.com/inform/138.html (accessed July 8, 2007).

Figure 8. The Evolution of the MDI Budget

2. Organization of the Main Directorate for Intelligence

The MDI is comprised of five departments and five major divisions (see Figure 9).



Source: Created from the analysis of http://www.globalsecurity.org/intell/world/ukraine/milintel.htm (accessed July 8, 2007), the law #2331-III "On the Intelligence Organs of Ukraine" http://www.fisu.gov.ua/base.php?lang=en (accessed July 7, 2007), and materials of Booklet of the MDI, issued under the responsibility of the chief of the MDI by the Ukrainian Newspaper "Vartovi Neba," special edition, 2004.

Figure 9. The Organization of the Main Directorate for Intelligence

The Strategic Intelligence Department (HUMINT) is responsible for gathering intelligence information and promoting the fulfillment of the state policy of Ukraine, strengthening defense capabilities, and economic and technical scientific developments of Ukraine. Together with the intelligence and law-enforcement services of Ukraine, the department takes part in countering international organized crime, including terrorism, drug trafficking, illegal immigration, illegal arms trade and technologies. The department's structural elements arrange international intelligence cooperation and joint actions with the intelligence and law-enforcement agencies of other countries.[209]

The Armed Forces General Staff Intelligence Support Directorate (the analogy of the G-2 in NATO) manages the reconnaissance unit activities of the Armed Forces of Ukraine. It is responsible for strategic planning and intelligence support of the Armed Forces of Ukraine, as well as intelligence personnel operational and combat training. It also provides intelligence support to Ukrainian peacekeeping contingents during multinational peacekeeping operations.

The Department of Information Support conducts analysis of intelligence information on the real and potential abilities, intentions or actions of foreign countries, organizations and individuals threatening the national interests of Ukraine. The Department evaluates the political-military situation around Ukraine, in conflict regions and detects threats to national security. It also prepares intelligence reports for submission to the high political and military command.

The Department of Personnel Policy conducts the tasks of selection, recruiting, education, training and appointment of officers and civilians to positions within the MDI. The Department's competencies also include defining the intelligence specialty requirements and further organization of their specialized education.

The Department of Logistics Support and Military Intelligence Housing arranges all-round support of the MDI and its subordinate units. It is responsible for providing intelligence units with specialized equipment, its exploitation, maintenance and repair activities. The director of the Department solves the issues of capital construction and military intelligence personnel lodging. In addition, together with the chief of the Financial Department, s/he is responsible for the MDI intelligence budget formulation and submission.

MDI specialists take an active part in international military-technical cooperation. They participate in estimation, preparation and signing of the protocols and international agreements of Ukraine with other countries regarding military equipment buying/selling activities.

The MDI actively cooperates with the other intelligence and law-enforcement bodies of Ukraine. As a result of such work, the Program of Technical Intelligence Equipment Development to the year 2010 was put in force. This program was approved by an Executive Order of the Cabinet of Ministers (#1672-13) on October 29, 2003. Earlier, the MDI and Ministry of Interior adopted joint operational order #024/031 on December 12, 2002, which approved the "Instruction on Interaction Activities of the MDI and Subsequent Units of the Ministry of Interior in the Issues of Intelligence, and International Organized Crime and Terrorism Prevention."

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[209] The information in this paragraph is extracted and translated from the Booklet of the Main Directorate for Intelligence. 2004. Issued under the responsibility of the chief of the MDI by the Ukrainian Newspaper *Vartovi Neba*. Special Edition.

D. THE INTELLIGENCE BODY OF THE STATE BORDER GUARD SERVICE (IBSBGS) OF UKRAINE

1. Legislation and the Main Tasks of the IBSBGS

The Intelligence Body of the Sate Border Guard Service of Ukraine (IBSBGS) evolved out of the Intelligence Committee of the Border Troops of the USSR. The role of this military formation has changed from military operations against Western countries during the Cold War toward police and law-enforcement functions and the prevention of transnational crime and terrorism.

Today, the main task of the State Border Guard Service and its Intelligence Body, in particular, is to ensure that people and goods can move easily across borders but also to prevent international terrorism and transnational crime, proliferation of weapons of mass destruction, illegal conventional weapon and drug trafficking, and illicit migration. All these new tasks and responsibilities require transforming the IBSBGS into a police and law-enforcement agency.

The laws "On the State Border of Ukraine" of November 4, 1991 (#1777-XII), "On Operational Investigatory Activity" of February 18, 1992 (#2135-XII), "On Intelligence Bodies of Ukraine" of March 21, 2001 (#2331-III), "On Counterintelligence Activity" of December 26, 2002 (#374-IV), and "On the State Border Service of Ukraine" of April 3, 2003 (#661-IV) form the main legislation that regulates the activity of the State Border Guard Service of Ukraine and its Intelligence Body.[210] Moreover, the Executive Decrees of the President of Ukraine "On Free Movement" of June 15, 2001 (#435), "On Reformation of the State Committee in the Issue of Border Protection" of July 31, 2003 (#772), "On Administration of State Border Guard Service" of August 4, 2003 (#797), and "On the Conception of Development of the State Border Service of Ukraine for the Period 2006-2015" on June 19, 2006 are also important in determining the daily duties of the IBSBGS. In addition, the latest executive orders of the Cabinet of Ministers of January 22, 2001 (#35) and of December 21, 2005 (#1251) guide the IBSBGS to carry out its tasks and missions with regard to preventing illegal migration through the Ukrainian State Border.[211]

Based on this legislation, the IBSBGS has the following main tasks:[212]

- collecting, analyzing and disseminating intelligence to the heads of the highest decision-making bodies of Ukraine in accordance with the Ukrainian law;
- implementing special measures to promote the state policy of Ukraine in economic, political, economic, military, military-technical, ecological and information spheres, as well as to contribute to national defense, foster economic development, and promote science and technology;
- safeguarding Ukrainian missions abroad, providing security to the legislative diplomatic staff and their family members in the host country;

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[210] Legislation is available at http://www.pvu.gov.ua/index.php (accessed July 11, 2007).

[211] Executive decrees of the President and executive orders of the Cabinet of Ministers of Ukraine are available at http://www.pvu.gov.ua/npa.htm (accessed July 11, 2007).

[212] Translated from the Law "On the Intelligence Organs of Ukraine." Amended in 2005. Available at http://www.sbu.gov.ua/sbu/control/uk/publish/article?art_id=38932&cat_id=38881 (accessed April 14, 2007)

- participating in fighting against organized crime, terrorism, drug trafficking, illegal trade of arms and respective technologies, and illegal migration;
- providing countermeasures to external threats that can negatively influence the national security of Ukraine, the lives and health of its citizens, and state establishments abroad.

The laws give the IBSBGS powers and authorities to have access to and to obtain information of any kind, including data from state informational databases, banking and informational systems; hire experts to conduct investigations; open accounts in national and international banks; establish covert institutions necessary to carry out intelligence functions; create and use documents that cover the intelligence activities of the IBSBGS' employees, etc. The IBSBGS can recruit and establish a confidential working relationship with adults (both international and domestic) who agree to cooperate with the IBSBGS. Moreover, in order to protect the state border, the IBSBGS is allowed to conduct counterintelligence operations along the Ukrainian border and to cooperate with their international counterparts within the rules of intelligence and law-enforcement agreements.[213] These functions have become more important with regard to fighting transnational organized crime and international terrorism. The results of the operational activity of the IBSBGS are periodically published on its official Website.[214]

According to the law "On Intelligence Bodies of Ukraine," the President appoints and dismisses the Chairman of the IBSBGS.[215] The President controls the service through the National Security and Defense Council (NSDC). The Head of the State Border Guard Service of Ukraine manages the Intelligence Body.[216]

The Cabinet of Ministers participates in conducting executive oversight of this intelligence organization. The Cabinet appoints and dismisses the members of the internal Collegial Commission of the State Border Guard Service of Ukraine, which oversees the policy, budget and developments of the IBSBGS. The Head of the State Border Guard Service is the head of the Commission.[217] According to the presidential executive decree of August 4, 2003 "On the Issues of the Administration of the State Border Guard Service," the head of the Commission is responsible for informing the President, the NSDC, and the relevant parliamentary committee regarding all issues related to the IBSBGS. He is also responsible to prepare and submit to those institutions and the Cabinet the annual report concerning the activities of the IBSBGS.

In addition, based on the law "On Administration of the State Border Guard Service," the People's Council was established under the Administration of the State Border Guard Service in order to provide public information regarding the State Border Guard Service and its IBSBGS

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[213] Official Website of the State Border Guard Service of Ukraine. Main Tasks of the Intelligence Body of the State Border Guard Service of Ukraine. Available at http://www.pvu.gov.ua/inf/ rozv/rozv6.htm (accessed July 11, 2007).

[214] The Results of Operational and Investigative Activity of the IBSBGS. 2006-2007. Translated from http://www.pvu.gov.ua/osd.htm (accessed July 11, 2007).

[215] More detailed information regarding this issue can be found at http://www.pvu.gov.ua/inf/rozv/rozv9.htm (accessed July 11, 2007).

[216] The System of Democratic Control of the IBSBGS of Ukraine. Translated from http://www.pvu.gov.ua/inf/rozv/rozv18.htm (accessed July 11, 2007).

[217] Executive Decree of the President of Ukraine on September 4, 2003 (#797). Clauses 9, 10. Available at http://www.pvu.gov.ua/inf/zakon/pitadm.htm (accessed July 11, 2007).

activities. The Council is comprised of representatives from different state executive bodies, independent mass media, scientists, etc. The Council meets regularly and discusses a variety of issues related to the legislation covering the State Border Guard Service, recent events, budget, border-crossing issues, medical benefits of its employees, etc. As of July 2007, the Council is comprised of 15 members and its working plan includes eleven main issues for discussion.[218] However, the results of the Council's meetings are not published.

Regarding parliamentary oversight of the IBSBGS, the Committee on National Security and Defense plays the most important role. Oversight of the intelligence budget of the IBSBGS is also conducted by a special group of the Accounting Chamber of Ukraine, which will be discussed in the next chapter.[219]

The IBSBGS is an independent state budget entity. Since 2005, its intelligence budget does not belong to the budget of the State Border Guard Service of Ukraine. The budget of the IBSBGS has been continually increasing (see Figure 10).

Year	2003	2004	2005-1*	2005-2*	2006	2007
Budget in grivnas (Ukrainian Currency)	463300000**	603500000**	800400000**	885100000**	14995700	19974600
Budget in U.S. dollars (currency conversion rate is 5.05 grivnas for 1 dollar)	**91,742,575****	**119,504,951****	**158,495,050****	**175,267,237****	2,969,446	3,955,367
Increase (%)	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**33.2**

*The budget was amended in 2005 after the "Orange Revolution" and new presidential elections.
** Before FY2006, the budget of the IBSBGS was a part of the budget of the State Border Guard Service Administration and was not officially published.
Source: Created from the analysis of the State Budget of Ukraine (FY2003-2007). Available at http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=820241& cat_id=304, http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id= 812978&cat_id=69625, http://ru.proua.com/inform/137.html (accessed May 17, 2007) and http://ru.proua.com/inform/138.html (accessed July 8, 2007).

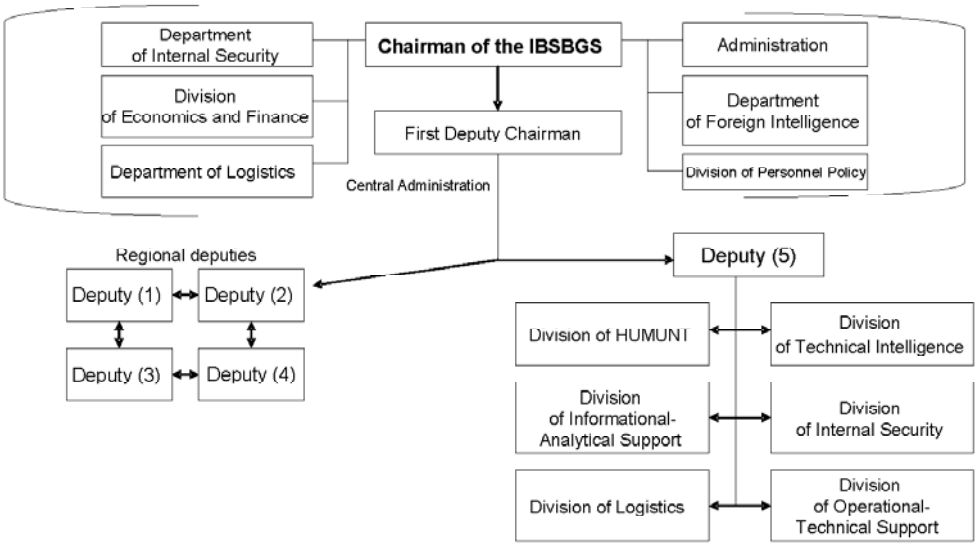
Figure 10. The Evolution of the Budget of the IBSBGS

[218] People Council of the State Border Guard Service. 2007. Personnel Composition and Plan of Issues to Discuss. Available at http://www.pvu.gov.ua/gromada.htm (accessed July 11, 2007).

[219] The System of Democratic Control of the IBSBGS of Ukraine. Translated from http://www.pvu.gov.ua/inf/rozv/rozv18.htm (accessed July 11, 2007).

2. Organization of the IBSBGS

The official Website of the IBSBGS does not provide information regarding its organization. However, some information is available from open sources and the current legislature. The organization of the IBSBGS is comprised of the Central Administration, the Foreign Intelligence Department, and five territorial directorates for intelligence (see Figure 11).



Source: Created from the analysis of legislation at http://www.pvu.gov.ua/npa.htm (accessed July 11, 2007) and data provided at the official website of the IBSBGS http://www.pvu.gov.ua/inf/rozv/rozv8.htm (accessed July 11, 2007).

Figure 11. The Organization of the Intelligence Body of the State Border Guard Service of Ukraine

The functional structure of the IBSBGS directorates includes units for HUMINT (human intelligence), technical intelligence, informational-analytical support, internal security, operation-technical units, and logistics support.[220]

The Chief of the Division of Economy and Finance formulates the financial policy of the IBSBGS. He is responsible for summarizing the intelligence budget proposals from the subordinated intelligence units and for submitting the finalized budget to the Chairman of the IBSBGS and then also to the Minister of Finance.

E. THE SECURITY SERVICE OF UKRAINE

1. Legislation

The Security Service of Ukraine (SSU) was created by the Verkhovna Rada of Ukraine on September 20, 1991, and was based on the Soviet KGB. The Ukrainian Committee of the KGB was the largest in the USSR at that time, because it protected the territory of Europe's second

[220] The Organization and the Functional Structure of the IBSBGS of Ukraine. Official Website of the IBSBGS. 2007. Available at http://www.pvu.gov.ua/inf/rozv/rozv8.htm (accessed July 11, 2007).

largest country. Thus, after independence and the emergence of a new democracy, it was historically necessary to reform the service, giving it new tasks and responsibilities.

The first law "On the Security Service of Ukraine" was enacted on March 25, 1992. It fixed the powers and authorities of the new state security organization. In most aspects, the tasks and missions of the SSU reflected the responsibilities of the former KGB, combining intelligence and law enforcement functions. However, the processes of building a democratic society required new legislation.

The laws "On Operational Investigatory Activity" of February 18, 1992 (#2135-XII), "On Fighting with Corruption" of October 5, 1995 (#356/95-BP), "On Organizational and Judicial Issues of Fighting with Organized Crime" of June 30, 1993 (#3341-XII), "On the State Sector" of January 21, 1994 (#3855-XII), "On Counterintelligence Activity" of December 26, 2002 (#374-IV), "On Intelligence Bodies of Ukraine" of March 21, 2001 (#2331-III), and "On Combating Terrorism" of March 20, 2003 (#638-IV) form the main legislation regulating the activity of the Security Service of Ukraine. Moreover, the presidential decree "On Fighting Corruption in Ukraine" of September 11, 2006 and the laws "On Organizational Structure and Total Strength of the Secret Service of Ukraine" of October 20, 2005 (#3014-IV) and "On the State Service of Special Communication" of January 1, 2007 are important in determining the mission of the SSU, its state protection and new tasks.[221]

The chairman of the SSU is appointed and dismissed by the Verkhovna Rada on the recommendation of the President of Ukraine. The Ukrainian parliament oversees SSU activities, policies and budget through the Committee on National Security and Defense. Moreover, the Committee for Legislative Provision of Law-enforcement Activity and the Committee for the Struggle Against Organized Crime and Corruption are responsible for oversight of the SSU funds spent for fighting organized crime and corruption.[222]

However, in reality, the President can appoint and dismiss the head of the service as s/he wishes. In accordance with the law "On Intelligence Bodies of Ukraine," the President appoints and dismisses the chairman, his first deputy, all deputies, and "is their main strategic task master and ultimate reporting officer."[223] The President conducts control over the SSU with the assistance of the Secretariat and the National Security and Defense Council. Moreover, according to the presidential order of October 22, 1998 (#1172/1998), the position of an Authorized Presidential Representative was created in the SSU. His office conducts real-time oversight procedures of the service's policies, activities and budget.[224]

The Cabinet of Ministers also participates in conducting executive oversight of the SSU. It performs its oversight functions through its Secretariat and special state committees and a commission.[225] The activities of those institutions will be discussed in Chapter VI.

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[221] The information regarding this legislation is available at http://www.sbu.gov.ua/sbu/control/uk/ publish/article;jsessionid=08327E4510209D2D77F904103E0E94CC?art_id=39449&cat_id=38875 (accessed July 13, 2007).

[222] Official Website of the SSU. 2007. Democratic Control of the Security Service of Ukraine. Legislative Oversight. Translated from http://www.sbu.gov.ua/sbu/control/uk/publish/ article?art_id=56851&cat_id=56802 (accessed March 28, 2007).

[223] Gordon Bennett, September 2004. The SBU – the Security Service of Ukraine. Conflict Studies Research Centre. Central and Eastern Europe Series. Defense Academy of the United Kingdom.

[224] Official Website of the SSU. 2007. Democratic Control of the SSU. Translated from http://sbu.gov.ua/sbu/control/uk/publish/article?art_id=56851&cat_id=56802 (accessed March 28, 2007).

[225] The system of parliamentary and executive oversight of the Ukrainian intelligence community will be examined in later chapters.

The SSU is an independent state budget entity. Its budget has been continually increasing (see Figure 12). Over the years, compared with the budget of FY2003, the budget of the SSU in FY2007 more than doubled in size, even after reforms that separated the intelligence component of the SSU from its law-enforcement departments and the Foreign Intelligence Service of Ukraine were organized.

Year	2003	2004	2005-1*	2005-2*	2006	2007
Budget in grivnas (Ukrainian Currency)	653300000	1004200000	1025600000	1140500000	1384847900	1563126600
Budget in U.S. dollars (currency conversion rate is 5.05 grivnas for 1 dollar)	129,366,337	198,851,485	203,089,109	225,841,584	274,227,307	309,530,020
Increase (%)	**N/A**	**53.7**	**2.1**	**11.2**	**21.5**	**12.9**

*The budget was amended in 2005 after the "Orange Revolution" and new presidential elections.
Source: Created from the analysis of the State Budget of Ukraine (FY2003-2007). Available at http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=820241&cat_id=304, http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=812978&cat_id=69625, http://ru.proua.com/inform/137. html (accessed May 17, 2007) and http://ru.proua.com/inform/138.html (accessed July 8, 2007).

