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CHALLENGES FACING ARMS EXPORT CONTROL IN UKRAINE AND THE RUSSIAN FEDERATION

Center for Army, Conversion and Disarmament Studies

The Geneva Centre for the Democratic Control of Armed Forces

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Geneva Centre for the Democratic Control
of Armed Forces
(DCAF)
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The Geneva Centre for the Democratic Control of Armed Forces is one of the world's leading institutions in the areas of security sector reform (SSR) and security sector governance (SSG).

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2012

CHALLENGES FACING ARMS EXPORT CONTROL IN UKRAINE AND THE RUSSIAN FEDERATION

Center for Army, Conversion and Disarmament Studies

Geneva, 2012

Center for Army, Conversion and Disarmament Studies, *Challenges Facing Arms Export Control in Ukraine and the Russian Federation*, DCAF Regional Programmes Series # 14 (Geneva: Geneva Centre for the Democratic Control of Armed Forces, August 2012).

DCAF Regional Programmes Series no. 14

Executive Publisher: Procon Ltd., <www.procon.bg>

Proofreading: Lydia Amberg

Cover Design: Angel Nedelchev

ISBN 978-92-9222-194-2

PREFACE

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) has enjoyed the membership of both the Russian Federation and Ukraine since it was established in the year 2000. Whereas questions of democratic oversight of the security sector were given priority in an early phase of the Centre's existence, issues of management (governance) recently gained in importance and the Centre is now one of the world's leading institutions on security sector governance and reform.

It is with great pleasure that we publish this concise study by one of Ukraine's leading think tanks.

Both Ukraine and the Russian Federation have built rather robust national systems of arms export control in the last decade. While Ukraine received significant support from the US, Russia relied fully on her own experience.

In terms of civilian control, neither system gives much importance to parliamentary oversight. Nor do they foresee much of a role for public oversight by civil society organisations and/or the media.

Both systems as documented and analysed in this very handy study may be adapted to economic necessities in the future and may thus shed some of their rigidity. At that point, elements of parliamentary oversight may become more important to decrease the risk of violations.

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Deputy Director, DCAF

Geneva, August 2012

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INTRODUCTION

It is common knowledge that arms export control is an important security policy instrument in any state possessing military and dual-use technologies. This reality requires governments to closely follow the growth of their arms exports and, on a parallel track, make sure that their countries' technological advantages remain in place. One of the most visible trends in the modern-era world arms market is towards the market's expansion, this being driven by armed forces rearmament and re-equipment budgets that are rising globally, and also by the fact that new weapon systems and military equipment types are becoming more expensive to design, manufacture and buy.

With the world changing rapidly, a lot of countries—by actively purchasing new weapons and new technology—are about to lend weight to their position on the global arms market by means of both intensely enhancing their weapons development and manufacturing capabilities and simplifying approaches to export controls. Particularly countries such as South Africa, Turkey or Poland, which were almost unknown in the world arms market barely two decades ago, have now evolved into major suppliers to markets for weapons and military equipment. Some other states are loosening their respective arms export policies; for example, a Pacifist nation such as Japan announced intent in November 2011 to soften a ban on arms exports which has been in effect since 1967.

Against this background, however, there still remains a high risk of illicit trafficking in weapons and military equipment, sensitive materials and technology. A striking proof of this was the high-profile 2011 trial of Viktor Bout, a modern-day cosmopolitan dealer on the black arms market. Bout, a citizen of Russia, was arrested in Thailand in 2008. The scope of his business

interests stretched as far as the sale of a few thousand pieces of weapons, including surface-to-air missiles (SAM). The fact that even weapons such as SAM missiles can be subject to illicit arms trade proves that global export control regimes and national export control systems are ineffective. Furthermore, there has been no solution to the problem of re-export found at the international level yet, which brings analysts to the conclusion that double standard is being applied to trade in the world's arms market.