Figure 12. The Evolution of the Budget of the SSU

Information regarding the SSU's budget and expenditure is considered as classified data. Due to the secret nature of this organization, it is expected that this information will remain protected in the future despite reform and the adoption of important democratic processes in the security sector that are currently taking place in Ukraine. The official Website of the SSU presents information regarding the need to classify the SSU budget, giving the Accounting Chamber of Ukraine more authority in overseeing the service's expenditure.[226]

[226] Translated from the Official Website of the SSU. 2007. Available at http://sbu.gov.ua/sbu/ control/uk/publish/article?art_id=56851&cat_id=56802 (accessed March 28, 2007).

2. Organization of the SSU and Its Main Tasks

The law "On the Organizational Structure and Total Strength of the Secret Service of Ukraine" of October 20, 2005 (#3014-IV) and the amendments to this law of February 8, 2007 (#656-V) completed the major (first) phase of the SSU's reform, establishing a new organizational structure and separating its intelligence and law-enforcement functions. The law allows the SSU to have the following general organizational structure: the Central Administration with subordinated regional bodies; military counterintelligence organs; educational, research and other establishments, organizations and entities of the SSU; and the Office of Governmental Communication (see Figure 13).[227]

The chairman of the SSU has a first deputy and several deputies working for him/her. The number of deputies has reached seven as of the beginning of July 2007.[228]

Source: Created from the law #3014-IV "On Organizational Structure of the Secret Service of Ukraine." 2005. Available at http://www.sbu.gov.ua/sbu/control/uk/publish/article?showHidden=1&art_id=45071&cat_id=38875&ctime=1132829148957 (accessed July 13, 2007).
Bennett, Gordon. September 2004. The SBU – the Security Service of Ukraine. Defense Academy of the United Kingdom.

Figure 13. The Organization of the Security Service of Ukraine

As of October 2005, the total strength of the SSU is 41,750 people, including 34,610 military

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[227] Translated from the law #3014-IV "On Organizational Structure and Total Strength of the Secret Service of Ukraine." October 20, 2005. Available at http://www.sbu.gov.ua/sbu/control/uk/publish/article?showHidden=1&art_id=45071&cat_id=38875&ctime=1132829148957 (accessed July 13, 2007).

[228] Ukrainian Informational Agency "INTERFAX-UKRAINE." April, 16 2007. Information translated from http://www.podrobnosti.ua/power/rest/2007/04/16/415776.html (accessed May 17, 2007).

servicemen.[229] The SSU's central organs are divided into departments, main directorates, directorates, and divisions. The most important of these are the Counterintelligence Department; The Information Support & Operations Management Department; the Department of Counterintelligence Protection of the National Economy; State Protection & Counterterrorism Department; Special Telecommunication Systems & Information Protection Department; Logistics & Maintenance Support Department; Main Analytical & Forecasting Directorate; Main Directorate for Combating Corruption & Organized Crime; State Secrets Protection Department; Personnel Policy Directorate; Internal Security Department; Treaties & Legal Department; Investigation Directorate; Scientific & Technical Directorate; State Archives of the SSU; Military-Medical Directorate and Financial Department.[230] Moreover, the law authorizes the SSU to have an Antiterrorist Center.

The SSU is built to support all activities of the Central Administration in the Ukrainian regions. The regional bodies are very flexible in creating units to provide security in the region. The law authorizes regional bodies to establish and develop the following functional units: counterintelligence; protection of the nation; counterintelligence protection of the Ukrainian economy; fighting against corruption and organized crime; combating terrorism; protection of witnesses before court decision; protection of servicemen of law-enforcement agencies; protection of state secrets; operational-technical activities; operational documentation; special telecommunication systems and information protection; informational-analytical; personnel policy; logistics support; and finance.

Reform of this huge intelligence and security structure has been ongoing since 2004. It began when an independent intelligence agency — the Foreign Intelligence Service of Ukraine — was organized.

F. SUMMARY

It has been shown that the UIC is comprised of four intelligence and security agencies. Each agency has independent tasks and missions, which differs from the other organizations, as well as some overlapping functions. This makes appropriate parliamentary and executive oversight difficult.

The Foreign Intelligence Service of Ukraine emerged from the Security Service of Ukraine. It was the beginning of an important process of reform of the UIC, which has been going on since 2003. The FISU is primarily an intelligence organization and performs its tasks abroad.

HUMINT and SIGINT functions found within intelligence organizations are different in nature and separated in most western and transitional democracies. In Ukraine, however, the FISU is authorized to conduct both HUMINT and SIGINT operations. It makes the service a very powerful intelligence and security "tool" available to current political leaders. At the same time, it is difficult for the Parliament and state executive bodies to exercise effective oversight of this complex structure.

Moreover, it is not clear whether the FISU conducts SIGINT operations abroad only or uses its powers and capabilities inside Ukraine as well. If such operations are conducted abroad, it would be in keeping with the purpose of the Foreign Intelligence Service. If those operations are

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[229] This information is translated from the law #3014-IV "On Organizational Structure and Total Strength of the Secret Service of Ukraine." October 20, 2005. Available at http://www.sbu.gov.ua/sbu/ control/uk/publish/article?showHidden=1&art_id=45071&cat_id=38875&ctime=1132829148957 (accessed July 13, 2007).

[230] The information regarding the principal central organs of the SSU was also taken from Gordon Bennett, The SBU – the Security Service of Ukraine, 7-13.

conducted in Ukraine, it is not clear which state structures control these activities and what governmental departments are being served by such operations.

In addition, the function assigned by law to the FISU of providing security to Ukrainian military and civilian personnel and their family members abroad, as well as safeguarding attached officers who have access to state secrets abroad, is in conflict with the original function of foreign intelligence services. By nature, such activities are closer to the tasks of security agencies. Thus, these security missions of the FISU are overlapped with similar functions performed by the Security Service and the Intelligence Body of the State Border Guard Service of Ukraine. Such duplication of duties can lead to unnecessary competition among the agencies of the UIC and an inefficient use of intelligence resources and funds.

The Main Directorate of Intelligence of the Ministry of Defense is also focused on conducting intelligence activities abroad. It does not have mixed intelligence and security functions and operates overseas primarily through the HUMINT resources. The MID does not have a powerful SIGINT capability. Its SIGINT functions are military in nature, and focused on performing tasks during military operations and local conflicts, when intelligence units need to intercept an enemy's means of communication.

The MDI has a clear organizational structure that allows for effective control by the Ukrainian parliament and different state executive bodies. Moreover, the intelligence budget of the MDI is not big and, therefore, should not be difficult to oversee.

The Intelligence Body of the State Border Guard Service of Ukraine became an independent intelligence agency and state budget entity in 2005. However, the activities of the IBSBGS are still unexplainably controlled and directed by the State Border Guard Service. Its budget is small and should not be difficult to oversee by parliamentary and state executive bodies.

Being authorized by the law "On Intelligence Bodies of Ukraine" to conduct intelligence functions, in practice the IBSBGS performs primarily security tasks, which are mixed with law-enforcement activities. In addition, the law allows the IBSBGS to conduct counterintelligence missions along the state border of Ukraine and safeguard Ukrainian personnel and state secrets. Given the fact that its intelligence tasks are minor, it is most likely that in the near future this organization will leave the UIC and join the family of law-enforcement agencies.

The Secret Service of Ukraine has been experiencing reform since 2003. These processes are still underway at the time of writing this paper. It appears that the SSU will become the primary national law-enforcement agency with pure security and counterintelligence functions.

Although the SSU is not mentioned by the amended law as an intelligence organ of Ukraine, its powerful capabilities are directed to perform tasks of the UIC in the sphere of fighting against terrorism and organized crime. After the first phase of reform, the SSU remains an enormous organization and influences the national intelligence estimation processes more than any other organization within the UIC.

The SSU also continues to conduct some intelligence operations abroad. Despite the reduction of the size of the agency (after the separation of the Main Intelligence and SIGINT directorates), the SSU has an extremely large budget which has been growing since the 2004 reforms. It is also unclear why the budget of the SSU has been increasing when the most costly directorates left the SSU and become part of a state independent budget entity (the Foreign Intelligence Service). Such manipulations of functions and organizations within the UIC make budget oversight of the SSU problematic.

It is also worth mentioning that the UIC does not have an all-source analysis intelligence

agency that provides a single national intelligence estimate based on information from other national intelligence and security organizations. The practice of agencies reporting independently, as well as performing similar functions, creates certain difficulties and inefficiency in the intelligence decision-making process, nor does it benefit the Ukrainian foreign policy decision-making process. Moreover, national budget constraints obligate Ukraine to create such an independent all-source analytical agency and clarify in detail the intelligence and security tasks among agencies of the UIC.

To oversee such complex intelligence and security organizations requires a change in the system of parliamentary and executive oversight. The next chapter will examine how intelligence oversight is conducted by the Ukrainian parliament. The intelligence budget process and the intelligence budget oversight mechanisms will be introduced and discussed.

V. PARLIAMENTARY OVERSIGHT OF THE UKRAINIAN INTELLIGENCE COMMUNITY

A. INTRODUCTION

Robert A. Dahl, an American scholar, said "the most fundamental and persistent problem in politics is to avoid autocratic rule."[231] As the Ukrainian Intelligence Community (UIC) deals with one of the state's core tasks — national security — a system of oversight and control is needed to counterbalance the executive's power. Parliamentary oversight of the intelligence community is an essential element of power-sharing at the state level and can set certain restrictions on the power of the executive or president.[232]

One of parliament's most important mechanisms for controlling intelligence executives is the budget. Ukrainian intelligence organizations use a considerable portion of the state budget. Thus, it remains vital that the Verkhovna Rada (Ukrainian Parliament) monitor the intelligence budget process and ensure that the use of the state's scarce resources is both effective and efficient.

The Verkhovna Rada is the highest legislative body of Ukraine. It consists of one chamber of four hundred and fifty parliamentarians. One half of the Verkhovna Rada is elected by local constituents and the other is half through the elective lists of the political parties that won in the previous election.

Article 85 of the Ukrainian constitution gives important powers and rights to the Verkhovna Rada to perform oversight of the Ukrainian Intelligence Community (UIC). The key powers and authority of the parliament are underlined in paragraphs 4 and 22 of the article: "(4) – approve the State Budget of Ukraine and introduce amendments to it; control the implementation of the State Budget of Ukraine and adopt decisions in regard to the report on its implementation; and (22) – confirm the general structure and numerical strength, and define the functions of the Armed Forces of Ukraine, the Security Service of Ukraine and other military structures created in accordance with the laws of Ukraine."[233]

Based on this constitutional power, the Ukrainian parliament has adopted special legislation to oversee activities and budgets of the UIC and law-enforcement agencies. Ukrainian legislation dealing with intelligence and intelligence budget oversight is presented primarily in a specific law passed in March 2001, "On the Intelligence Bodies of Ukraine" (amended in 2005), and two basic laws passed on June 19, 2003 "On Democratic Civilian Oversight of the Military Organization and Law-enforcement Agencies of Ukraine" and "On the Fundamentals of the National Security of Ukraine." The fundamental provisions of these laws are elaborated in special legislative acts dealing

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[231] A program of the Institute of Politics and the Phillips Brooks House. 2007. Harvard CIVICS, 5 http://www.usc.edu/schools/college/unruh/private/docs/Harvard_CIVICS_Curriculum_Spring_20051.doc (accessed June 6, 2007).

[232] Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices. 2003. Handbook for Parliamentarians, No. 5, 18. Geneva Centre for the Democratic Control of Armed Forces (DCAF).

[233] Constitution of Ukraine. 1996. Chapter IV: The Supreme Rada of Ukraine. Article 85. Available at http://www.rada.gov.ua/const/conengl.htm#r4 (accessed May 29, 2007).

with intelligence oversight issues, such as "On the Verkhovna Rada's Committees," "On the Procedures of Verkhovna Rada of Ukraine," and "On the Accounting Chamber of Ukraine." In addition, the major intelligence budget procedures are explained in the national law of 2001, "On the Budget Code of Ukraine."

The Verkhovna Rada carries out the functions of intelligence and intelligence budget oversight through its permanent parliamentary committees. According to Article 89 of the constitution, the Verkhovna Rada confirms the list of all parliamentary committees, and elects chairmen to the respective committees. This list is usually drawn up during the first plenary session of the new parliament based on the proposition of the people's deputies.

The Committee for National Security and Defense (CNSD) is the major parliamentary body that deals with intelligence and intelligence budget oversight. By law, the CNSD prepares legislation on intelligence issues, oversees the UIC structure and the policies and activities of its intelligence agencies, authorizes and controls intelligence appropriations and conducts the preliminary consideration of intelligence issues under the authority of the Verkhovna Rada of Ukraine.[234] During the State Budget appropriations process the Budget Committee (BC) plays an important role in intelligence budget oversight as it has the power to review proposed intelligence expenditure and to influence decisions regarding final intelligence appropriations. These committees prepare legislative drafts on issues of intelligence funding and authorize the UIC agencies to use appropriated funds. Both committees are also allowed to oversee intelligence expenditure during the various stages of the intelligence budget cycle.

To enhance intelligence budget oversight, the Ukrainian parliament exercises its control powers over the UIC via the Accounting Chamber (AC). According to the law "On the Accounting Chamber of Ukraine," it supervises the use of the national budget funds of governmental and non-governmental organizations, and the expenditure of independent state bodies, such as agencies of the UIC (the key spending units).

Thus, the Ukrainian legislature empowers parliamentarians to oversee both operational activities and financial aspects of the UIC. They can make necessary decisions regarding intelligence budget authorization and appropriations, as well as monitor the financial activities of intelligence organizations.

This chapter consists of three main sections. First, it will describe the typical intelligence budget process in Ukraine, with emphasis on intelligence budget development inside intelligence agencies and subsequent processes within the Ukrainian parliament. The next section discusses the oversight mechanisms and jurisdiction of the parliamentary Committee for National Security and Defense and the Budget Committee. Finally, the role of the Accounting Chamber of Ukraine on the issue of intelligence budget oversight will be considered.

B. INTELLIGENCE BUDGET PROCESS

The introduction of the Budget Code of Ukraine in June 2001 affected the Ukrainian budget system and budgeting for the Ukrainian intelligence community in particular. According to the

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[234] Constitution of Ukraine. 1996. Chapter IV: The Supreme Rada of Ukraine. Article 89. Available at http://www.rada.gov.ua/const/conengl.htm#r4 (accessed May 29, 2007).

law "On the Budget Code of Ukraine," the list of key budget entities (national spending units) of the State Budget of Ukraine is established each fiscal year and should be approved by the State Budget Law by establishing budget appropriations.[235] Today, all four agencies of the UIC have the status of budget entities. Each has an independent budget line in the State Budget of Ukraine and, therefore, is obligated to conduct budget development and execution procedures independently from the rest of the state budget entities, as well as defense, security and law-enforcement agencies.

The Budget Code of Ukraine provides the time frame and other requirements for all participants of the budget process. Its Article 19 identifies four stages in the national budget process. These stages include: formulating draft budgets; considering and passing the State Budget Law of Ukraine; executing the budget; and preparing and considering reports on budget execution and making decisions on these reports. Moreover, the law requires that each key budget entity be controlled at each stage of the budget process by conducting financial control and audits.[236]

The intelligence budget process is designed to meet the requirements of the Budget Code. To achieve these objectives, the following procedures are employed.

1. Development of the Intelligence Budget within Intelligence Organizations

Among intelligence organizations of the UIC, the internal processes of financial planning and budgeting are approximately the same. In each intelligence agency these processes are performed under the coordination and supervision of a Chief of the Financial Department (CFD). As mentioned in Chapter IV, the Financial Department is part of the organizational structure of every intelligence agency of the UIC. It usually carries out its functions within an administrative directorate. The CFD is subordinated directly to the director of an intelligence agency. The CFD is the executive body through which an intelligence director exercises his authority over the spending of intelligence funds.

The Budget Code of Ukraine requires an intelligence agency to provide the Cabinet of Ministers with an intelligence budget proposal on a timely basis through the Ministry of Finance. The Cabinet of Ministers is responsible for development of the State Budget of Ukraine, which, after approval of the parliament, becomes a national law.

Each year (see Figure 14), the Cabinet of Ministers, together with the Ministry of Finance and the Ministry of Economy and European Integration, issues a report "On the Guidelines of Budget Policy for the Next Budget Period." These propositions and recommendations are designed to help state budget entities to develop their budgets for the next fiscal year and provide targets, ceilings, and necessary guidelines.

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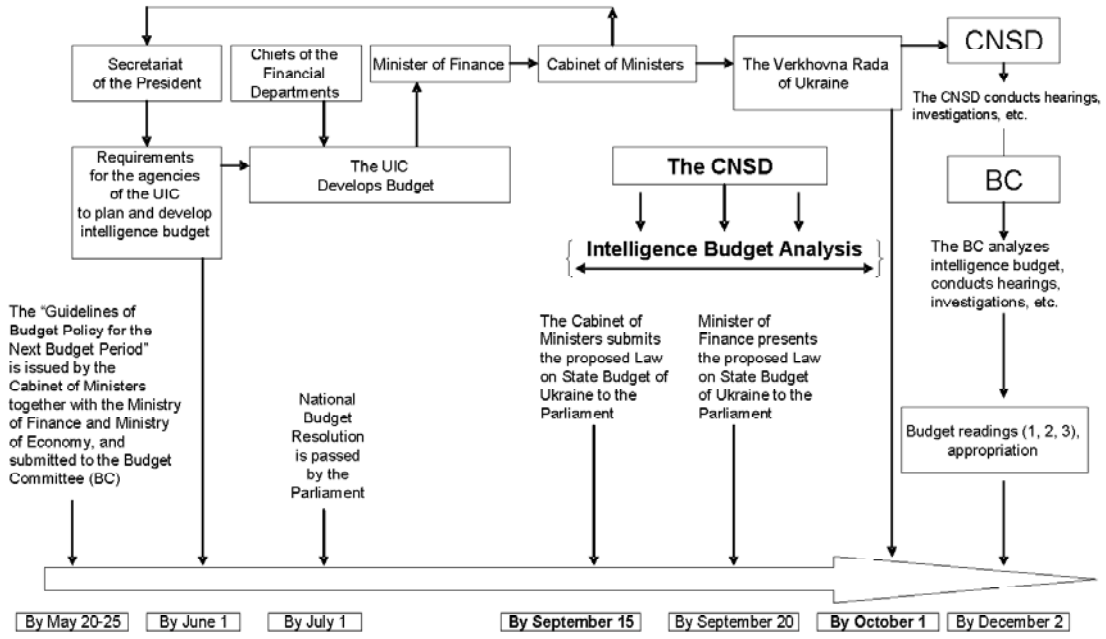
[235] Translated from the law "The Budget Code of Ukraine." 2007. Chapter 1. Paragraph 4: Budget Process and Participants. Article 22: Key Spending Units and Main Functions Thereof. Available at http://meget.kiev.ua/pg.php?i=29 (accessed May 29, 2007).

[236] Ibid., Article 26: Audit and Financial Control.



Source: The Budget Code of Ukraine, http://meget.kiev.ua/pg.php?i=29 (accessed May 30, 2007).

Figure 14. The Intelligent Budget Process in Ukraine

According to the Code, this document should be submitted to the Verkhovna Rada Budget Committee by the end of May and no later than four working days prior to the parliamentary plenary session of June 1. In order to expedite the budget process in 2007, the Guidelines were submitted to the Parliament by May.[237]

No later than June 1, or the first day of a plenary session of the Verkhovna Rada after this date, hearings on budget policy for the next budget period take place in the Ukrainian parliament. A report "On the Guidelines of Budget Policy for the Next Budget Period" is presented by the Prime Minister of Ukraine or by the Minister of Finance.[238] Based on this report and results of the parliamentary hearings, a Budget Resolution on approving or taking into consideration the Guidelines of the Budget Policy for the next budget period is passed by the Verkhovna Rada no later than July 1. This Resolution is a major guideline for the national budget entities to develop budgets for the next fiscal year. However, for the agencies of the UIC it is not the main document to develop intelligence budgets.

The Resolution serves for them as additional information to develop their budgets, because each intelligence agency has its special guidelines and requirements for intelligence budget planning and development. Those special guidelines come from the Head of the Secretariat of the President

[237] The Interview of the First Vice-Prime Minister, Finance Minister of Ukraine Mykola Azarov to the Radio Station "Ukraine" on March 22, 2007. Available at http://www.nrcu.gov.ua/index.php/index.php?id=148&listid=43009 (accessed May 31, 2007).

[238] Translated from the law "The Budget Code of Ukraine." 2007. Article 33: Definition of the Guidelines of Budget Policy for the Next Budget Period. Available at http://meget.kiev.ua/pg.php?i=29 (accessed May 29, 2007).

(office of his Deputy for Intelligence and Law-enforcement Issues, in particular). Earlier — usually by May of a current fiscal year (FY) — some recommendations also come from the CNSD to intelligence agencies in order to avoid big differences in intelligence budget estimations. For example, the recommendations regarding the FY2005 intelligence budget of the Secret Service of Ukraine were done by the CNSD on April 8, 2004.[239] Taking under consideration the reform processes that took place in the Ukrainian Secret Service in 2005 (the separation of foreign intelligence from law-enforcement functions), the CNSD provided its recommendations to the just created Foreign Intelligence Service regarding the budget developments for FY2007 on December 13, 2006, while conducting the working meeting with the intelligence service's executives.[240]

During this time, as a rule, informal and formal meetings and consultations take place between intelligence officials and the Office of the Deputy for Intelligence and Law-enforcement Issues to update intelligence requirements and discuss agencies' appropriations for the next fiscal year. Therefore, the legislative and executive branches, by law, may start conducting their intelligence budget oversight functions during the first stage of the intelligence budget process (budget preparation).

Based on these special recommendations, the director of an intelligence organization releases internal documents (instructions) that regulate the agency's intelligence budget processes, as well as timeframes for budgeting in subordinate intelligence spending units. These spending units submit their budget estimates to the CFD. The CFD revises these estimates, determines the intelligence financial requirements for the upcoming year, and prepares consolidated budget estimates of the agency's income and expenditure. The intelligence organization's budget request is then reported to the director of the given intelligence agency.

Once it is approved by the agency's director, the intelligence budget request goes for submission to the Ministry of Finance of Ukraine for revision and standardization. The Ministry of Finance is responsible for coordination of budget request preparation activities among national budget entities. It is also in charge of combining those requests into one single document — the State Budget Proposal (the draft State Budget Law of Ukraine).[241] The Ministry is allowed to analyze and control the budget requests of the national budget entities at this stage of the budget preparation process. Based on the results of the analysis of each budget entity, the Ministry of Finance may make a decision to include or exclude a certain portion of the budget request in the final request that is later submitted to the Cabinet of Ministers.[242]

After its submission to the Ministry of Finance, the intelligence budget request becomes a part of the Cabinet's Budget Proposal, which is presented to the Secretariat of the President. Following revisions made by the Secretariat of the President, the proposed intelligence budget returns to the

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[239] News of the CNSD. Archive. 2004. Propositions Regarding the Budget of the Secret Service of Ukraine for 2005. Available at http://www.rada.gov.ua/~k_obor/news/news/20040408news0036.htm (accessed June 13, 2007).

[240] Materials of the Visiting Meeting of the CNSD to the Foreign Intelligence Service of Ukraine. 2006. Available at http://www.szru.gov.ua/messages.php?lang=ua&item=37&page=1 (accessed June 13, 2007).

[241] Translated from the law "The Budget Code of Ukraine." 2007. Article 32: Organizational Principles on Formulation of the State Budget of Ukraine. Available at http://meget.kiev.ua/pg.php?i=29 (accessed May 29, 2007).

[242] Translated from the law "The Budget Code of Ukraine." 2007, Article 36: Analysis of Budget Requests and Development of Proposals to the draft State Budget of Ukraine. Available at http://meget.kiev.ua/pg.php?i=29 (accessed May 29, 2007).

Cabinet of Ministers and to the Ministry of Finance, in particular, for final revision. Later it becomes a classified appendix to the draft State Budget Law of Ukraine that should be submitted by the Cabinet of Ministers to the Parliament for reading and approval (authorization) no later than September 15.[243] Afterward, the classified appendix should be reported to the CNSD and the BC for final scrutiny.

2. Budgeting for Intelligence within the Parliament

The CNSD and the BC start analyzing and reviewing the intelligence budgets of the UIC after they are submitted by the Cabinet of Ministers to the Verkhovna Rada (by September 15). Expenditure for intelligence budget programs are presented to the relevant committees as classified appendices of the draft State Budget Law.

The State Budget does not show the detailed amount of expenditure proposed for intelligence programs. Article 31 of "The Budget Code of Ukraine" emphasizes that the State Budget of Ukraine should contain explanations for all expenditure, except for expenditure involving State secrets (funding of classified programs). Therefore, secret intelligence expenditure planned for the activities of bodies of State power for purposes of national security are included in the State Budget of Ukraine without details.

According to "The Budget Code of Ukraine," four parliamentary committees, the Accounting Chamber and the Ministry of Finance are authorized to overview secret budget expenditure.

> The Accounting Chamber and the Ministry of Finance of Ukraine shall supervise secret expenditure in keeping with procedures established by the Verkhovna Rada of Ukraine. Reports on secret expenditure shall be reviewed by the **Verkhovna Rada Budget Committee**, the Verkhovna Rada Committee for Legislative Provision of Law-enforcement Activity, the Verkhovna Rada Committee for the Struggle Against Organized Crime and Corruption, and the **Verkhovna Rada Committee for National Security and Defense**. Some reports on the use of funds for secret expenditure shall be reviewed by the Verkhovna Rada of Ukraine at a secret sitting.[244]

However, classified intelligence budgets and expenditure are reviewed only by the CNSD, the BC, and the AC. They are also allowed to oversee expenditure of classified intelligence budget items.

The Ministry of Finance also reviews this budget information before including it within the draft State Budget of Ukraine. The Committee for Legislative Provision of Law-enforcement Activity and the Committee for the Struggle Against Organized Crime and Corruption are responsible for reviewing the classified budgets of the Ministry of Interior and other law-enforcement agencies. The latter committee has statutory power to request information from the Secret Service of Ukraine and oversee the use of its funds for fighting organized crime and corruption.[245]

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[243] Ibid.

[244] Translated from the law "The Budget Code of Ukraine." 2007. Article 31. Available at http://meget.kiev.ua/pg.php?i=29 (accessed May 30, 2007).

[245] Democratic Control of Secret Service of Ukraine. 2007. Legislative Oversight. Available at http://www.sbu.gov.ua/sbu/control/uk/publish/article?art_id=56851&cat_id=56802 (accessed March 28, 2007).

Within 5 days after the Cabinet of Ministers of Ukraine submits the draft State Budget Law to the Parliament (September 15), the Minister of Finance of Ukraine should present it to a plenary meeting and submit it to the BC.

After accepting the draft State Budget Law of Ukraine submitted by the Cabinet (but no later than October 1), the draft State Budget Law of Ukraine is reviewed by people's deputies, relevant committees, and political factions of the Verkhovna Rada of Ukraine. "The Verkhovna Rada's committees formulate their proposals regarding the draft State Budget of Ukraine, submit them to the Budget Committee, and appoint representatives to take part in the Budget Committee's work. The deadline for submission of proposals by Verkhovna Rada members is October 1."[246]

Thus, the CNSD reviews and analyzes the intelligence budget during the period from September 15 to October 1. During this timeframe, closed-door hearings take place at the CNSD on intelligence budget issues. Usually, intelligence executives personally report budget requests of intelligence agencies. Intelligence officials may also be required to explain in detail the financial aspects of certain intelligence programs and provide justification for including those expenditure for the upcoming year. Later, the CNSD submits its estimation regarding the budget for intelligence to the BC for further review.

While analyzing the intelligence budget request from the CNSD, the BC may also hold hearings to ask the agencies' directors to explain financial details of selected intelligence programs. According to Article 39 of the law "On the Budget Code of Ukraine," the representatives of the CNSD should be delegated to the BC to work together to summarize the intelligence budget proposals. This is a mandatory procedure that happens every year.

The goal of this liaison activity is to reach agreement between the CNSD and the BC regarding the main features of intelligence budgets. The agreement between the two committees is worked out during the special meeting or conference behind closed doors. The materials of that meeting are not published. No information is available to indicate that the agreement regarding intelligence budgets between these committees was not reached or was postponed for an uncertain period.

Having reached an agreement in both committees, the proposed intelligence budget becomes a part of the final report of the BC to the Parliament regarding the proposed draft State Budget Law of Ukraine. Based on the requirements of Article 31 of the Code, budgets for intelligence are included in this proposed draft without details. The final report of the BC to the Parliament opens the first reading of the proposed draft State Budget Law of Ukraine.

After parliamentary approval of the Budget Committee's report, the Cabinet of Ministers has two weeks to implement the amendments and recommendations of the Rada and submit it to the Parliament for the second reading. The second reading once again begins with the report of the Ministry of Finance. The Verkhovna Rada can approve the proposed second draft state Budget Law by voting. If this vote fails, the proposed Law goes to the BC for further revision. Standing committees and people's deputies have three days to submit their amendments to the BC, which then has five days to make amendments and provide deputies with its conclusions (no later than three days before the third reading starts). The third reading repeats the general procedures of the second one.

Theoretically, the UIC can amend its budget during the first or the second reading. However,

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[246] Translated from the law "The Budget Code of Ukraine." 2007. Article 39: Presentation of the draft State Budget Law of Ukraine to the Verkhovna Rada of Ukraine. Available at http://meget.kiev.ua/ pg.php?i=29 (accessed May 29, 2007).

the conference agreement between the CNSD and the BC almost "fixes" the intelligence budgets. The current Ukrainian legislature allows any budget entity (as well as intelligence agencies) to initiate an amendment to the law "State Budget of Ukraine" any time it considers it necessary. If an agency of the UIC needs to increase appropriations, it gets approval from the Secretariat of the President, the National Security and Defense Council and the Cabinet of Ministries. The agency then writes its proposals to the CNSD. After conducting an analysis of the proposed issue (and audits if necessary), the committee makes its decision to refuse or support the proposed amendment. If they support it, the CNSD organizes statutory procedures to prepare an amendment for reviewing and voting in the Verkhovna Rada. This procedure is very complicated and, due to continuous budget constraints in Ukraine, is not likely to be successful.

An agency of the UIC has only succeeded once in changing its budget. In 2004, the CNSD introduced to the people's deputies its proposals to increase the FY2004 intelligence budget of the Security Service of Ukraine. The amendment to the law "State Budget of Ukraine" was adopted by the Verkhovna Rada in April 2004.[247]

On November 21, 2005, the CNSD announced that during the first reading of the proposed law "State Budget of Ukraine for 2006," the propositions of the intelligence agencies and the CNDS regarding the FY2006 intelligence funds were simply ignored by the Parliament. The letter was sent to the President of Ukraine, the National Security and Defense Council, the Cabinet of Ministers and the Budget Committee.[248] However, the attempt to increase intelligence funding was unsuccessful. The CNSD official Website does not contain information that the proposed additional funds were approved and included into the proposed FY2006 budget for intelligence.

On September 22, 2006, based on the additional requests of intelligence agencies, the CNSD issued propositions regarding the budget amendments of intelligence agencies in 2007.[249] However, the published intelligence budget for FY2007 does not indicate whether the proposed amendments were approved by the Parliament.

The State Budget Law of Ukraine should be passed by December 2. This law officially appropriates expenditure for state budget entities, including intelligence agencies. If the Parliament fails to complete the budget on time, a special resolution on the financing of vital expenditure should be passed by the Parliament until final approval of the law. The Ukrainian Parliament has not failed to provide funds for the intelligence organizations on time since this process began in 1992.

C. THE PARLIAMENTARY OVERSIGHT COMMITTEES: JURISDICTION AND RESPONSIBILITIES

According to the Constitution, the Verkhovna Rada holds significant authority and has access to any state information and classified data as well. Article 86 of the Constitution of Ukraine stipulates that the people's deputies can call on the executive branch to conduct investigations and obtain any

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[247] The CNSD. Archive. Regarding the Proposed Law "On Changes of the Law On State Budget of Ukraine." 2004. Available at http://www.rada.gov.ua/~k_obor/news/archive.htm (accessed June 14, 2007).

[248] The CNSD. Archive. Available at http://www.rada.gov.ua/~k_obor/news/20060922news0007.htm (accessed June 14, 2007).

[249] The CNSD. 2006. Propositions of the CNSD to Increase Budgets of Agencies Dealing with the National Security and Defense Issues. Available at http://www.rada.gov.ua/~k_obor/news/ 20060922news0007.htm (accessed June 14, 2007).

kind of information. The results of these inquiries should be reported to and discussed at sessions of parliament.

The law "On the Verkhovna Rada of Ukraine Committees" specifies the power of committees to call for investigations. It says that all executive bodies, entities and organizations, as well as their officials, must provide committees with all information, original documents and copies upon their request. In addition, the law gives the parliamentary committees and its people's deputies the power to question executives in the parliament committees, organize hearings for them and request cabinet officers, civilian and military to testify in parliament.

There is no special parliamentary committee in the Verkhovna Rada that deals exclusively with intelligence issues. The CNSD includes for these purposes a subcommittee "On Legislative Support of National Security and Intelligence Bodies of Ukraine," which is the key substructure of the Verkhovna Rada in the system of intelligence and intelligence budget oversight.

The Verkhovna Rada Budget Committee (BC) also deals with the issues of intelligence budget oversight. However, its intelligence budget oversight functions are operational mostly during the short period of intelligence budget appropriation. It does not have the power to influence intelligence expenditure after they are appropriated.

1. The Committee on National Security and Defense

a. The Organizational Structure of the Committee, the Main Functions and Tasks of Its Subcommittee on Intelligence Issues

The CNSD was created by the Ukrainian Parliament on October 10, 1990. At this time it was a permanent parliamentary commission "On the Issues of Internal and External Security." According to the parliamentary decision of May 13, 1998 "On the Verkhovna Rada Committees," the commission was renamed as the Committee on National Security and Defense.[250] Based on a decision of the Ukrainian Parliament on February 20, 2003, fourteen people's deputies are delegated to the CNSD to carry out oversight duties and support the committee's functions. On June 4, 2007, this statutory number was increased to sixteen.

All political parties of the Verkhovna Rada are represented on this committee (six positions for the "Blok of Ulii Timoshenko," five for the "Party of Regions," three for "Our Ukraine," one for the "Socialistic Party," and one for the "Communist Party").[251] It is worth mentioning that only five members of the CNSD had experience serving in intelligence and security organizations: one served in military intelligence; two were high ranking officers in the Armed Service of Ukraine; and two members of the CNSD had long experience serving in the KGB and later in the Security Service of Ukraine.[252]

The committee considers draft legislation and overview issues of intelligence and national security and defense. The law "On the Verkhovna Rada of Ukraine Committees" stipulates that the committee can establish subcommittees to organize work within specific areas.

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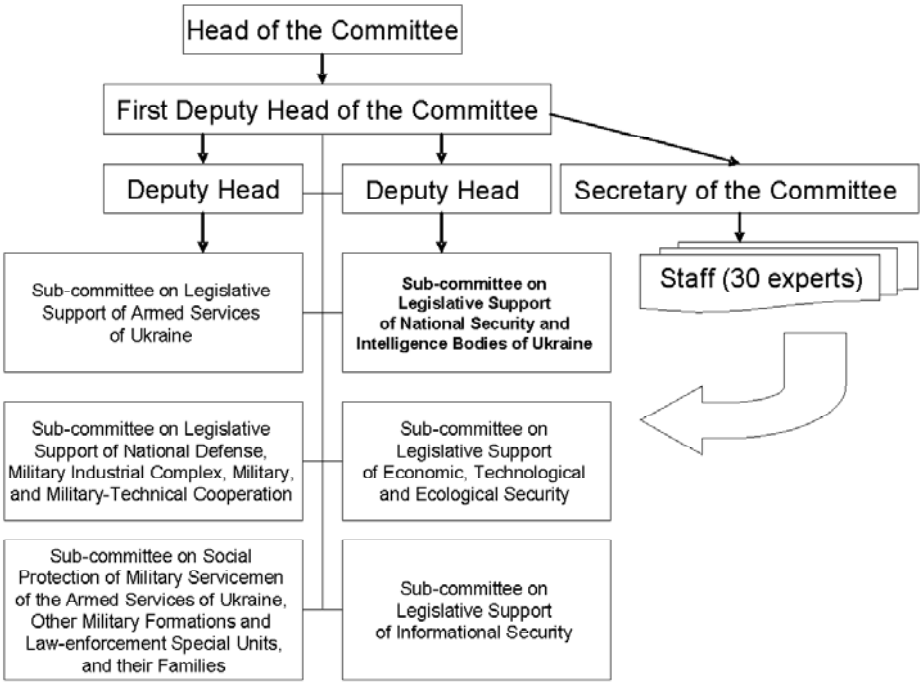
[250] History of the Ukrainian Parliamentary Committee on National Security and Defense. 2007. Translated from the official Committee's Website. Available at http://www.rada.gov.ua/~k_obor/about.htm (accessed June 3, 2007).

[251] The CNSD. 2007. Composition of the Committee. Available at http://gska2.rada.gov.ua/pls/ site/p_komity_list?pidid=1808 (accessed June 14, 2007).

[252] The CNSD. 2007. Biographies of the CNSD's members are available at http://www.rada.gov.ua/~k_obor/vip.htm (accessed June 14, 2007).

> Sub-committees should include at least three members of the committee; members of the committee may have membership in more than one sub-committee. Sub-committees are supported by the respective divisions in the committee Secretariat and its staff members…The secretariat of the committee organizes the work of the committee providing information, consultation, and documentation. The staff of the secretariat comprises about thirty experts.[253]

The CNSD contains six subcommittees (see Figure 15). The subcommittee on Legislative Support of National Security and Intelligence Bodies of Ukraine is the main structure of the CNSD that oversees the activities of intelligence agencies and conducts intelligence budget oversight.



Source: The Verhovna Rada Committees. 2007.
Available at http://gska2.rada.gov.ua/pls/site/p_komity?pidid=1808 (accessed June 5, 2007)

Figure 15. The Organization of the Committee on National Security and Defense

The subcommittee's main functions and tasks regarding intelligence oversight are the following:[254]

- Lawmaking activity related to the issue of intelligence and intelligence budget oversight, including the examination upon its own initiative or instruction from the Parliament; preliminary review of draft laws submitted by other parliamentary committees and people's deputies on intelligence issues; preparation of the conclusions and recommendations with regard to draft laws on intelligence matters;

[253] Leonid Polyakov, January 2005. An Analytical Overview of Democratic Oversight and Governance of the Defense and Security Sector in Ukraine, 29. DCAF. Geneva. Available http://www.dcaf.ch/publications/Working_Papers/152.pdf (accessed June 3, 2007).

[254] Translated from: Main Functions and Tasks of the Committee on National Security and Defense. Available at http://www.rada.gov.ua/~k_obor/about.htm (accessed June 3, 2007).

- Collecting, studying and researching information related to the activity of the CNSD; organizing hearings for intelligence executives, as well as during the parliamentary sessions;
- Participating in the formulation of intelligence budgets and in the control over them; preliminary review of international treaties and agreements on intelligence cooperation issues; preparation of conclusions concerning their ratification or abrogation.

The subcommittee also has a legal right to call for investigations in the intelligence sector. A new law "On Temporary and Special Inquiry Commissions of the Verkhovna Rada of Ukraine" may update current procedures to conduct such investigations.[255] The proposed law was provided to the parliament on March 5, 2007 for registration, review and vote.