These and other factors of developing international market for arms and military equipment are stimulating the former Soviet successor states to more aggressively compete in the global arms sales race. Some countries, including the Russian Federation and Ukraine, are doing fairly well in this competition in terms of the results achieved. According to official reports and statistics on sales, Russia's arms exports exceeded $11 billion in 2011, and in Ukraine, the state-owned company *Ukrspecexport* alone chalked up arms export revenues in excess of $1 billion for the same year. At the same time, in both countries, the level of parliamentary scrutiny and oversight over the international arms trade business remains low, not even considering a total lack of public oversight; the military-technical cooperation domain still remains among the least transparent to the citizenry. It is difficult, indeed, to find an appropriate balance between transparency and confidentiality in case of the export of sensitive goods and technology. The traditionally excessive 'privacy' of Ukraine's international military-technical cooperation system, far from furthering the vital national interests, is in fact quite often detrimental to those interests in that the information void is filled with misinformation and criticism from Ukraine's competitors. Such a situation provides a fertile environment for large-scale notorious information campaigns to be conducted against Ukrainian arms producers and exporters. The public and parliamentary monitoring of the export controls system in Ukraine still remains more in a hypothetical thought-world. Until now, there has been no ultimate compromise reached between export control functionaries and government authorised arms dealers with respect to supervision over pre-contract negotiations on the export of sensitive materials. Studies conducted by experts at the Center for Army, Conversion and

Disarmament Studies suggest that Ukraine's export control system does need to be improved and upgraded.[1]

However, the system's major challenges are not going to be in the field of structural inconsistencies but rather in the lack of understanding of the need for establishing strong oversight mechanisms to ensure that the legislature and the public alike are in control of this sensitive activity sector. For instance, the State Service for Export Control (SSUEC) is under no obligation to be accountable to the public or to provide it with detailed statistics about arms sales and reports on sought solutions to existing challenges. The SSUEC is currently not mandated to officially release information on the amount and value of the country's arms export sales. At the same time, the SSUEC compiles reports on international transfers of some goods categories (which transfers are subject to reporting to international organisations) and submits them to the Ministry of Foreign Affairs from where these reports, in compliance with Ukraine's legislation and international obligations, are then forwarded to the international organisations concerned (UN, OSCE and international export control regimes). However, it is to be noted here that the transfer listings featured in those reports are selective rather than comprehensive, insofar as they do not include transfers in a whole variety of arms market sectors (particularly assemblies and components, radar systems and services). In an environment where transparency in the arms export business is virtually non-existent and access to information to most of the media outlets (which are mostly electronic) is severely restricted, there is a major risk of Ukraine being subject to information campaigns aimed to undermine the country's foreign policy status in the world, and arms market rivals can easily resort to mud-slinging tactics to gain a market edge over Ukraine. Another sensitive challenge that is still facing many of the former Soviet states is related to the potential proliferation risk of intangible technology transfers and the associated risk of highly skilled workforce moving to foreign countries. Although the level of threats to global security has reduced dramatically since the 1990s, the threats

[1] Mikhaylo Samus, "Export Controls in Ukraine: Ad Astra per Aspera, Possible areas of focus in improving Ukraine's export control system seen through the prism of current challenges and deficiencies," *Defense Express*, 3 February 2006, <www.defense-ua.com/rus/hotnews/?id=19195>.

have also become more dangerous and sophisticated as critical information and materials are becoming more readily accessible to extremist and terrorist organisations. Generally speaking, those risks have increased in scale and intensity.

Finally, one of the most critical challenges to reliable operation of export control mechanisms lies in the field of establishing robust defences against corrupt practices. The work to enhance the effectiveness of "export filters" and to set up unsurpassable barriers on the way to illicit arms trafficking, to companies' involvement in the 'black' and 'grey' markets, to unauthorised supplies and re-export should begin with learning experience the state has with fighting against international criminal organisations and dishonest middlemen. The aspects of anti-corruption war in the areas of arms production, military-technical cooperation and export controls appear to be most significant in the present-day context, given that corruption has affected the world's arms market as a whole. Even though Ukraine and the Russian Federation, and indeed all of the other post-Soviet states have illegal business practices and corruption arrangements that are specific to each of them, it is nevertheless still important that they should examine and introduce the best practices of anti-corruption measures taken by the states having enduring, sustainable and well proven tradition.