The subcommittee "On Legislative Support of National Security and Intelligence Bodies of Ukraine" continually overviews the most important intelligence issues and reports them to the CNSD. The subcommittee conducts regular meetings with intelligence executives, testifies at hearings, and organizes inspections.

Given that the sub-committee deals with classified intelligence issues, its decisions are not widely published in the mass media. The official Website of the CNSD does not provide detailed information concerning the functional successes of the committee and its subcommittees in reviewing the intelligence agencies. Materials on hearings and other events of the CNSD and its relevant subcommittee regarding intelligence oversight functions are also not published at the official Website of the Verhovna Rada. In addition, no information is available concerning thematic subjects of those hearings.

The most recent report of the Ukrainian mass media regarding the attempt of the CNSD to summon the Chairman of the Ukrainian Secret Service and the Secretary Deputy on Intelligence and Law-enforcement Issues of the Presidential Secretariat to testify before the Parliament was published on May 16, 2007. On that day, the Informational Agency "RBK-Ukraine" reported that the CNSD was going to invite those officials to question them concerning some national security related issues.[256] However, the fact that meetings took place, and the actual results of these possible meetings, still remain unknown.

Thus, the Ukrainian Parliament and the CNSD, in particular, do not inform the public regarding the results of parliamentary hearings related to the security sector. It is still unknown whether the hearings concerning intelligence budget issues were organized in the CNSD and the BC, or if they even took place in Ukraine in 2007.[257]

b. International Cooperation of the CNSD

The parliamentary intelligence oversight system in Ukrainian is in the process of development. The members of the CNSD continuously conduct research and gain international experience in order to enhance this type of control in Ukraine.

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[255] Translated from: People's Deputy Olexandr Feldman Proposes to Fix the Statutory Right of the Parliamentary Temporary and Special Commissions. 2007. Available at: http://delo.ua/news/ econimic/ukraine/ info-23454.html (accessed June 3, 2007).

[256] Translated from: The Committee on the National Security and Defense is Going to Invite Security Officials. May 16, 2007. Informational Agency "RBK-Ukraine." Article Available at http://www.rbc.ua/rus/newsline/ 2007/05/16/203998.shtml (accessed June 6, 2007).

[257] Materials of the Parliamentary Hearings in 2007. Available at http://www.rada.gov.ua/ zakon/new/ par_sl/index.htm (accessed June 5, 2007).

The CNSD and sub-committee members take part in international conferences and seminars on intelligence-related issues.[258] The CNSD regularly extends invitations to members of various international parliamentary committees dealing with intelligence oversight issues to visit Ukraine. During their meetings, the participants exchange information concerning the best techniques and practices of intelligence and intelligence budget oversight.[259] Some recent events with regard to the issue of intelligence oversight are discussed in the Ukrainian mass media and on the official Website of the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

In this regard, the first important event occurred in June 2004, when the international conference "On the Defense and Security Sector Oversight" was organized in Ukraine and hosted by the CNSD.[260] This event was a key turning point for further international cooperation of the CNSD.

During this conference, representatives of DCAF and the CNSD discussed the most significant problems of intelligence and intelligence budget oversight in western countries. The major challenges to enhancing such control in Ukraine were also reviewed.

The conference accelerated transformational processes in security sector reforms. As a result, certain structural changes were adopted in the Ukrainian Intelligence Community. At the beginning of 2005, the CNSD was actively involved in reforming the Secret Service of Ukraine and its budget oversight system. The Security Service was separated from the foreign intelligence activity and the new agency — the Foreign Intelligence Service of Ukraine — was organized.[261] After this reorganization, an audit of the intelligence budget of the Security Service was conducted by the CNSD and the Accounting Chamber of Ukraine. This procedure was organized in order to check previous expenditure of the Security Service and make estimates of new budget requirements for these two intelligence services.

Perhaps the most important events regarding intelligence and intelligence budget oversight occurred in Ukraine in May and December of 2005. On May 11, 2005, the international conference "Current Problems of Defense and Security Sector Reform in Ukraine" was organized by the Ukrainian Parliament.[262] The most significant problems of transparency and accountability in the Ukrainian security sector were discussed.

On December 18, 2005, the international conference "NATO-Ukraine Roundtable on Civil and Democratic Oversight of the Intelligence Sector" was organized in Ukraine and hosted by the CNSD.[263] This time, the purpose of the conference was to raise issues concerning the transparency and accountability of Ukrainian intelligence.

High-level representatives from DCAF, NATO, and the Ukrainian Parliament and Presidential Administration gathered together to discuss perspectives of intelligence oversight in Ukraine and its legislative and executive procedures, in particular. Moreover, representatives of parliamentary

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[258] Translated from: Information about the Activities of the Committee on National Security and Defense. 2007. Available at http://www.rada.gov.ua/~k_obor/about.htm (accessed June 3, 2007).

[259] Ibid.

[260] The Verkhovna Rada of Ukraine. 2004. International Conference. Materials of the Conference are Available at http://www.dcaf.ch/news/_diarydetailskms.cfm?lng=en&id=15797&nav1=2 (accessed June 3, 2007).

[261] Smeshko, Igor. September 2005. Reformation of the Security Service of Ukraine and the Whole Law-enforcement System Will Happen. Translated from the Interview to the Defense Express Magazine. Available at http://www.cripo.com.ua/?sect_id=3&aid=8140 (accessed May 17, 2007).

[262] The materials of the conference are available at http://www.dcaf.ch/news/_diarydetailskms.cfm?lng=en&id=15666&nav1=2 (accessed June 4, 2007).

[263] The Information regarding the program of the conference is available at http://se2.dcaf.ch/ serviceengine/FileContent?serviceID=DCAF&fileid=375C8628-F945-52AF-6A6F-B623B56284E3&lng=en (accessed June 4, 2007).

oversight bodies and intelligence executives from the U.S., the United Kingdom, Slovakia, Poland, the Czech Republic, Latvia, Lithuania, Turkey, Bulgaria and Romania took part in this conference.[264]

During these conferences, international officials shared their experience and knowledge in organizing and conducting intelligence and intelligence budget oversight. These conferences were considered by some members of the international community as distinguished and unprecedented events in the security sector reforms occurring in Ukraine.

In 2006, such conferences became common practices. On May 18, the international conference "The Security Sector Reform: Lessons Learned" took place in Ukraine. Then, on June 22, the parliamentary roundtable was conducted "On Oversight of the Security Sector"; on October 19, the regional meeting of the DCAF Foundation Council was held, focusing on the issue of "Defense and Security Sector Review in Ukraine"; and on October 7, the workshop "Defense Institution Building: Tools for Policy Development, Coordination, Advocacy, and Implementation" took place in the Verkhovna Rada. Finally, on December 11, a Seminar "On Cooperation between Civil Servants and Professional Military in Defense and Security Sector Governance" was organized and hosted by the CNSD.

In 2007, only two international workshops took place in the CNSD. On February 7, 2007, a workshop "On Practical Aspects of Parliamentary Oversight of the Intelligence Sector" took place, and in March 26, the senior-level NATO-Ukraine roundtable "On Parliament's Role in National Security and Defense" was held. These workshops aimed "to share experience regarding practical aspects of the functioning of parliamentary committees or sub-committees responsible for intelligence oversight and provide practical support for the development or improvement of the relevant legal and procedural bases."[265]

In 2007, the international activity of the CNSD and practical implementation of the intelligence and intelligence budget oversight mechanisms were decreased due to a political crisis that occurred in Ukraine. In April 2007, the President of Ukraine made a decision to dissolve the Parliament in order to call for new elections. According to an agreement between the Ukrainian Parliament and the President, these elections were to be held on September 30, 2007. No further international meetings between the CNSD and DCAF were scheduled in 2007. These meetings are not on the list of planned DCAF events for 2008, pending resolution of the current political crisis in Ukraine.[266]

2. The Budget Committee

The Budget Committee is the main parliamentary body that is responsible for the State Budget of Ukraine (see Figure 16). As of June 15, 2007, it consists of twenty-six parliamentarians.[267] All political parties of the Verkhovna Rada are represented on this committee (fourteen positions for the "Party of Regions," four for "Our Ukraine," four for the "Socialistic Party," three for the "Blok of Ulii Timoshenko," and one for the "Communist Party").[268]

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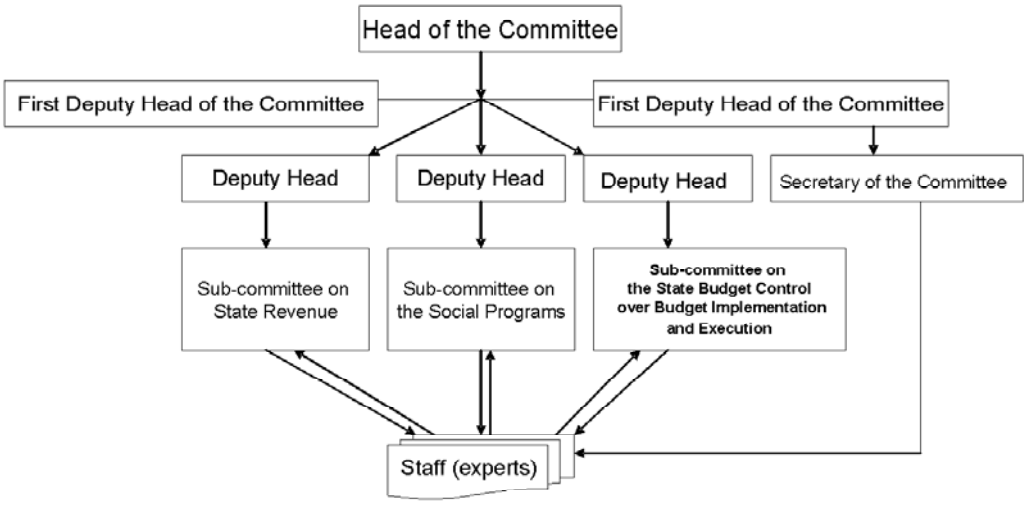
[264] The Information regarding the participants of the conference is available at http://se2.dcaf.ch/serviceengine/FileContent?serviceID=DCAF&fileid=47381FE0-FA89-945A-1580-DFB4DA7BFD93&lng=en (accessed June 4, 2007).

[265] The materials of the workshops are available at http://www.dcaf.ch/news/_diarypastkms.cfm?lng=en&id=28466&param0_219=2007&nav1=2&nav2=2 (accessed June 4, 2007).

[266] Future Events of the DCAF. 2007. Available at http://www.dcaf.ch/news/_diarykms.cfm?nav1=2&nav2=1 (accessed June 4, 2007).

[267] The Total Strength of the BC. 2007. Available at http://gska2.rada.gov.ua/ pls/site/p_komity?pidid=1813 (accessed June 14, 2007).

[268] The Budget Committee. 2007. Composition of the Committee. Available at http://gska2.rada.gov.ua/pls/site/p_komity_list?pidid=1808 (accessed June 14, 2007).



Source: The Verhovna Rada Committees. 2007.
Available at http://gska2.rada.gov.ua/pls/site/p_komity?pidid=1813 (accessed June 5, 2007)

Figure 16. The Organization of the Budget Committee

The organizational structure of the BC is made up of the head, two first deputy heads, a secretary and three deputy heads who run three sub-committees: "On the State Revenue," "On the Social Programs," and "On the State Budget Control on Budget Implementation and Execution."[269]

Theoretically, this committee initiates and coordinates all parliamentary budget cycles, including the intelligence budget cycle. It controls the process of preparation and adoption of budgets of intelligence agencies and reviews the report of the Accounting Chamber of Ukraine on intelligence budget execution at the end of the fiscal year.[270]

The BC does not have a separate subcommittee to deal with intelligence issues or a subcommittee on the budgets of security structures. A few people's deputies of the committee have received special education in formulating the state budget policy and budgeting for the security sector.[271] However, as a rule, parliamentarians of the BC critically discuss the intelligence budget at the budget adoption stage. They also pay much attention while reviewing the execution of the intelligence budget.

The BC does not have a sufficient number of qualified specialists to deal effectively with intelligence budgeting and oversight issues. During the stage of intelligence appropriations, the CNSD delegates its members to take part in meetings of the State Budget Working Group, which operates within the BC during the appropriation stage. This delegation helps the BC to figure out future intelligence appropriations and understand the picture of future intelligence budget expenditure.

The role of the BC in budgeting for intelligence is limited to the general coordination and oversight of the appropriateness of budgeting for intelligence to the national budget process. Dealing with other budgets at the same time, the BC does not have sufficient staff resources to understand all the specifics and practices of intelligence budgets. Moreover, time constraints do not allow the Budget Committee to be fully effective in checking and tracking all appropriations of intelligence

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[269] The organizational Structure of the Budget Committee. 2007. Available at http://gska2.rada.gov.ua/pls/site/p_komity?pidid=1813 (accessed June 5, 2007).

[270] Polyakov, An Analytical Overview of Democratic Oversight and Governance of the Defense and Security Sector in Ukraine, 30.

[271] Biographies of the BC's members are available at http://gska2.rada.gov.ua/pls/site/p_komity_list?pidid=1813 (accessed June 14, 2007).

agencies. Thus, most real power in the development of intelligence budgets belongs to the Ministry of Finance, the Secretariat of the President and the Committee on National Security and Defense.

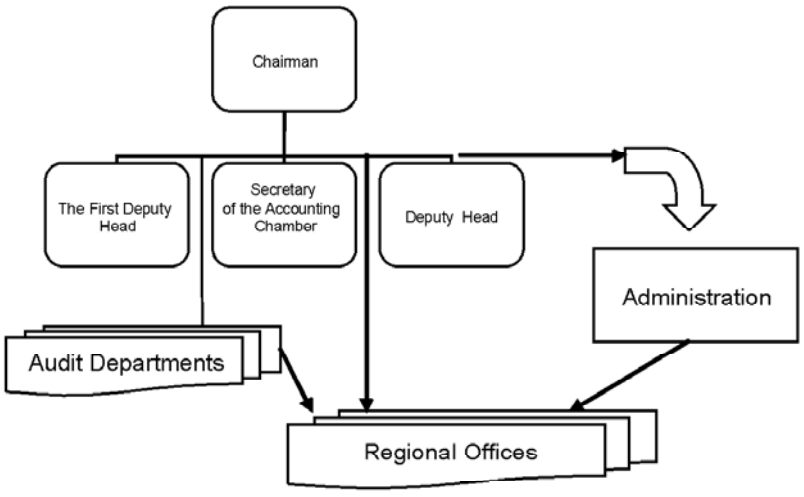
D. THE ACCOUNTING CHAMBER OF UKRAINE AND ITS ROLE IN INTELLIGENCE BUDGET OVERSIGHT

1. The Organizational Structure of the Accounting Chamber

The Constitution of Ukraine adopted by the Verkhovna Rada (Ukrainian Parliament) on June 28, 1996, established the constitutional status of the Accounting Chamber (AC) as the body acting on behalf of the Parliament to execute control over the use of Ukrainian state budget funds. On July 11, 1996, the Parliament adopted the law of Ukraine "On the Accounting Chamber" that recognized the AC as a permanent body of external state financial control that is subordinated to the Verkhovna Rada. This control has been functioning in Ukraine since 1997.[272]

On December 8, 2004, the Verkhovna Rada adopted the law of Ukraine No 2222-IV "On Amendments to the Constitution of Ukraine" that amends Article 98 of the Constitution of Ukraine as follows: "Control over revenues of the State Budget of Ukraine and their use on behalf of Verkhovna Rada of Ukraine shall be exercised by the Accounting Chamber."[273] This amendment went into effect on January 1, 2006. Since that time, the article has extended the authority of the AC regarding control of the use of each governmental organization's funds. Therefore, it also includes agencies of the Ukrainian Intelligence Community.

By law, the AC shall consist of a Chairman, a First Deputy and Deputy Head, the Secretary of the AC, and comptrollers working in audit departments (see Figure 17).



Source: The law "On the Accounting Chamber of Ukraine ", Amended in 2004. Chapter III: Composition and Structure of the Accounting Chamber. Article 10.

Figure 17. The Organization of the Accounting Chamber of Ukraine

[272] Information is taken and translated from the official Website of the Verkhovna Rada (Ukrainian Parliament). Available at http://www.ac-rada.gov.ua/achamber/control/uk/index (accessed May 21, 2007).

[273] Constitution of Ukraine. 1996. Article 98. Available at http://www.rada.gov.ua/const/conengl.htm (accessed March 28, 2007).

The AC activities are supported by a staff. The structure and the total strength of the staff are regulated by the Chairman of the AC and are usually limited by funding allocated for such needs.[274] The Board of the AC is comprised of the Chairman, the First Deputy and Deputy Chairman, the Secretary of the AC, and Chief Comptrollers — heads of the AC operational departments.

The Chairman of the AC shall be appointed to the office by the Verkhovna Rada after nomination by the Chairman of the Parliament for a term of 7 years, with the right to be appointed for a second term. The appointment must be approved by a majority of the parliament, by a secret ballot. The Chairman must also be a citizen of Ukraine and have a terminal degree in economics or law, as well as professional experience in public administration, audit and finance. In addition, s/he should demonstrate professional knowledge during the process of selection according to special procedures, set up by the relevant parliamentary committee [the Budget Committee].

> The Head of the Accounting Chamber shall have a right to participate in sessions of the Parliament, its committees and ad hoc, special and other commissions when issues concerning the Accounting Chamber are under consideration. The Head of the Accounting Chamber, as well as the Board members, cannot be a Member of the Parliament of Ukraine, a member of the Government of Ukraine, get involved in entrepreneurial activities, have a part time job (except for teaching, research and other creative activities conducted outside of working hours).[275]

The AC performs its executive control over intelligence expenditure based on the authorization of parliamentary committees. According to an amendment to the law "On Accounting Chamber" of 2004 (Article 6), the AC "if authorized by parliamentary committees, shall verify the appropriateness of spending targeted national funds and over-the-budget funds by executive bodies."[276] Thus, with the purpose of overseeing intelligence budgets, the CNSD and the BC are authorized to task the AC with control of intelligence expenditure.

In addition to the constitutional power of the Accounting Chamber, the law "On Intelligence Organs of Ukraine" of 2001 specifies that the AC is responsible for overseeing intelligence budgets and expenditure exercised on intelligence-related activities. The AC conducts its oversight through a specially authorized department — the Defense and Law Enforcement Audit Department (see Figure 18).

The Head of this department is a governmental official who is subordinated to the Board of the AC. S/he manages direction of the AC operations within defense, law enforcement, and intelligence agencies. Having the highest state clearance, the head of the department has the right to be present at all meetings of committees of the Parliament, state bodies, and local governments. S/he also has the exclusive right to attend special meetings of the boards of central executive bodies, to which the Ukrainian intelligence agencies belong.

The department head may be discharged from his position ahead of time, except for retirement or resignation, by the recommendation of the AC Board in cases of unsatisfactory

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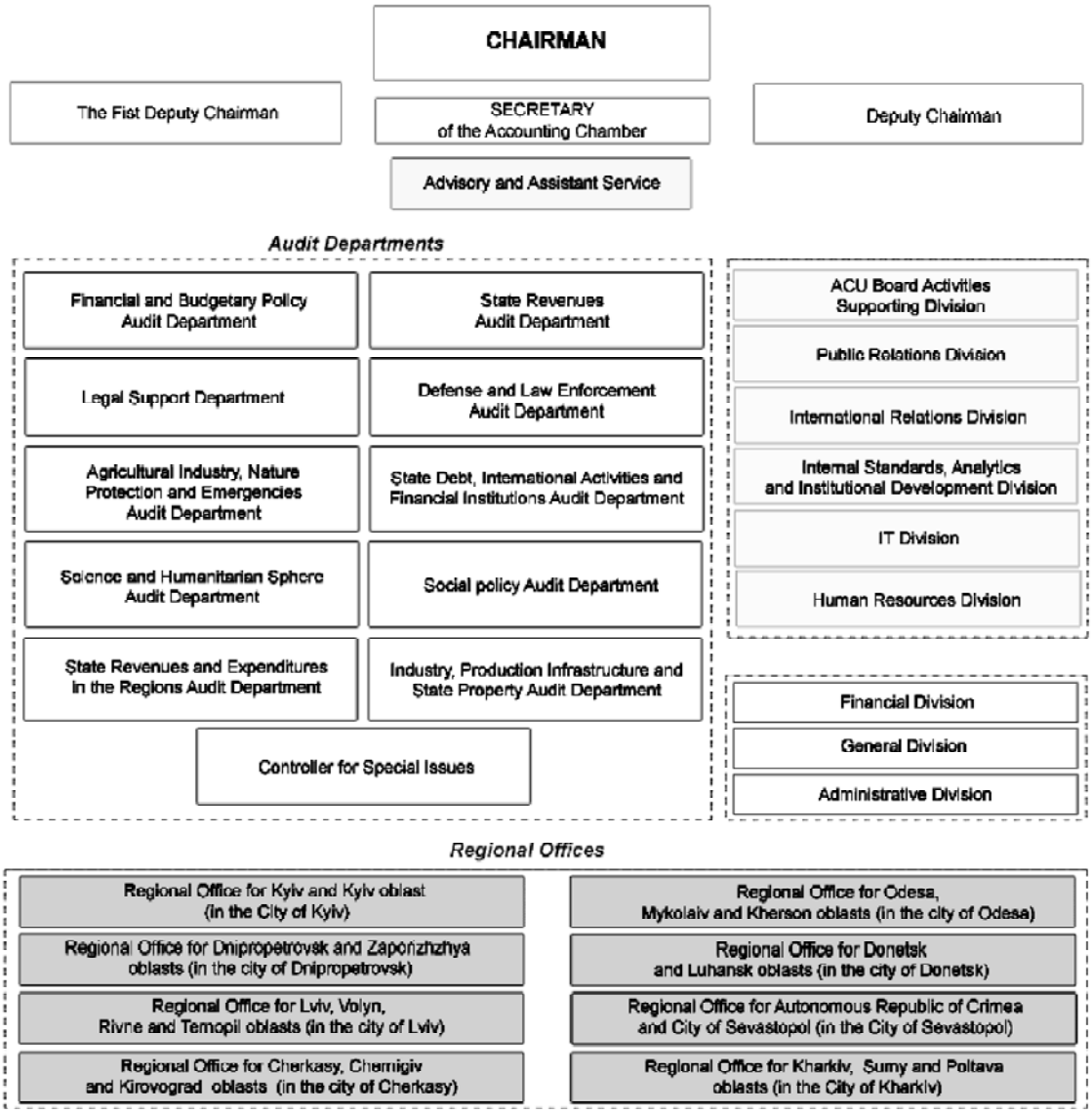
[274] Translated from the Statute of the Accounting Chamber of Ukraine.

[275] The Law "On Accounting Chamber of Ukraine." Amended in 2004. Chapter III: Composition and Structure of the Accounting Chamber. Article 10. Available at http://www.ac-rada.gov.ua/achamber/ control/uk/publish/article/main?art_id=88465&cat_id=32815 (accessed May 21, 2007).

[276] Ibid, Article 6. Amended in 2004.

performance of duties, violation of laws or abuse of office. S/he can not get involved in entrepreneurial activities, nor have a part time job (except for teaching, research and other creative activities).[277]



Source: The Accounting Chamber of Ukraine. 2007. Translated from http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?showHidden=1&art_id=88278&cat_id=32784&ctime=1091630232224 (accessed May 28, 2007).

Figure 18. Functional Structure of the Accounting Chamber of Ukraine [From: The Accounting Chamber of Ukraine. 2007]

The AC regularly monitors the expenditure of intelligence agencies. For example, in May

[277] The law "On the Accounting Chamber of Ukraine." Amended in 2004. Article 11. Available at http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=88465&cat_id=32815 (accessed May 21, 2007).

2007 the AC was involved in auditing the Security Service of Ukraine. On May 16, 2007, the Verkhovna Rada and its CNSD authorized the AC to conduct audits of this service and control the expenditure for intelligence-related activities. About 250 people's deputies voted for this decision.[278] However, the results of this inquiry were not published or even commented on by the AC or the Verkhovna Rada of Ukraine.

2. The Special Group of the Defense and Law-enforcement Audit Department

In order to control the expenditure of funds from the State Budget of Ukraine to support intelligence agencies and finance their activities, a special group was established within the Defense and Law Enforcement Audit Department. According to Article 15 of Chapter IV of the law "On the Accounting Chamber" the group should exercise control of targeted national intelligence funds on the basis of annual and operational plans, which are to be formed specified by the Parliament and relevant committees (CNSD and BC). The group's experts actively participate in conducting audits of intelligence expenditure and are responsible for overseeing intelligence funds at each stage of the intelligence budget process: preparation, appropriation and execution.

This group is also authorized to gather expert and analytical information and perform other activities aimed at controlling intelligence spending. Proposals of this group of experts are oriented primarily toward the elimination of the ineffective usage of intelligence budget funds. By examining draft intelligence budgets and developing proposals for the CNSD on the effectiveness of intelligence funds, the AC's group is directly involved in the improvement of the intelligence budget process.[279]

Moreover, by the laws "On the Intelligence Organs of Ukraine" and "On the Accounting Chamber of Ukraine," the special group of the Defense and Law Enforcement Audit Department is authorized to receive all documents from intelligence agencies that certify expenditure. In addition, it can call on heads of intelligence organizations to report on these issues. These laws allow them also to make a preliminary analysis regarding the financial activities of intelligence agencies, prior to hearings at the parliamentary oversight committees.

In order to protect information that contains national secrets from disclosure, the group follows certain mandatory rules provided by the Ukrainian legislature. According to the law, "materials, which executive bodies or other institutions, enterprises, and organizations provided for analysis, check or audit [as well as information and documents, which the AC receives about financial activity of an intelligence organization or natural persons], are subject to professional secrecy and may be used only for controlling purposes."[280] Therefore, the AC controls intelligence expenditure and conducts intelligence budget oversight using the principles of professional secrecy.

The law "On State Secrets" of 1992 and the law "On Accounting Chamber" interpret professional secrecy as the "process of safekeeping materials, documents, other information, which are used by the Accounting Chamber officials and persons involved in activities of the AC during

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[278] Ukrainian News Agency "UNIAN". May 16, 2007. An Announcement of the Chairman of the Ukrainian Parliament. Available at http://www.unian.net/ukr/news/news-195726.html (accessed June 10, 2007).

[279] History of Establishment and Development of the Accounting Chamber. 2007. Available at http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=520279&cat_id=32785 (accessed May 22, 2007).

[280] The law "On the Accounting Chamber of Ukraine." Amended in 2004. Article 19. Available at http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=88465&cat_id=32815 (accessed May 21, 2007).

checks, audits and examinations."[281] It is prohibited for the AC's auditor generals (inspectors) to disclose this information in any form before the AC makes a decision, which should be based on the decision of the Parliament and its committee responsible for intelligence oversight issues, in particular. Thus, members of this special group carry out functions spelled out in the law "On the Accounting Chamber" only provided that they have been granted access to the documents constituting state secrets in the order established by the law of Ukraine "On State Secrets".

According to the statutory act "On Adoption of the Standard of the Accounting Chamber of Ukraine" and its special instruction "Procedure of Preparation and Holding of Audits and Execution of Their Results" (adopted by the Resolution of the Board of the AC on December 27, 2004 under #28-6 and registered in the Ministry of Justice of Ukraine on January 28, 2005 under #115/10395), the officials of the Defense and Law Enforcement Audit Department and members of a special group, which are engaged in the audit of intelligence funds, shall have the following rights:[282]

- to obtain all necessary information on the audited objects from the intelligence agencies, and other organizations connected with the activity of the audited object;
- to have unlimited access to any premises and storage places of the audited objects unless otherwise stipulated by the laws of Ukraine;
- to obtain original documents or copies, other materials, electronic media data, extracts from these documents from the officials of the audited object;
- to obtain secret documents and other documents restricted to limited access;
- to demand that audited object officials immediately eliminate detected violations;
- to get explanations from the audited object officials, other institutions, organizations, enterprises connected with the activity of the audited object; and
- to draft protocols of administrative violations when necessary.

The statutory act also emphasizes that if the control team [a special group that controls intelligence expenditure] "meets barriers" to the conduct of an audit, the leader of the group shall create a special memo and promptly send it to the AC. The memo on administrative violation shall be signed by the AC Chairman or one of his deputies and filed in court for immediate action.

While carrying out their duties, the group members are also forbidden from revealing methods and means of intelligence activities, uncovering the identity of their operatives, and illegally disseminating information received.[283] In other words, their oversight and controlling functions should not place intelligence's sources and methods of operational activity at risk.

With the purpose of organizing a better means of oversight of intelligence funds, the AC consults intelligence executives on issues of the state budget, its targeted usages, processes, requirements, as well as execution of intelligence expenditure. These functions and powers of the AC are underscored in Article 6 of Chapter II of the amended 2004 law "On Accounting Chamber."

The AC makes annual reports to the Verkhovna Rada on its performance results. By order of

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[281] Ibid., Article 20.

[282] Standard of the Accounting Chamber of Ukraine. Amended in 2004. Chapter 1: General Provisions. Article 1.7 http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/ main?art_id=283173&cat_id=121 (accessed May 22, 2007).

[283] Leonid Polyakov, "Rationalisation and Regulation of Non-Military Security-Sector Organisations" (Materials of the Joint Workshop of Razumkov Centre for Economic and Political Studies (Ukraine) and the Centre for European Security Studies (the Netherlands), Kiev, Ukraine, April 23, 2004). Available at http://www.uceps.org/ua/show/649/ (accessed May 23, 2007).

the Verkhovna Rada, its relevant committees (CNSD and BC) may hear reports and information (statements) of the AC on the results of audits of intelligence agencies. However, hearings and discussions regarding intelligence expenditure and the results of audits are held behind closed doors either at the office of the oversight committees or the Defense and Law Enforcement Audit Department.

The AC's special group is allowed to conduct operational (unexpected) audits of intelligence expenditure. Moreover, sometimes the external control and audit of the financial and business activities of intelligence agencies can be exercised by the Central Control and Auditing Administration of Ukraine in accordance with its authority established by Ukrainian legislation.[284]

3. The International Cooperation of the Accounting Chamber

The AC is deeply involved in international financial cooperation and foreign audit activities in order to protect the Ukrainian State Budget System from participating in illegal financial transactions. By monitoring the UIC budget and expenditure, the AC minimizes the possibility of using intelligence agencies in international money laundering activities and illegal financial transactions.

In 2006, during a working meeting of the Euro-Asian Financial Group (Russia, Byelorussia, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, and China) a decision was made to increase regional international cooperation regarding the issue of fighting terrorism financing and money laundering.[285] This decision was based on international requests to stop the illegal financial transactions sourced by illicit drug trafficking from Afghanistan to those countries. The flood of illegal money obtained from narcotics has recently increased from the Afghanistan region and has served as a valuable source of funds for international and regional terrorist groups, as well as organized crime cartels.

Within the framework of this international organization, the U.S., the United Kingdom, France, Italy, Georgia, and Turkey were given the status of observers. Ukraine was given the status of special observer. This implied that Ukraine was encouraged by the financial security institutions of those countries to establish a Ukrainian Financial Intelligence Task Force (UFITF) to fight threats effectively.[286]

One of the UFITF tasks is to prevent the possibility of using the State Financial System of Ukraine and its budgetary entities to conduct illegal financial transactions. This vital task will effectively be carried out by the UFITF with the cooperation of the AC. Thus, by conducting its oversight functions, the AC protects national budget entities, as well as intelligence organizations, from being used in illegal financial activities. Understanding the importance of these duties, the Accounting Chamber of Ukraine has already expanded its international financial cooperation with most western democracies and started working closely "as a fully-fledged member of the international organizations of the supreme audit bodies INTOSAI and EUROSAI."[287]

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[284] The Budget Code of Ukraine. Article 26: Audit and Financial Control.

[285] Ukrainian Informational Agency. Creation of the Intelligence Financial Task Forces in Euro-Asian Group. International Cooperation. Available at http://unian.net/rus/news/news-177191.html (accessed December 15, 2006).

[286] Ibid.

[287] The History of Establishment and Development of the Accounting Chamber of Ukraine. Available at http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=520279&cat_id=32785 (accessed May 25, 2007).

E. CONCLUSION

A parliamentary system of intelligence budget and oversight has been established and currently functions in Ukraine. The Verkhovna Rada has adopted special legislation to oversee activities and budgets of intelligence agencies. The statutory rules also allow the Ukrainian parliament to monitor intelligence budgets at each stage of the intelligence budget cycle.

The CNSD is the main parliamentary body that oversees tasks, policies and appropriations of intelligence agencies. During the intelligence budget process, the CNSD coordinates its budget oversight functions with the BC, which is empowered to control intelligence expenditure within the system of national budget planning and development. In order to enhance the system of intelligence oversight, this committee actively participates in international conferences, taking under consideration the best practices of western and transitional democracies.

Moreover, intelligence expenditure can be reviewed by the AC and its special group that has the constitutional authority to conduct this type of control. The AC is also charged with the task of protecting intelligence agencies' financial systems from being used by illegal financial institutions. This task creates an additional oversight function, which is conducted by the AC of Ukraine. This function is vital for such a transitional democracy as Ukraine.

However, the system of intelligence and intelligence budget oversight of the UIC is not completely efficient or fully operational. The powers for conducting oversight are written into Ukrainian laws but, in practice, there are problems that affect the whole system of intelligence and intelligence budget oversight. Those problems can be summarized as follows.

The Ukrainian parliamentary oversight system does not have an independent intelligence oversight committee dealing only with issues related to intelligence. The effectiveness of the Sub-committee on Legislative Support of National Security and Intelligence Bodies of Ukraine is doubtful because it also deals with oversight functions of various secondary issues that are not related to intelligence. The CNSD and its relevant subcommittee have a small number of people's deputies involved in oversight functions. The number of experienced staff to perform those duties is not appropriate for such an important activity.

The Parliament does not have an absolute ability to control the intelligence budget process. The CNSD sends its recommendations to intelligence agencies regarding future intelligence appropriations at the beginning of the intelligence budget cycle. However, the CNSD does not control the development of budgets. There is no information available that the committee or its relevant sub-committee controls intelligence budget development before the Cabinet of Ministers submits the proposed law on State Budget of Ukraine (by September 15). Before this deadline the Parliament has limited information about proposed intelligence budgets with which to conduct efficient analysis and control.

When the budgets are submitted to the Parliament, the CNSD has just two weeks (until October 1) for the review and scrutiny of intelligence budgets. The efficiency to control future intelligence appropriations is also decreased because, within a two-week period, the CNSD needs to analyze the intelligence budgets of four intelligence agencies. The committee is not able to check every single intelligence budget item and is forced by time constraints to follow the general rules of the budget cycle. When the proposed Law on State Budget is ready to be handed over to the BC (October 1), it is too late for the CNSD to make any changes because after this period the BC is responsible for intelligence budget analysis in accordance with the overall state budget framework.

The BC influences the intelligence budget appropriations, but its role in intelligence budgeting

and oversight is limited. The BC conducts mostly general coordination of the appropriateness of budgeting for intelligence within the general budget process. Furthermore, the BC has a small number of specialists who can deal with intelligence budget issues. Due to a lack of professional experience in intelligence-related issues, the control of intelligence budget items by the BC is doubtful. Moreover, during the review of the proposed Law of State Budget (after October 1) and working at the same time with budget groups from different parliamentary committees, it is difficult for the BC's specialists to oversee all the specifics of intelligence budgets. Important items may be overlooked.

The CNSD and the AC do not inform the public regarding the results of parliamentary hearings related to intelligence and audits conducted in the UIC. It is still unknown whether those hearings and audits make any differences in the behavior of intelligence agencies and their budget issues. The lack of public information concerning the results of hearings organized by the CNSD and the BC and audits conducted by the AC raises questions regarding the effect of those activities on the system of intelligence oversight or whether they even took place in Ukraine.

The Ukrainian parliamentary system of intelligence and intelligence budget oversight has some problems with efficiency. However, recent events in the sphere of intelligence oversight have demonstrated that it is operational and workable. Parliamentarians have some ability to keep abreast of events taking place inside agencies of the UIC and stay informed regarding the usage of intelligence expenditure. That awareness can be enhanced if the parliamentary intelligence oversight system works closely with the executive branch of Ukrainian government.

The next chapter will discuss the system of executive oversight of the UIC. The oversight functions of the Secretariat of the President, National Security and Defense Council, as well as the newly created Office of the Vice Prime-Minister on the Issue of National Security and Defense will be stressed.

VI. EXECUTIVE OVERSIGHT OF THE UKRAINIAN INTELLIGENCE COMMUNITY

A. INTRODUCTION

Executive oversight is needed in order to keep intelligence agencies effective and manageable in the same way as any other governmental entity. In Ukraine, executive oversight of the Ukrainian Intelligence Community (UIC) is conducted by the President through specialized institutions and the Cabinet of Ministers — the highest body in the system of executive power.[288]

According to the Constitution of Ukraine, the President, as the guarantor of state sovereignty, human rights and freedoms, has the dominant role in the control of the UIC. Article 106 of the Constitution stipulates that, as the Head of National Security and Defense Council and the Commander-in-Chief of the Armed Services of Ukraine, the President appoints and dismisses the head of the Security Service of Ukraine, the high command of the Armed Forces of Ukraine and other military institutions, and the heads of intelligence agencies.[289]

The President administers all issues in the sphere of intelligence and the state's national security and defense. To exercise his power and authority, the President "creates, within the limits of the funds envisaged in the State Budget of Ukraine, consultative, advisory and other subsidiary bodies and services."[290] The most influential among these are the Secretariat of the President of Ukraine and the National Security and Defense Council. Among different executive tasks, these presidential auxiliary institutions are also designed to provide effective intelligence and intelligence budget oversight functions of the UIC.

Pursuant to the Constitution, the Cabinet of Ministers of Ukraine conducts oversight over each governmental entity. The Cabinet delegates and coordinates the work of ministers and other executive branches, including intelligence and law-enforcement agencies. It should also take measures to ensure proper defense capabilities for the national security of Ukraine, and determine the need for defense funding.[291]

Within this constitutional and legislative framework, the system of executive oversight of intelligence in Ukraine is enduring. Adopted in 2005, the law "On Democratic Civilian Control of the Military Organization and Law-enforcement Agencies of Ukraine" fixes the distribution of authority and powers of the state branches to exercise oversight of intelligence agencies. This law balances the authorities of state branches in order to avoid concentration of excessive power over the intelligence organizations and law-enforcement agencies in any one of them.[292]

This chapter consists of three main sections. First, it will describe the organization of the Secretariat of the President and how it conducts executive oversight of the UIC through its specialized services (offices). The next section discusses the executive oversight of the UIC provided by the

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[288] The Constitution of Ukraine. June 28, 1996. Article 113. Available at http://www.rada.gov.ua/const/conengl.htm (accessed June 26, 2007).

[289] Ibid., Article 106.

[290] Ibid., Paragraph 28.

[291] The Constitution of Ukraine. June 28, 1996. Article 116. Available at http://www.rada.gov.ua/const/conengl.htm (accessed June 26, 2007).

[292] Polyakov, An Analytical Overview of Democratic Oversight and Governance of the Defense and Security Sector in Ukraine, 12.