The facts and arguments referred to above make us again return to the same old topic – how to improve national arms export control systems, and what measures and structural reforms are needed for strengthening international controls over the export of sensitive products globally. This study deals with some of these issues that still remain highly topical.

THE BUILDING OF ARMS EXPORT CONTROL SYSTEMS IN UKRAINE AND THE RUSSIAN FEDERATION

After the downfall of the Soviet Union and the restoration of Ukrainian independence in 1991, Ukraine was left with huge amounts of former Soviet armaments and military equipment inventories. This created a situation where these could flood into the global market without any supervision or control enforced. Hence an acute necessity arose to set up an international mechanism—effective and acceptable to all the stakeholders at that—for enforcing controls over the movement of armaments, military equipment, sensitive technology and materials. Ukraine's export control system was being built with direct involvement of U.S. experts and resource support from the government of the United States.

The assistance was provided to Ukraine under the U.S. Export Control and Border Security (EXBS) Programme. Ukrainian stakeholders in the EXBS Programme and technical assistance recipients were the State Customs Service, the State Border Security Service, the State Service for Export Control, and the Environment Protection Ministry's State Ecological Inspectorate. By 2001, the United States had invested about $14 million in projects for building and upgrading Ukraine's export control system.

As is known, the Ukrainian arms export control system was performing poorly in its early period. According to statistics provided by the Verkhovna Rada's Ad Hoc Investigative Committee at the time, the Export Control Service issued 6,500 export licenses for weapons, military hardware, special-purpose equipment and related replacement parts, and more than 114 Ukrainian businesses and organisations were dealing with export trade op-

erations involving armaments, military hardware and special-purpose equipment in the period from 1994 through 1997. According to the Parliamentary Committee, Ukraine exported about $760 million worth of military products to forty countries worldwide over the period under review, these being often sold at blow-out prices (which is understood to be the result of corrupt practices).[2]

In subsequent years, Ukraine's export control system was progressively developing and improving in effectiveness and efficiency. An interesting viewpoint was offered by former U.S. Ambassador to Ukraine Carlos Pascual, who noted that Ukraine was still in need of a system of checks and balances to be introduced via export control regulations and procedures.[3] According to Ambassador Pascual, this could be implemented in the form of a jury body to do inquiries into complaints related to conflict of interest. For that matter, it should be noted that a lot of observers, including experts at the Center for Army, Conversion and Disarmament Studies (CACDS) were speaking of the need to set up a standing body within Ukrainian Parliament to deal with conflict of interest issues.

From the fall of 1996 onwards, each and all Ukrainian entities involved in the international arms trade have been placed under the authority of *Ukrspecexport*, a state-owned company that was set up specifically to that end. Furthermore, the State Service of Ukraine for Export Control (SSUEC)—the executive agency with special authority to enforce state export controls—was set up under the authority of the Cabinet of Ministers. Having reviewed the performance of Ukraine's national arms export control system in 1998, American experts found it to be 83 percent compliant with

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[2] According to the Parliamentary Commission, during the 15-year period from 1989 through 2004, Ukraine exported $32.4 billion worth of armaments – an average $6.48 billion per year. The figures imply that Ukrainian arms exports at the time exceeded what any of the other arms exporting countries except the USA could potentially supply to the global market. The Commission's conclusions stem from figures provided by the London-based International Institute for Strategic Studies, which were calculated by some generalised, yet arguable, methodologies.