National Security and Defense Council. Finally, the oversight role of the Cabinet of Ministers of Ukraine will be considered.

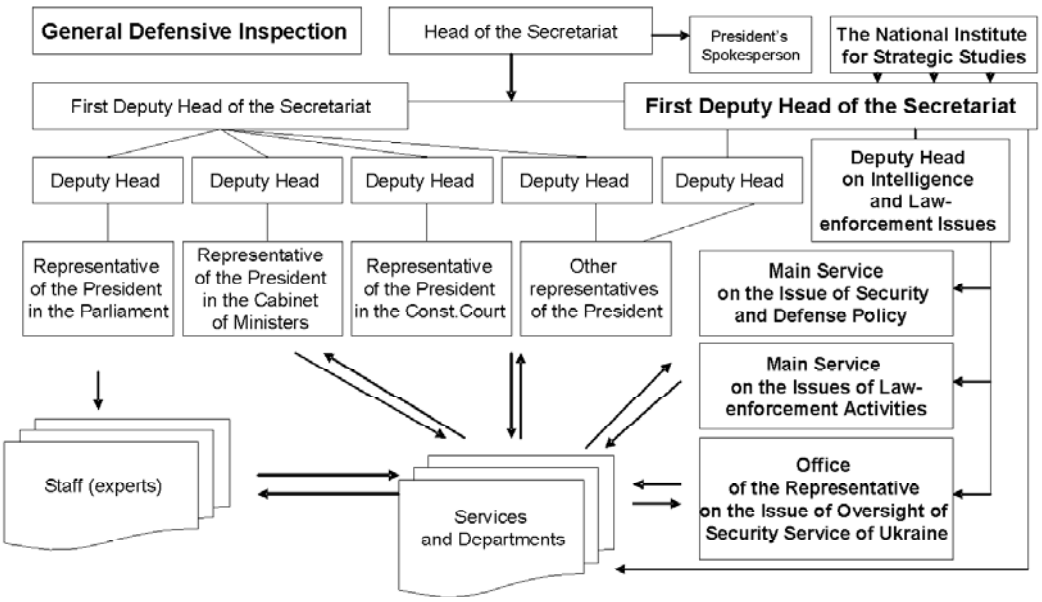
B. THE SECRETARIAT OF THE PRESIDENT OF UKRAINE

1. The Organization of the Secretariat and Its Main Intelligence Oversight Functions

In accordance with Clause 28 of Article 106 of the Ukrainian Constitution the President of Ukraine, Mr. Victor Yushchenko, ordered a change to the Presidential Administration to the Secretariat of the President of Ukraine (Secretariat) after his inauguration in 2005. An organizational order regarding this change was signed by the President on October 14, 2005 (#1548/2005).

The Secretariat of the President is an administrative unit set up by the President for maintaining his duties. The Secretariat Head, who is appointed and dismissed by the Ukrainian President, manages the Secretariat (see Figure 19).

The Current Organization of the Secretariat of the President of Ukraine
(regarding intelligence and intelligence budget oversight)



Source: Created from the Analysis of the Presidential Order on November 4, 2005 "On the Issue of the Secretariat of the President of Ukraine." Available at http://www.president.gov.ua/documents/3462.html (accessed June 27, 2007).

Figure 19. The Current Organization of the Secretariat of the President of Ukraine

As of June 2007, the Secretariat consists of two First Deputy Heads, six Deputy Heads, the President's Spokesperson, twenty experts and advisors to the President, the representatives of the President in the Verkhovna Rada, the Cabinet of Ministers, and the Constitutional Court, other representatives of the President, a chief of services and other services and departments.

The Secretariat of the President is a huge bureaucratic apparatus. According to presidential order #1548/2005, the total strength of the Secretariat is 605, all of whom have the status of state

servicemen. Only the President and the Head of the Secretariat can make amendments to the personnel policy requirements of the Secretariat and its number of servicemen.

The main task of the Secretariat is to provide administrative, legal, advisory, information, analytical and other assistance to the President of Ukraine, as well as conduct various oversight and controlling functions. The Secretariat can engage scientists, experts (on a fee or contract basis) and representatives of central and local government bodies in carrying out certain tasks. It is empowered by the President to commission officials from all ranks to eliminate obvious defects and drawbacks and to inform intelligence and law-enforcement agencies about the instances of violation of the Constitution and the laws of Ukraine, and decrees and orders by the President of Ukraine.[293]

The Secretariat is entitled to request and receive information from government and local self-governing bodies, state enterprises, institutions, organizations and officials. Intelligence and law-enforcement agencies are responsible to provide information to the Secretariat of the President continually to help formulate national and foreign policy. It also coordinates communication and official statements between the Ukrainian President and the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine, intelligence and law-enforcement agencies, government and local self-governing bodies, enterprises, institutions and organizations.[294]

To support presidential functions in achieving strict oversight of the UIC, the Secretariat is authorized by the President to set requirements of intelligence agencies, analyze its expenditure and activities, as well as testify at hearings of its executive directors and prepare submissions for their appointment and dismissal.[295] It also participates in the preparation of intelligence budgets and provides recommendations for the President of Ukraine with regard to state honors and the highest military ranks, special ranks and grade levels for military and civilian servicemen and employees of intelligence and law-enforcement agencies.

The Secretariat conducts intelligence and intelligence budget oversight through the special services, called the Main Service of Security and Defense Policy and the Main Service on the Issues of Law-enforcement Activities, which are subordinated to the Deputy Head of the Secretariat on Intelligence and Law-Enforcement Issues, and General Defensive Inspection under the President of Ukraine. Moreover, taking into consideration the complexity and multifunctional tasks of the Security Service of Ukraine, as well as its importance in the sphere of national security and defense, an independent Office of the Representative of the President on the Issue of Oversight of the Security Service of Ukraine was established under the Head of the Secretariat in November 2005.

According to presidential order #1548/2005, those intelligence and law-enforcement oversight structures have absolute power to obtain information from the UIC and conduct planned and operational control over its agencies. Clauses 5.1 and 5.2 of this order empower them to "have access to any governmental information and use any databases, documents and archives" to carry out its oversight functions."[296] The services identified in this order can also establish their liaison

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[293] Translated from the Official Website of the Secretariat of the President of Ukraine. 2007. Available at http://www.president.gov.ua/content/300.html (accessed June 26, 2007).

[294] Ibid.

[295] The Presidential Order "On the Issue of the Secretariat of the President of Ukraine." November 4, 2005. Statutory Rights of the Secretariat. Clauses 8, 13, 17, 20, 22, 23. Available at http://www.president.gov.ua/documents/3462.html (accessed June 26, 2007).

[296] Translated form Executive Order of November 4, 2005 #1548/2005. Clauses 5.1, 5.2. Available at http://www.president.gov.ua/documents/3462.html (accessed June 28, 2007).

components at the intelligence agencies' headquarters and request the Accounting Chamber of Ukraine or other specialized governmental institutions to conduct audits in order to ensure the propriety of intelligence expenditure. In addition, they may request intelligence executives to report in person information regarding the service's activities or other data they are interested in.

Finally, the National Institute for Strategic Studies serves as a think tank, helping the Secretariat to analyze intelligence requirements, current policies and budgets of the UIC's agencies.[297] The institute has several regional branches and is primarily comprised of retired military and law-enforcement officers and civilians. Due to the closed nature of its research, there is no information available regarding the results of the institute's work, as well as the quality of its advice to the Secretariat.

2. Current Oversight Activities of the Secretariat of the President

The official Website of the Secretariat does not provide information regarding the intelligence oversight activities of its specialized units and results of their oversight functions. However, due to the political crisis that has been taking place in Ukraine since 2004 and the confrontation between legislative and executive powers in Ukraine that occurred in March 2007 (disagreement between the President from the one side and the Parliament and the Prime Minister on the other side), some information is available from the Ukrainian informational agencies. This information indicates that the President of Ukraine with his Secretariat is the most influential oversight body and has dominant powers in controlling the UIC.

During the political crisis, the President enhanced his power over intelligence organizations and provided more authority toward law-enforcement agencies. He enhanced his authority to prevent a violent resolution of the political disagreement; however, a political polarization of intelligence services and law-enforcement agencies resulted.[298] To defuse that situation and improve oversight of the UIC, the President appointed a new chairman of the Foreign Intelligence Service of Ukraine in 2005. When the confrontation continued in 2006, and politicization of the Security Service of Ukraine became more visible, the President dismissed the chairman of the Security Service and appointed a new one. Closer control of the Security Service was initiated by the Secretariat of the President and its First Deputy Arsenii Yatsenyk, in particular.[299] He discovered corrupt connections inside and outside the Security Service of Ukraine and organized appropriate oversight countermeasures conducted by the specialized services of the Secretariat.[300]

The leaders of the political parties of Ukraine noticed that during the political crisis the President wanted to increase his authority and accumulate intelligence and law-enforcement agencies around the Secretariat. On April 27, 2007, the Head of the Communist Party of Ukraine, Mr. Petro Symonenko, offered to collect signatures in Ukraine on the issue of President Yushchenko's usurpation of power. According to Mr. Symonenko "the President is going to resort to force to

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[297] Information regarding the National Institute for Strategic Studies is available at http://www.niss.gov.ua/en/ (accessed July 3, 2003).

[298] Marchuk Evgen. Interview to the Ukrainian Informational Portal "No Censor". May 31, 2007. Available at http://www.proua.com/archive/2007/05/31/ (accessed June 27, 2007).

[299] Translated from Ukrainian Website "Censor Net". 2006. "Arsenii Yatsenyk Has Promised to Reform Half-Pregnant Security Service of Ukraine." Available at http://censor.net.ua/go/ offer/ResourceID/39758.html (accessed June 27, 2007).

[300] Ibid.

solve the political crisis in the country and has already enhanced oversight and control of the UIC to organize future actions."[301]

Based on the propositions of the Head of the Secretariat, the President signed an executive order that allows the Secretariat to appoint one officer from each intelligence agency to the position of an Assistant Deputy Head of the Secretariat on Intelligence and Law-enforcement Issues. This order came into action on June 27, 2007.[302] It should be noted that this order requires that an officer shall be selected from the intelligence and law-enforcement services based on the decision of the liaison component of the Secretariat at a particular service. Such a decision suggests that the Secretariat began using the personnel files of the services' employees in order to fill the assistant positions with intelligence officers who are not corrupted and politically engaged.

Thus, recent political events in Ukraine forced the President and its Secretariat to enhance the system of executive oversight of the UIC and law-enforcement agencies. However, stringent controls were put in place, mostly toward agencies that have law-enforcement functions, such as the Security Service of Ukraine. The organizational changes that have taken place in the Secretariat since the Orange Revolution have not yet produced an independent service or department that would deal primarily with intelligence oversight issues.

3. The General Inspectorate under the President of Ukraine

The "General Inspectorate (GI) Under the President of Ukraine" is the presidential institution that serves as an additional "tool" for the Secretariat of the President to conduct executive control and oversee policies and budgets of intelligence and law-enforcement agencies. The GI operates as a presidential office.

The means of the GI in Ukraine are executed according to requirements of the Decree of the President of Ukraine dated July 4, 2003 (#565/2003) "About Holding of General Inspection." They are determined by the "List of Main Measures of Holding General Inspection in Ukraine," developed by the state committees that are established under the Prime Minister of Ukraine.

The GI has the authority to check reform and development issues within the Armed Forces of Ukraine and other military organizations. It also pays significant attention to the armament and military equipment of military and non-military organizations, as well as their budgets and expenditure.

The GI exercises some control at all levels of government in Ukraine. Mechanisms for collaboration among different levels of state management include regular meetings of state executives under the leadership of the Prime Minister of Ukraine. During its working meetings, the GI discusses issues in the sphere of reform, development of intelligence and security organizations, other military organizations, as well as armament and military equipment. The results of activities conducted among experts engaged in military, intelligence and security oversight are reported.[303]

The membership of the GI consists of high representatives of the Ministries of Defense, Foreign Affairs, Emergency Situations, Interior, Economy, Finance, Justice, Labor and Social Politics, as well

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[301] Petro Simonenko, April 27, 2007. Ukrainian Information Agency "FORUM". "The President Prepares the Armed Variant to Solve Crisis" http://ua.for-ua.com/ukraine/2007/04/27/110054.html (accessed June 27, 2007).

[302] Ukrainian Informational Agency "FORUM". June 27, 2007. Available at http://ua.for-ua.com/ukraine/2007/06/27/194616.html (accessed June 27, 2007).

[303] Informational-reference materials about state of executing measures of defensive inspection in Ukraine. 2007. Available at http://www.mil.gov.ua/index.php?lang=en&part=def_insp&sub=irm (accessed June 30, 2007).

as the Security Service of Ukraine and Academy of Science.[304] As of 2007, intelligence agencies do not have representation at this institution, though they can provide analytical information in order to support the inspection in conducting a strict control in the sphere of national security and defense.

Before 2003, the GI did not have authority to control intelligence and law-enforcement agencies.[305] After 2003, it started carrying out executive oversight functions of the UIC, controlling its organizational structure, reform processes and budget policies.

The GI regularly published its annual prospective executive plan of work (list of main actions).[306] However, since 2004, no information is available regarding the results of its oversight work.

C. THE NATIONAL SECURITY AND DEFENSE COUNCIL

1. Organization of the National Security and Defense Council and Its Main Intelligence Oversight Functions

According to the Ukrainian Constitution (Article 107), "the National Security and Defense Council (NSDC) of Ukraine is the coordinating body in matters pertaining to national security and defense under the President of Ukraine. The NSDC shall coordinate and supervise the activities of organs of executive authority in the sphere of national security and defense." The President of Ukraine is the Chairman of the NSDC and authorized to appoint its members.

The Constitution of Ukraine demands that the competence and functions of the NSDC should be provided by a separate law. On January 16, 1997 the Ukrainian Parliament adopted the "Conception of National Security." This document became the basis for the law "Regarding the National Security and Defense Council," which was signed by the President in 1998.

According to Article 4 of the law, this institution has the "authority and powers to carry out day-to-day control of executive structures [including intelligence agencies]; uses state officials and analysts of all governmental departments, research organizations of both private and public form of property to analyze necessary information; initiates the legislation related to the issue of national security and defense and controls its implementation; coordinates and controls the activity of state local institutions [including agencies of the UIC] during the time of emergency or threat of a crisis situation."[307] In terms of rank and position, membership in the NSDC must include the Prime Minister of Ukraine, the Minister of Defense, the Head of the Security Service, the Minister of the Interior, and the Minister of Foreign Affairs. The Chairman of the Supreme Council of Ukraine may take part in meetings of the NSDC. Decisions of the NSDC are put into effect by decrees of the President of Ukraine.[308] However, due to the current political crisis in Ukraine, the President has made changes in the membership of the NSDC.

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[304] List of permanent coordination group of the Defensive Inspection of Ukraine. 2007. Available at http://www.mil.gov.ua/index.php?lang=en&part=def_insp&sub=coordination_group (accessed June 30, 2007).

[305] Nikolay Sungurovskiy, Leonid Polyakov and Anatoliy Gritsenko, November 10, 2000. Civilian Control of Security Sector is the Requirement of the Time. Ukrainian Newspaper *Zerkalo Tyzhnya*, #43(316) 4. Available at http://www.zn.ua/1000/1030/28899/ (accessed June 30, 2007).

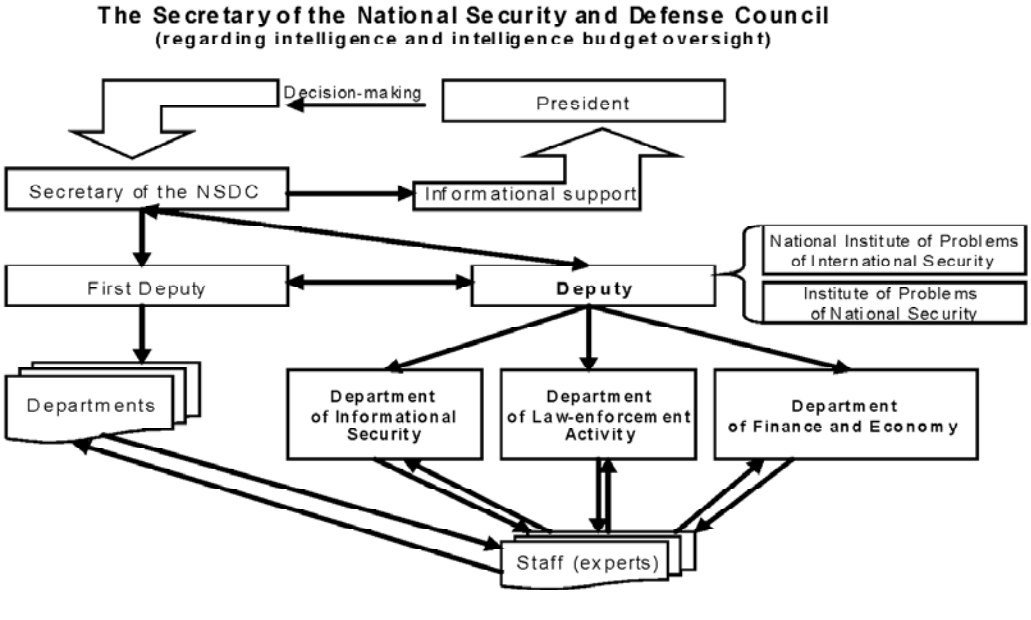
[306] List of Main Actions During Defensive Inspection in Ukraine. 2003. Available at http://www.mil.gov.ua/index.php?lang=en&part=def_insp&sub=list_of_action (accessed June 30, 2007).

[307] The Law of Ukraine "Regarding the National Security and Defense Council of Ukraine." 1998. Available at http://www.rainbow.gov.ua/about/ (accessed June 28, 2007).

[308] Constitution of Ukraine. 1996. #254/96-BP. Bulletin of the Verkhovna Rada of Ukraine, #30.

According to his executive order of November 29, 2006 (#1008) "On the Administration of the National Security and Defense Council of Ukraine," the President has increased the number of members of the NSDC to 42. Added to the Council are the First Prime Minister — Minister of Finance, the Head of the Secretariat of the President, the Secretary of the NSDC, the Chief of Staff of the Armed Services, the Commander-in-Chief of the Interior Troops, the Chairman of the Foreign Intelligence Service, the Prosecutor General of Ukraine, the Director of the National Institute of Strategic Studies, the Head of the National Bank, and 27 heads of the regional state administration. The order expands the total strength of the NSDC's staff from 254 to 260 servicemen.

This order also made some structural changes to the system of the NSDC's executive oversight of intelligence and law-enforcement agencies (see Figure 20). The Secretary of the NSDC was given new authority over the Departments of Strategic Developments, On the Issues of Energetic and Nuclear Security, Informational Security, On the Issues of Law-enforcement Activities, and Finance and Economy. In addition, the Personnel Section and the Section of State Secret Protection were subordinated to the Secretary of the NSDC.[309]



Source: Created from the Analysis of http://www.unian.net/rus/news/news-178672.html, http://www.rainbow.gov.ua/about/index.shtml, http://www.rainbow.gov.ua/about/index.shtml (accessed June 30, 2007).

Figure 20. The Secretary of the National Security and Defense Council

The NSDC conducts executive oversight of agencies of the UIC through its specialized departments, such as the Department of Informational Security, the Department of Law-enforcement Activity, and the Department of Finance and Economy. It is worth mentioning that clause 3.8 of this statutory order gives those specialized units the authority and powers to analyze and control the financial, personnel and organizational aspects of national security and defense.[310] Those departments

[309] Ukrainian Informational Agency "UNIAN". 2007. "The President Made Some Changes to the Organization of the NSDC". Translated from http://www.unian.net/rus/news/news-178672.html (accessed June 25, 2007).