[3] U.S. Ambassador to Ukraine Carlos Pascual made these comments during an international conference on "Export control in the context of security sector reform" in Kyiv on 26 March 2003.

relevant standards in the West.[4] Afterwards, the Presidential Committee on Military-Technical Cooperation and Export Control Policies—a type of a "policy-making superstructure" over the SSUEC—was set up as a structural unit of the National Security and Defence Council of Ukraine (NSDCU). It was precisely this new Committee that provided the institutional framework through which the President of Ukraine began to implement all general policy decisions on military-technical cooperation matters.[5]

In 2006, the SSUEC certified compliance of newly-established internal export control compliance programmes in five companies and verified the compliance of such programmes that were already in place in 16 companies. The establishment and reliable operation of internal export control compliance programmes at arms exporting organisations in Ukraine is a precondition for them to qualify for "license exceptions" – a special treatment allowing exporters to obtain general or open licenses for international transfers of products with military or dual-use applications.

In general, Ukraine's current export control system had been "combat tested" and proved its worth during the controversy over the alleged sale to Iraq of "*Kolchuga*" aerial surveillance systems in 2002 and the Somali pirate hijacking of the *Faina* roll-on/roll-off cargo ship in 2009. Western experts appreciated it as being sufficiently mature and effective.

Russia's export control system, like Ukraine's, was developing in stages until it was brought to its current level of maturity. It was formally set up on 11th April 1992, when the President of the Russian Federation issued decree No 388 on "Measures for creating an export control system in Russia." The first ever military export license issued by Russia was the one allowing "special subassemblies and components necessary for the production of armaments and military equipment" (Item 9B1032 – passive radar seeker for the air-to-air guided missile R-27P; license No 0730142096001) to be exported to Ukraine. The license was issued on 6th August 1992 to *Omsk Avtomatica Zavod* by the Strategic Analysis and Licensing Department,

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4 Scott A. Jones, "The Evolution of the Ukrainian Export Control System: State Building and International Cooperation," in *Arms on the Market: Reducing the Risk of Proliferation in the Former Soviet Union*, ed. Gary K. Bertsch and Suzette R. Grillot (New York: Routledge, 1998).

5 Opinion by Valentyn Badrak, Center for Army, Conversion and Disarmament Studies.

part of the Russian Ministry of Foreign Trade Relations' Directorate of Military-Technical Cooperation.

For the purposes of ensuring a unified state policy on export controls and coordinating federal executive bodies' actions, the Commission on Export Controls was set up under the authority of the government of the Russian Federation. Members of the Commission are deputy heads of the concerned ministries and government agencies. During the earlier half of the 1990s, six Export Control Lists were compiled and a licensing mechanism for products subject to export control regulations was put in place.

According to Russian analysts, the period from 1995 to 1996 saw the second stage in the development of Russia's export control system. 1995 was the year when legislations on state regulation of export/import trade activities and the exploitation of atomic energy became effective in Russia.[6] However, the legislations' articles regulating export control procedures were more in the nature of declarations. Later that year, Russia became a signatory of the Missile Technology Control Regime and a full-fledged party to the formulation of the Wassenaar agreements. During this period Russia' Export Control Lists were internationally harmonised.

In Russia, punishments for lax enforcement of export control regulations had become more severe over time. The year 1997 saw the coming into force of a new Criminal Code, with a number of articles providing specific penalties for export control violations.

The adoption in 1999 of the Law on Export Controls, along with the reorganisation of the export control infrastructure as part of the administrative reform of 2000 marked a new milestone in the evolution of the export control regime in Russia. Furthermore, the Law on Export Controls does not just regulate international transfers of products and technology, but also transactions whereby products or technology are transferred to a foreign national while on the soil of the Russian Federation. In contrast to the Law on "State Regulation of Foreign Trade Activities," the legislation referred to above does not affect the export of armaments and military equipment, which is covered by the Federal Law on "Military-Technical Cooperation

6 Elina Kirichenko and Andrei Frolov, "Transformation of the export control system in Russia," <http://www.pircenter.org/data/news/kir_frol150904.pdf>.

between the Russian Federation and Foreign States." This law has elevated the status of selected export control mechanisms that previously were implemented by government resolutions and presidential decrees.