[310] The Executive order #1008 "On the Administration of the National Security and Defense Council of Ukraine." November 29, 2006. Clause 3.8. Available at http://www.rainbow.gov.ua/about/index.shtml (accessed June 30, 2007).

participate in estimations of the intelligence and security requirements of agencies, their budgets and needs and, therefore, can influence the UIC. In this regard, the NSDC conducts executive oversight of the UIC, making propositions to the President of Ukraine to strengthen the field of national security and defense or make changes in budgets or organizational structures of those governmental institutions dealing with intelligence, security, and law-enforcement issues. Moreover, clause 4.1 of the order allows the NSDC's specialized departments to have access to any agency and obtain information of any kind from the databases of all Ukrainian governmental organizations, including agencies of the UIC.[311]

Based on recommendations of the heads of these departments, the Secretary of the NSDC can hire intelligence and security officers from the UIC, law-enforcement agencies and servicemen of the UIC and other military organizations to work at the NSDC. The officers are assigned to the departments to provide assistance and share experience in the issue of enhancing executive oversight of the UIC and other governmental institutions.[312]

2. Think Tanks of the NSDC

Two scientific institutions subordinated to the NSDC help the Council to conduct intelligence and intelligence budget oversight of the UIC. The National Institute of Problems of International Security and the Institute of Problems of National Security are subordinated to the Secretary of the NSDC and provide informational-analytical support to the President, the NSDC and the Cabinet of Ministers regarding the issues of national security and defense.[313] They are responsible for conducting intelligence and defense-related research and help executive bodies to make decisions in security sector oversight and reform. These institutions assist executive bodies of Ukraine in exercising control of the organizational structure, intelligence requirements, budgets and policy of intelligence and law-enforcement agencies. In addition, they also forecast events that can negatively influence the integration processes of Ukrainian defense, intelligence and the security sector with respect to EU and NATO structures and develop proposals that the CNSD can carry out to make necessary changes.[314]

D. THE INTELLIGENCE OVERSIGHT CONDUCTED BY THE CABINET OF MINISTERS

1. Organization of the Cabinet of Ministers of Ukraine Regarding Intelligence and Intelligence Budget Oversight

According to the Ukrainian Constitution, the Cabinet of Ministers of Ukraine (Cabinet) adopts measures to ensure the defense capability and coordinates the work of ministries and other executive

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[311] The Executive order #1008 "On the Administration of the National Security and Defense Council of Ukraine," clauses 3.8, 3.9, 4.1.

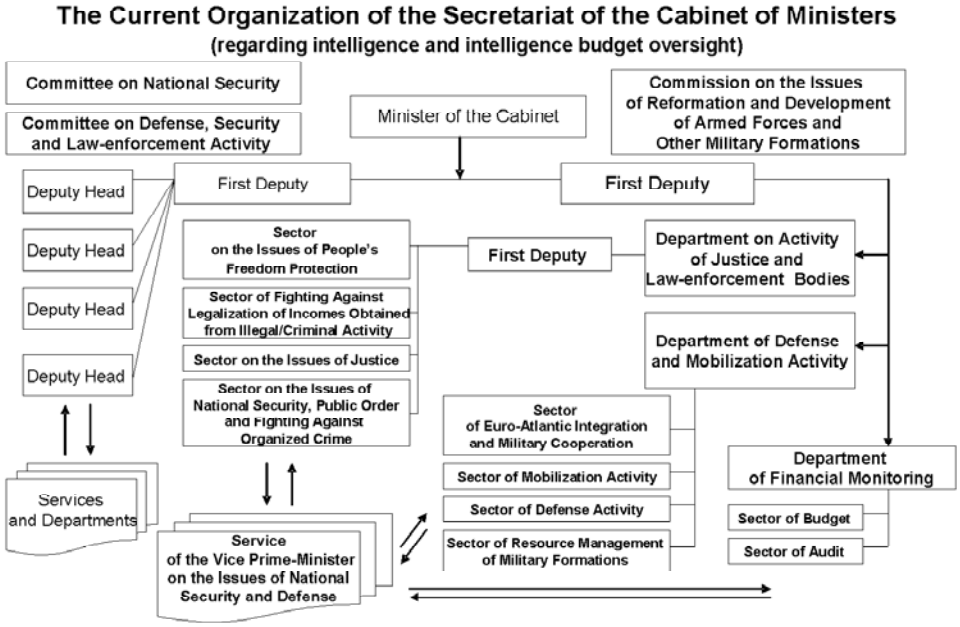
[312] Ibid., clause 10.

[313] Information regarding the main tasks and responsibilities of those institutions is available at http://www.niisp.gov.ua/institute.php?razdel=zavdanna&doc=main and http://www.nbu.gov.ua/_pro_inst.php (accessed June 30, 2007).

[314] Extracted from the fundamental research tasks of the institutions. Available at http://www.niisp.gov.ua/institute.php?razdel=zavdanna&doc=main (accessed June 30, 2007).

bodies with respect to the issues of national security and defense.[315] This Cabinet's power is also underlined in the law "On the Cabinet of Ministers of Ukraine," which was adopted on December 21, 2006.[316] The Prime Minister is empowered to submit candidates for the appointment of the heads of ministries and other central executive bodies.[317] Moreover, by law, the Cabinet is responsible for preparation of the draft of the State Budget of Ukraine and controlling the budget preparation activity and expenditure of any state budget entity. Thus, the Cabinet, theoretically, can influence the process of assigning intelligence executives and is authorized to conduct intelligence budget oversight at each stage of the intelligence budget process.

The Cabinet conducts intelligence and intelligence budget oversight of the UIC primarily through three departments: the Department on Activity of Justice and Law-enforcement Bodies, the Department of Defense and Mobilization Activity, and the Department of Financial Monitoring (see Figure 21).[318]



Source: Created from the Analysis of the Executive Decision of the President of Ukraine on April 14, 2003 #319/200 and Materials of Official Website of the Cabinet of Ministers of Ukraine http://www.kmu.gov.ua/control/uk/publish/popup_article?art_id=1662368, http://www.kmu.gov.ua/control/uk/publish/article%3fshowHidden=1&art_id=28730744&cat_id=28552944&ctime=1140104679599, and http://www.kmu.gov.ua/control/uk/publish/article%3fshowHidden=1&art_id=28877683&cat_id=28552944&ctime=1140190177734 (accessed July 2, 2007).

Figure 21. The Current Organization of the Secretariat of the Cabinet of Ministers

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[315] The Constitution of Ukraine. June 28, 1996. Chapter VI: Cabinet of Ministers of Ukraine. Other Bodies of Executive Power. Available at http://www.rada.gov.ua/const/conengl.htm (accessed June 26, 2007).

[316] Translated from the Law "On the Cabinet Ministers of Ukraine." December 21, 2006. Chapter IV: Responsibility of the Cabinet of Ministers. Article 21. Available at http://www.kmu.gov.ua/ document/65557974/Закон%20України%20Про%20Кабінет%20Міністрів%20України.doc (accessed July 2, 2007).

[317] According to the State Management Structure of Ukraine, intelligence and law-enforcement agencies are the central executive bodies.

[318] The Official Website of the Cabinet of Ministers. 2007. The Department of Justice and Law-enforcement Bodies. Available at http://www.kmu.gov.ua/control/uk/publish/article%3fshowHidden=1&art_id=28730744&cat_id=28552944&ctime=1140104679599 (accessed July 2, 2007); and The Department of Defense and Mobilization Activity. Available at http://www.kmu.gov.ua/control/uk/ publish/article%3fshowHidden=1&art_id=28877683&cat_id=28552944&ctime=1140190177734 (accessed July 2, 2007).

According to the functional oversight duties written in the internal instruction of the Cabinet "On the Department on Activity of Justice and Law-enforcement Bodies," the department is responsible for oversight of the Intelligence Body of the State Border Service of Ukraine and some issues involving the Security Service of Ukraine.[319] The Department of Defense and Mobilization Activity is tasked to oversee and monitor the Ministry of Defense and, therefore, the Main Directorate for Intelligence of the Ministry of Defense.[320] There is no information available at the official Website of the Cabinet that the Cabinet of Ministers controls the Foreign Intelligence Service of Ukraine and its budget. According to the instruction, no one department or service in the Cabinet of Ministers is assigned to oversee the Foreign Intelligence Service and control its intelligence programs and funds.

Unfortunately, the official Websites of the Cabinet of Ministers and the Secretariat of the Cabinet do not provide information regarding the authority to conduct oversight of the UIC, nor do they indicate detailed organizational structures and concrete functional tasks of the departments (or services) involved. However, some public sources give information concerning the principle functions of the system of executive oversight conducted by the Cabinet of Ministers and recent changes in that system.

On January 13, 2007, the Ukrainian newspaper "The Facts" reported that the Verkhovna Rada of Ukraine voted on and approved the nomination of the new Vice Prime Minister of Ukraine based on a proposal of the Prime Minister. The former Chairman of the Security Service of Ukraine and the National Security and Defense Council, Mr. Volodymyr Radchenko was assigned on this position.[321] The newspaper reported that the new Vice Prime Minister would deal primarily with coordination of activities of intelligence and law-enforcement agencies, as well as assist the Cabinet of Ministers to oversee other processes taking place in the sphere of national security and defense.

Based on an executive order of the Cabinet, the Vice Prime Minister organized his Office so, that, together with the Department on Activity of Justice and Law-enforcement Bodies, the Department of Defense and Mobilization Activity and the Department of Financial Monitoring, was assigned to enhance the role and responsibility of the Cabinet in conducting intelligence and intelligence budget oversight.[322] This Office became operational in February 2007 and immediately started making constructive changes in overseeing the governmental budget entities during the preparation phase of the State Budget of Ukraine for FY2008. At roughly the same time, the Prime Minister of Ukraine, Mr. Victor Yanukovich, announced that "we urgently need to conduct analysis of each independent budget entity in order to safeguard the state budget and later punish everyone who used its funds ineffectively."[323]

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[319] General Responsibility of the Department on Activity of Justice and Law-enforcement Bodies. Available at http://www.kmu.gov.ua/control/uk/publish/article%3fshowHidden=1&art_id=29261204&cat_id=28584895&ctime=1140449578979 (accessed July 2, 2007).

[320] The Cabinet's Order Regarding the "Responsibilities of the Department of Defense and Mobilization Activity." 2007. Available at http://www.kmu.gov.ua/control/uk/publish/article_%3fshowHidden=1&art_id=28877683&cat_id=28552944&ctime=1140190177734 (accessed July 2, 2007).

[321] Irina Kotsina, January 13, 2007. The Ukrainian Parliament approved Volodymyr Radchenko for the position of a Vice Prime Minister of the Cabinet. The Ukrainian newspaper *The Facts*. Available at www.facts.kiev.ua (archive, accessed July 2, 2007).

[322] The Official Website of the Cabinet of Ministers. July 2007. Services of the Secretariat of the Cabinet. Available at http://www.kmu.gov.ua/control/uk/publish/article%3fshowHidden=1&art_id=28551361&cat_id=9205042&ctime=1139309776621 (accessed July 2, 2007).

[323] Translated form the discussion of the Prime Minister of Ukraine regarding the preparation of the draft Law of State Budget of Ukraine of 2008. February 2007.

However, the new Vice Prime Minister was recalled from the position in May 2007 and a former Minister of Defense of Ukraine, Mr. Oleksandr Kuzmuk, was assigned to this position. On May 25, 2007 he announced that "during the political crisis in Ukraine he sees his duties in helping the President and the Cabinet of Ministers to avoid using intelligence and law-enforcement agencies in resolving the political crisis."[324]

After his nomination, the Office of the Vice Prime Minister recommended that the Ukrainian Parliament support the proposition of the Ministry of Economy in making changes to the law "On the State Military Acquisition Order," which regulates the acquisition system for military, intelligence and law-enforcement agencies.[325] The Office also became very active in providing consultations to agencies of the UIC regarding the budget preparation and usage of its funds.

2. Government Oversight Committees and a Specialized Commission

To be effective in conducting its intelligence oversight functions, the Office of the Vice Prime Minister established a working relationship with government committees "On National Security" and "On Defense, Security and Law-enforcement Activity." Comprised of the top executives of the Cabinet and people's deputies of the Parliament, the committee "On National Security" has a broader jurisdiction over the state ministers and central executive bodies. The second committee consists of deputy ministers and some deputies of central executive bodies and has more specific functions dealing with particular oversight issues.

Moreover, the Office activated its effective connections with the governmental specialized commission "On the Issues of Reformation and Development of the Armed Services of Ukraine and Other Military Formations," which was established by executive decision of the President of Ukraine on April 14, 2003 (#319/2003) and finalized by the executive order of the Cabinet on May 31, 2004 (#298-p).[326]

These governmental institutions conduct investigations related to national security and defense. They usually include representatives of the Cabinet of Ministers, Ministries of Defense, Internal Affairs, Economy and European Integration, Industrial Policy, Justice, Finance, as well as the State Border Service of Ukraine, the Security Service, the National Institute of Strategic Studies, the National Institute of Problems of International Security, the Institute of Problems of National Security and people's deputies assigned to serve in relevant parliamentary oversight committees.

The Prime Minister is the head of the committee "On National Security." The Vice Prime Minister on the Issues of National Security and Defense is the head of the committee "On Defense, Security and Law-enforcement Activity." The Deputy Head of the Security Service of Ukraine is the head of the specialized commission.

These institutions are authorized to obtain information, documents, and analytical materials of any kind from any governmental agency, including agencies of the UIC.[327] They are allowed to

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[324] Oleksandr Kuzmuk, May 25, 2007. Materials of Vice Prime Minister Briefing. Translated from the materials of the Ukrainian Information Agency "UNIAN" http://www.unian.net/rus/online/10/20070525 (accessed July 2, 2007).

[325] The Ukrainian Informational Agency "The Ukrainian News". May 8, 2007. Available in the archive at http://www.ukranews.com/rus/fulltext/all/20070531.html (accessed June 3, 2007).

[326] The Executive Decision of the President of Ukraine on April 14, 2003 #319/2003. Available at http://www.kmu.gov.ua/control/uk/publish/popup_article?art_id=1662368 (accessed July 2, 2007).

[327] Translated from the Executive Decision of the President of Ukraine#319/2003. April 14, 2003. Clause 5. Available at http://www.kmu.gov.ua/control/uk/publish/popup_article?art_id=1662368 (accessed July 2, 2007).

invite intelligence executives to testify at hearings concerning an agency's policy, current activities, budget or expenditure. Moreover, the law "On the Cabinet of Ministers" allows them to obtain information from the Accounting Chamber of Ukraine regarding the results of scheduled and operational audits of the UIC in order to control and oversee its intelligence budgets and expenditure.[328]

They are also authorized to hold regular working meetings, but not less than one every three months. The heads of these governmental committees and the specialized commission are assigned and dismissed by the President of Ukraine.[329]

No information is available regarding the results of the working meetings conducted by these governmental institutions. However, the official Website of the Cabinet of Ministers provides information concerning the table of contents of those meetings, which proves that they are scheduled and held regularly. For example, the Government Committee "On Defense, Security and Law-enforcement Activity" held its meetings three times in April, three times in May and two times in June 2007 in order to discuss urgent issues related to intelligence and security sector reforms.[330]

E. CONCLUSION

A system of executive oversight of intelligence and its budget has been established and currently functions in Ukraine. It is comprised of the Secretariat of the President, the NSDC and the Cabinet of Ministers. Those executive bodies operate and perform oversight functions based on special legislation to oversee the activities and budgets of intelligence agencies. The statutory rules also allow them to monitor intelligence budgets at each stage of the intelligence budget cycle and use results of audits conducted by the Accounting Chamber of Ukraine.

The Secretariat of the President is the most influential executive oversight body. That is because the Constitution, and current Ukrainian legislature, provide the President with broad executive powers in exercising intelligence oversight and give the Secretariat strong and effective mechanisms to conduct oversight of the UIC. The Secretariat provides the leadership of the UIC through its role in the process of nominating intelligence executives. Moreover, subordinated to the President of Ukraine and functioning under presidential orders, the Secretariat has an independent authority and is not accountable to any other governmental institution in Ukraine regarding its decisions toward the UIC.

In its oversight activity, the Secretariat relies upon the "General Inspectorate Under the President of Ukraine," which serves as a "working tool" to control the UIC, and the National Institute for Strategic Studies, which serves as a think tank for the Secretariat regarding different issues of national security and defense. Due to the closed nature of those institutions, the results of their work, in the enhancement of intelligence and intelligence budget oversight are difficult to evaluate.

The intelligence oversight functions of the Secretariat are not fully effective. The Secretariat does not have an independent body devoted primarily to intelligence oversight tasks. The

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[328] Translated from the Law "On the Cabinet Ministers of Ukraine." December 21, 2006. Chapter VI: Authority of the Cabinet of Ministers. Article 33. Available at http://www.kmu.gov.ua/document/ 65557974/Закон%20України%20Про%20Кабінет%20Міністрів%20України.doc (accessed July 2, 2007).

[329] Translated from the Executive Decision of the President of Ukraine#319/2003. April 14, 2003. Clause 5. Available at http://www.kmu.gov.ua/control/uk/publish/popup_article?art_id=1662368 (accessed July 2, 2007).

[330] This information was extracted and translated from http://www.kmu.gov.ua/control/ru/ meetings/timeframe?d=21.6.2007&cId=73905257&ctx= (accessed July 2, 2007).

responsibilities of its oversight departments are mixed and directed primarily toward law-enforcement agencies.

The President of Ukraine also controls the UIC through the National Security and Defense Council, which has statutory authority and powers to carry out day-to-day control of intelligence agencies. Two think tanks — the National Institute of Problems of International Security and the Institute of Problems of National Security — are assigned to help the NSDC in analyzing the current policies of the UIC's agencies, their intelligence requirements, budgets and expenditure.

However, the NSDC does not have in its organizational structure an independent body that deals directly with oversight functions of intelligence agencies. The mixture of intelligence and law-enforcement oversight tasks decreases the efficiency of the executive oversight system of the UIC conducted by the NSDC.

Until 2003 the Cabinet of Ministers had little authority to conduct oversight of intelligence agencies. The current organization of executive oversight still does not allow the Cabinet to conduct efficient oversight of the UIC due to the absence in its organizational structure of a specialized unit dealing only with intelligence and intelligence budget oversight issues. However, current legislation empowers the Cabinet to oversee the UIC, influencing assignments of intelligence executives as well as intelligence budget preparation and control processes.

With the establishment of the new Office of Vice Prime Minister on the Issues of National Security and Defense, the Cabinet is apparently attempting to enhance its role in conducting strict control of the UIC and its budget. As a result of the political situation in Ukraine, the attempts of the Cabinet to enhance its role in conducting oversight of intelligence and law-enforcement agencies are likely to be controversial, and the "competition" with the Secretariat of the President regarding the issue of conducting such control will continue.

It is expected that in order to enhance its control of the UIC, the new Office will work closely with the governmental oversight committees and the specialized commission, requesting from the Ukrainian Parliament more legislative powers for those institutions. However, due to the closed nature of those governmental institutions and the absence of official information from the executive bodies of Ukraine, it is difficult to judge their current effectiveness and forecast their role in intelligence and intelligence budget oversight of the UIC.