The restructuring of the executive branch of the federal government, prescribed by Presidential Decree No 314 dated 9 March 2004, inaugurated the next stage in development of Russia's export control system. The decree transferred the export control function—which previously was conferred to the Ministry for Economic Development and Commerce (MEDC)—to a newly established entity, the Technical & Export Control Service (TECS) that was to operate under the wing of the Ministry of Defence. Rules of Procedure of the TECS were officially endorsed by Russian President's Decree No 1085 issued on 16 August 2004.

It should be noted, however, that the export control systems built in Ukraine and Russia, as 'rigorous' as they are, cannot provide a 100 percent guarantee against the risk of arms ending up in conflict-prone locations, in 'rogue' states, or the ruling regimes designated by the global community as being 'totalitarian,' or in the hands of black-market arms dealers – because of both lax enforcement of export controls and abuses among officials. Stories of this kind are common in international practice. Moreover, there are still questions regarding illicit arms trafficking (as they go beyond the scope of export controls), and there are no international legal mechanisms in place mandating arms recipients to report to the suppliers on how the arms were used. In the case of illegal re-export, all the responsibility will be borne by the country of origin of the relevant end-user certificate.

CURRENT STATUS OF ARMS EXPORT CONTROL SYSTEMS IN UKRAINE AND RUSSIA

As of the start of 2012, Ukraine's export control system could be described as having been legalised in a range of interrelated legal regulatory acts and being effective enough to preclude the possibility of state-level violations in conformity with obligations undertaken by Ukraine under international treaties and agreements.[7]

Following is structural description of the export control system adopted by Ukraine.

The **Verkhovna Rada** (Parliament) establishes the legislative basis and adopts the annual National Budget Law.

The laws in effect *in Ukraine* fully conform to international norms on non-proliferation of weapons of mass destruction and the limitations on transfers of certain products with military and dual-use applications. The national legal framework for export control became fully shaped and formed with the adoption in September 2003 of the Law of Ukraine on "State control over international transfers of goods with military and dual-use applications." The Law, together with other legislative, normative and legal acts, establishes a complex set of norms, regulations, procedures and mechanisms to ensure compliance with the obligations taken by Ukraine under international non-proliferation treaties and regimes. Ukraine was the first and so far the only country of the former Soviet Union to have become a party to each and every international export control regime. Ukraine-spe-

[7] Important issues of export controls. Interview with S. Khimchenko, Senior Deputy Head of the State Service of Ukraine for Export Control, *Defense Express*, 11 January 2012, <http://www.defense-ua.com/rus/hotnews/?id=37193>.

cific lists of products subject to export control regulations are almost identical to European counterparts, though different in form.

The Constitution of Ukraine confers policy-making authority over national security and defence matters to the **President of Ukraine**.[8] NSDCU resolutions are enacted by presidential decrees.

The **National Security and Defence Council of Ukraine** is a body appointed by the President charged with coordinating the implementation of State policies on national security and defence matters. Its responsibilities *inter alia* include regularly monitoring executive activity for policy implementation in the military-technical cooperation area and submitting reports and proposals to the President of Ukraine for consideration and decision-making.[9]

The **Cabinet of Ministers of Ukraine** is the supreme executive body of the government of Ukraine. In the military-technical cooperation domain—as stipulated by Article 6 in the Presidential Decree on "Measures necessary to improve military-technical cooperation between Ukraine and foreign states"—its responsibilities *inter alia* include ensuring the implementation of state policy on military-technical cooperation and, with the approval of the Interagency Commission on Military-Technical Cooperation and Export Control Policies, granting export/import licenses for military purpose goods to entities involved in international military-technical cooperation.

President-appointed Interagency Commission on Military-Technical Cooperation and Export Control Policies (hereafter Interagency Commission) is a working body charged with developing proposals on state policy priorities for further military-technical cooperation. The Interagency Commission, acting within the scope of its duties, *inter alia*, investigates proposals for the initiation, restriction, termination, suspension or resump-

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8 Article 106: The President of Ukraine ensures: 1) state independence, national security and state succession; 17) is the Supreme Commander of the Armed Forces of Ukraine; appoints to and dismisses from office the highest command officers of the Ukrainian Armed Forces and other military formations; leads policy making in the national security and defence sectors; 18) has Chairmanship of the National Security and Defence Council of Ukraine.