VII. SUMMARY

A. INTRODUCTION

Intelligence reform will always be a vital issue for every democratic nation. For a Ukraine in the process of democratic consolidation, restructuring its intelligence community will be vital and tremendously difficult. It is evident that democratic consolidation cannot happen without establishing effective democratic control of the intelligence apparatus. Emerging transnational threats require that allied countries evaluate their intelligence organizations to ensure their operational efficiency and the use of resources. The experience of older democracies is "that intelligence reform is not a one-time event but, like democracy itself, requires consistent attention, oversight, and institutional engineering, if intelligence is to be effective."[331]

Ukraine has been experiencing political crisis since the Orange Revolution of 2004. The latest wave of this crisis began in April 2007, when the President of Ukraine made a decision to dissolve the Parliament and to call for new parliamentary elections. According to the political agreement between the Ukrainian parliament and the President, these elections would be held on September 30, 2007. However, "the existing multilayer system of compromises in Ukraine cannot be dismantled; it can at best be rearranged to become more compatible with the goal of reforms."[332]

This political instability holds up implementation of intelligence and intelligence budget oversight conducted by the Ukrainian parliament and the state executive bodies. For example, after September 30 it will be very difficult for both the newly elected Ukrainian parliament and state government to conduct effective intelligence budget oversight. They will not have enough time to scrutinize the budget for the UIC and, therefore, intelligence appropriations for FY2008 would be issued based on state budget technical procedures and without precise analysis of previous and proposed expenditure. This will negatively influence the political image of Ukraine, which officially claimed its willingness to accelerate partnership with the European Union (EU) and NATO states in 1998.

This political division does not influence all foreign policy of Ukraine equally. Immediately after the crisis took place, the President of Ukraine informed the international community that these political events would not influence Ukrainian foreign policy, underlining the priority of its western orientation. The newly appointed Minister of Foreign Affairs of Ukraine, Mr. Arseniy Yatsenyuk, made an official tour to the U.S. and Canada at the end of April 2007. During his official visit to Washington, D.C., he noted the economic successes of Ukraine in FY2006-FY2007 and stressed that its foreign policy would be oriented toward integration with the EU and NATO states.[333]

Another indication of the Ukrainian political inclination to cooperate with the EU and NATO

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[331] Thomas C. Bruneau and Steven C. Boraz, *Reforming Intelligence. Obstacles to Democratic Control and Effectiveness* (Austin: University of Texas Press, 2007) 331.

[332] Arkady Moshes and Viraliy Silitski, June 2007. Political Trends in the New Eastern Europe: Ukraine and Belarus. Ukraine: Domestic Changes And Foreign Policy Reconfiguration, 21. Available at http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB781.pdf (accessed July 23, 2007).

[333] Arseniy Yatsenyuk, H.E. Minister of Foreign Affaires of Ukraine. April 30, 2007. Ukraine: Current Developments and Foreign Policy Priorities. Interview in the Carnegie Endowment For International Peace. Washington, D.C. Available at http://www.carnegieendowment.org/events/ index.cfm?fa=eventDetail&id=985&&prog=zru (accessed June 11, 2007).

was the international forum "The Euro-Atlantic Future of Ukraine," which took place in the Ukrainian capital on June 12, 2007. Some 80 experts from different countries discussed the European future of Ukraine and agreed that Ukrainian foreign policy is pointed toward the West. During this forum, the former ambassador of the U.S. in Ukraine, Mr. Stiven Paifer, stressed that despite the political crisis, "the door to enter the EU and NATO is not closed for Ukraine, and western democracies will help and support Ukraine to go this direction."[334]

Thus, Ukraine continues its initiatives aimed at improving ties to NATO and the EU. In this regard, the systems of parliamentary and executive oversight of the Ukrainian Intelligence Community (UIC) remain critical for Ukraine, and should continue to be strengthened if Ukraine wants to be accepted by the western world.

B. OBSERVATIONS AND CONCLUSIONS

The analysis of norms of western and transitional democracies associated with oversight of intelligence communities and examination of the system of parliamentary and executive oversight of the UIC, suggests that a similar system of intelligence oversight is established and operational in Ukraine. However, this system needs improvement. Compared with other systems, the parliamentary and executive oversight of intelligence in Ukraine is at a low to medium level. Moreover, due to excess secrecy, the UIC is not totally accountable to parliamentarians and state executives and, therefore, its oversight system does not provide sufficient transparency to the public.

The organizational structure of the agencies of the UIC is complicated and, thus, difficult to control. Each Ukrainian intelligence agency has multifunctional duties and a mixture of foreign intelligence, security and law-enforcement responsibilities. A combination of HUMINT and SIGINT functions in some agencies provides power that is available to the ruling political elite. In addition, the absence in the UIC of an all-source analysis intelligence agency and the existence of independent reporting systems among the agencies provide unnecessary duplication in intelligence reporting and also influence the political decision-making process. Such organizational and functional "disorder" might lead to the inefficient usage of intelligence resources, as well as problems in performing effective parliamentary and executive oversight of the UIC.

Current legislation allows the Ukrainian parliament to monitor intelligence organizations and their budgets at each stage of the intelligence budget cycle. However, in practice the power of the Parliament to conduct intelligence oversight tasks is reduced. It does not have an independent intelligence oversight committee dealing only with the issues related to intelligence. The effectiveness of its subcommittee is uncertain because it also deals with secondary issues that are not purely intelligence-related in nature. In addition, lack of experienced staff in relevant oversight committees decreases the capacity of the legislative branch to perform oversight functions.

The Ukrainian parliament has difficulties in exercising effective control of the intelligence budget. The relevant committees have a short time period for the review and scrutiny of intelligence budgets. The effectiveness of their control is also decreased because, within this period, the parliamentarians need to analyze the budgets of four independent agencies. It is also doubtful that the delegated parliamentarians have enough time to check every single intelligence budget item during the process.

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[334] Materials of the International Forum "The Euro-Atlantic Future of Ukraine." June 11, 2007. Available at http://5tv.com.ua/newsline/236/0/41595/ (accessed June 11, 2007).

The Ukrainian parliament also oversees intelligence expenditure by authorizing the Accounting Chamber of Ukraine to conduct audits in agencies of the UIC. The Accounting Chamber conducts mostly financial audits to check intelligence expenditure, and does not review the compliance of the UIC agencies with existing laws. It is not clear which institution conducts such compliance audits in the UIC and to which institution it reports the results.

The Committee on National Security and Defense and the Accounting Chamber of Ukraine do not inform the public concerning all of the results of parliamentary hearings and audits related to intelligence. The public is also not aware whether those hearings and audits make any difference in the behavior of intelligence agencies, including their budget compliance.

The organizational structures for executive oversight of the UIC do not have independent organs devoted primarily to intelligence oversight tasks. No such intelligence oversight structures exist in the Secretariat of the President, the National Security and Defense Council, or the Cabinet of Ministers. The responsibilities of their oversight departments are mixed and directed primarily to law-enforcement agencies.

The recent statutory attempts of the Cabinet of Ministers of Ukraine to enhance its role in conducting oversight of intelligence and law-enforcement agencies may suggest the establishment of some new oversight mechanisms in Ukraine that would influence executive oversight of intelligence in the future. After the establishment of the Office of Vice Prime Minister on the Issues of National Security and Defense, the Cabinet has already revised its organizational structure for oversight of the UIC. It is expected that the Cabinet will modify its current control functions, especially in the issue of oversight of intelligence budgets and their expenditure.

One of the biggest problems of the parliamentary and executive oversight systems of the UIC is that information regarding the operational efficiency of those systems is not properly reported to the public and strategic partners of Ukraine. The results of oversight activities of relevant parliamentary committees or high executive bodies are difficult to find. Information published on the official Websites of oversight institutions is frequently incorrect or out of date, or provides data that shows the intelligence oversight system to be an ineffective process.

Moreover, due to the closed nature of executive oversight institutions and, sometimes, the absence of official statements about the results of their work, it is difficult for Ukrainian citizens to judge the effectiveness of intelligence oversight activities conducted by the executive branch. It is also not easy for Ukraine's strategic partners to see the important role performed by state executives in providing intelligence and intelligence budget oversight of the UIC. This "seeds" doubt among international organizations and foreign allies about the effectiveness of the oversight system of the UIC, and encourages misunderstanding that can negatively influence Ukraine's political reputation.

C. RECOMMENDATIONS

New parliamentary elections scheduled for September 30, 2007 provide an opportunity for the Ukrainian parliament and the government to enhance its system of intelligence oversight of the UIC. Taking into consideration the best western principles in conducting oversight of intelligence, they can use the powers available under the constitution to adopt new oversight principles and practices in Ukraine to improve upon the existing oversight system. A strategy to pursue such reforms can be summarized as follows.

The legislative branch should ensure that the organizational, management, personnel and

budgetary structure of the agencies of the UIC is clear for the parliamentarians. In this regard, the Ukrainian parliament should create an independent parliamentary committee on intelligence (or a subcommittee within the framework of an existing committee) to deal only with intelligence-related issues. This committee should have broad powers over the UIC and its appropriations. The members of the committee should have the highest state clearance and be guaranteed access to the information they need in order to carry out intelligence oversight functions. In addition to this, the number of qualified experts supporting the people's deputies should be increased.

The committee should consider changing the law "The Budget Code of Ukraine" to allow parliamentarians more time to oversee and scrutinize the intelligence budget in general and its individual budget items in particular. The committee should be more active in participating in budgeting for intelligence. It should pay much more attention to controlling the intelligence budget at each stage of the budget process: preparation, authorization, appropriation and execution.

The Budget Committee and the Accounting Chamber of Ukraine should also enhance their cooperation and participation in the intelligence budget process and in controlling its authorization and execution stages in particular. The Accounting Chamber of Ukraine should also prepare to conduct compliance audits of the UIC and report the results of its work.

To conduct effective oversight, the executive branch should provide overarching direction for the UIC by defining its missions. With this purpose, the Secretariat of the President, the National Security and Defense Council and the Cabinet of Ministers should rearrange their organizational structures in order to establish additional units dealing only with intelligence oversight functions. The heads of these units, as well as staff, should receive special education in the field of conducting intelligence and intelligence budget oversight, as well as professional knowledge regarding the UIC's operational activities, policies and budget. Moreover, the General Inspectorate Under the President of Ukraine and the relevant governmental committees dealing with the issues of national security and defense should be given more authority in conducting oversight of the UIC.

Furthermore, the systems of parliamentary and executive oversight of intelligence could be enhanced if the Ukrainian government made changes in the organizational structure of the UIC. For better oversight, it is necessary to provide a minimum set of tasks for each intelligence organization of the UIC. Its agencies should be assigned to perform just one mission. Oversight may be made more effective if the SIGINT functions of different agencies were combined under the responsibility of an independent intelligence organization. It also will be essential to create and add to the UIC an all-source intelligence analysis agency to avoid informational duplication in the decision-making process and inefficient usage of intelligence resources and funds.

Finally, in order to increase transparency and accountability, general information concerning the consequences of parliamentary and executive hearings on intelligence matters, as well as the results of audits in the UIC should be appropriately reported to the public. However, that information should not place intelligence sources and methods of operational activity at risk.

D. SUGGESTION FOR FURTHER RESEARCH. THE INTELLIGENCE OVERSIGHT RADAR

Parliamentary and executive oversight of intelligence involves innovative processes. These processes require not only knowledge of security studies, but also, and most importantly, applying

techniques of systems management and business administration. Ukrainian parliamentary leaders and high state executives should continually seek better ways of obtaining objective data regarding the activities, policies, budgets and expenditure of intelligence agencies. This suggests a possibility for further research.

When innovating, the parliament and state executive bodies must consider all dimensions of the intelligence oversight system. To enhance parliamentary and executive oversight, an "Intelligence Oversight Radar" (IOR) could be developed and adopted by those oversight institutions (see Figure 22).[335]

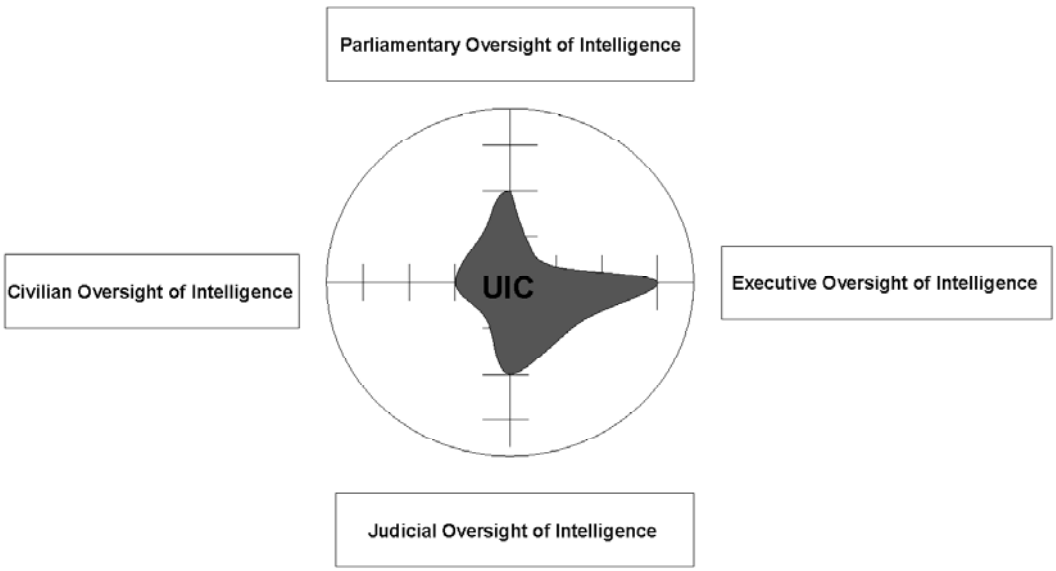

Figure 22. The Intelligence Oversight Radar

An IOR can show the current position of each entity engaged in intelligence oversight (parliamentary, executive, judicial, and civilian). The Radar would analyze and evaluate each oversight function independently. For example, to analyze the efficiency of parliamentary oversight of an intelligence agency, the IOR evaluates each important feature for that particular oversight, such as the existence of specialized legislation, the existence of an independent parliamentary body (committee or subcommittee) dealing only with intelligence oversight functions, the ability of parliamentarians to obtain information from intelligence agencies, the effectiveness of parliamentarians in conducting intelligence budget oversight, the consistency of their oversight functions during each stage of the intelligence budget cycle, the existence and operational efficiency of a specialized parliamentary body dealing with oversight of intelligence expenditure, the number of professional staff, etc. Examples of the parliamentary oversight criteria are shown in Figure 23.

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[335] An Intelligence Oversight Radar is Based on the Business Innovation Radar, Proposed by Sawhney, Mohanbir, Wolcott, Robert C., and Arroniz, Inigo. 2006. The 12 Different Ways for Companies to Innovate. MIT Sloan Management Review. Vol. 47. No. 3, 77.

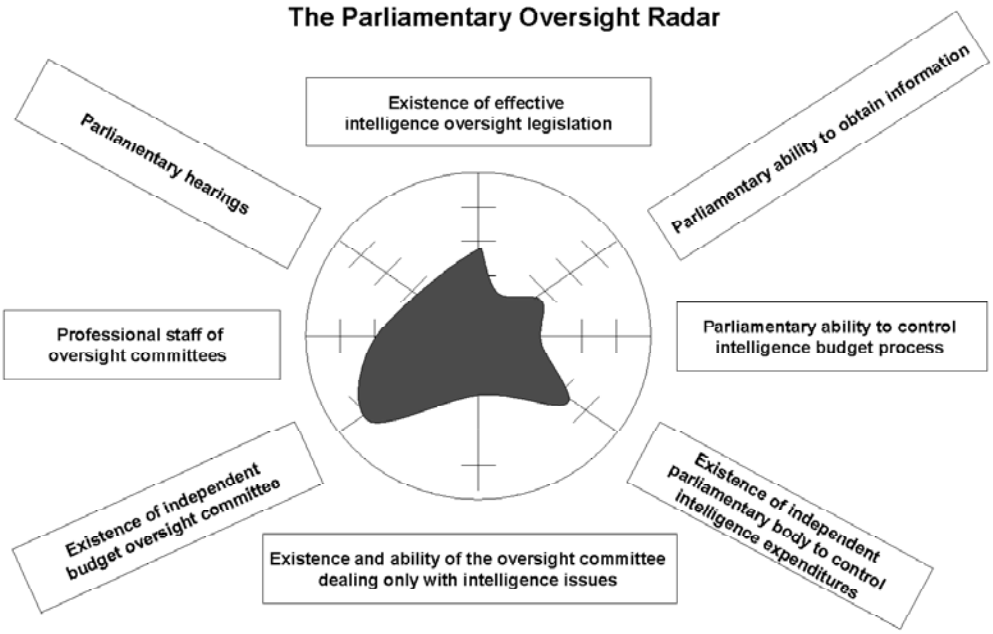

Figure 23. The Parliamentary Oversight Radar

To analyze the efficiency of the system of executive oversight of intelligence, the IOR would evaluate such criteria as the number and importance of high executive bodies participating in the intelligence oversight process, the existence of independent executive units dealing primarily with intelligence oversight tasks, the professionalization of executive staff supporting oversight of the UIC, the existence of specialized governmental programs and committees to oversee intelligence organizations, the ability of executive bodies to obtain information regarding the policies, activities and budgets of intelligence agencies, the ability to influence the intelligence budget at each stage of intelligence budget cycle, etc. Examples of executive oversight criteria are shown in Figure 24.

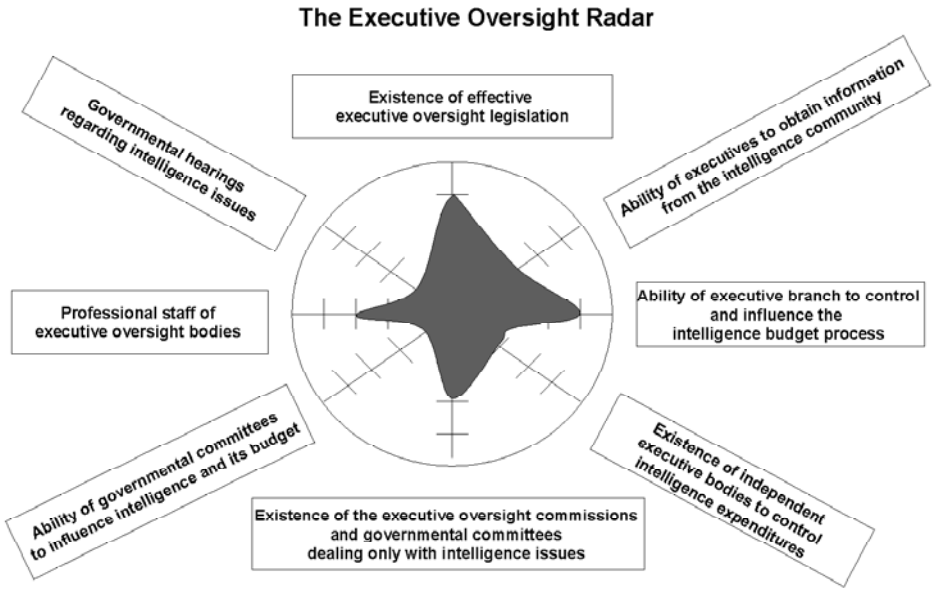

Figure 24. The Executive Oversight Radar

Moreover, the IOR can also analyze the current organization of intelligence agencies, using such criteria as the need to separate intelligence tasks from security and law-enforcement functions, the existence of an independent SIGINT agency, the creation of an all-source analysis intelligence organization, etc.

The important purpose of this model is also to develop tools for the evaluation of the oversight system for intelligence. Transparency could serve here as a key parameter of evaluation. In other words, as more information is provided for the public by parliamentary or executive branches about the results of their oversight activities, a higher level of evaluation can be given to a particular oversight function.

An Intelligence Oversight Radar can be an interesting subject for future research. In any democracy it can serve as a helpful "tool" for the parliament and high-level state executives in overseeing their intelligence and security agencies. The IOR may also help to estimate how far a democracy has improved in the issue of developing its national system of intelligence and intelligence budget oversight and what else should be done to enhance that oversight system in order to approach transparent models that already exist in many western democracies.

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