9 The Law of Ukraine on "The National Security and Defence Council of Ukraine," <http://www.rainbow.gov.ua/content/zakon_rnbou.html>.

tion of military-technical cooperation between Ukraine and individual foreign states. A Bill on "Military-technical cooperation between Ukraine and foreign states" was discussed several times by the Verkhovna Rada but has not been passed into law to date.[10]

There have been setbacks in the Interagency Commission's work during the past few years; indeed, it has been inactive since March 2010.[11]

It was the Interagency Commission that was solving the most complicated matters requiring well-balanced politico-economic decisions to be made. Because of this situation, a great number of export license applications submitted before the end of 2010 had remained unconsidered, with an implication that the possibility of a number of multimillion contracts being successfully implemented was effectively blocked. Following several rounds of consultations held by SSUEC officials with members of the Presidential Secretariat and the Government, export license applications have from November 2010 onwards been considered by the Interagency Council attached to the SSUEC, with decisions being made based upon written agreements with all of the executive authorities concerned. Not only has this increased the workload of the SSUEC, but also made it more responsible for the decisions made. The Interagency Council attached to the SSUEC has restricted membership (as compared to the counterpart body attached to the NSDCU) and by far a lower level of representation of member government agencies and ministries.

Where there are no international limitations in place on the export of controlled product types, decisions are being made with due account taken of all the political, military-technical and economic implications. In addition to the SSUEC officials, interagency considerations and decision-making typically involve representatives of the Presidential Secretariat, the NSDCU Office, the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Industrial Policy (prior to its reorganization), the Ministry of Economy (now succeeded by the Ministry of Economic Development and Com-

[10] A Bill on "Military-Technical Cooperation between Ukraine and Foreign States," <http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_2?id=&pf3516=4228&skl=5>.

[11] Important issues of export controls. Interview with S. Khimchenko, Senior Deputy Head of the State Service of Ukraine for Export Control, *Defense Express*, 11 January 2012, <http://www.defense-ua.com/rus/hotnews/?id=37193>.

merce), the State Space Agency of Ukraine, the Security Service, the Foreign Intelligence Service of Ukraine, the Chief Directorate of Intelligence at the Ministry of Defence, the State Customs Committee and other agencies concerned.[12]

In 2011, during the administrative reform and reorganisation of the Ministry of Industrial Policy, the issue emerged of some of the latter's functions to be transferred to other central executive bodies of government. Particularly in 2012, there will be urgent issues, particularly the need to license some defence-related businesses after their current licenses expire. Several of the authorities previously held by the Ministry of Industrial Policy have been assigned to the Ministry of Economic Development and Commerce. The latter's organisational structure currently includes the Department of Industrial Policy that has a directorate of the defence-industrial complex (which in turn consists of four units: for the development of the defence-industrial complex; for special programs and military-technical cooperation; for State arms export control policy; and for licensing).

In the Russian arms export control system, a more vertical decision-making structure has been put in place.

As stipulated by the Constitution of the Russian Federation, foreign policy-making, including policy on non-proliferation of weapons of mass destruction, belongs to the executive domain of the **President of Russia**. The President's responsibilities in the export control field include approving of Export Control Lists and issuing decrees and orders on relevant matters.

The **Federal Assembly**, the upper chamber of the Russian Parliament, ratifies treaties and makes and adopts laws. The lower chamber of the Russian Parliament, the State Duma, has time and again made attempts to play a more visible role in decision-making on export control matters. While there has been a permanent redistribution of authorities taking place between the President and the Cabinet of Ministers in Ukraine, this situation was absolutely impossible in the case of Russia where all the power is consolidated.

The **Government of the Russian Federation** approves the Export Control Lists and submits them to the President for signature; issues reso-

[12] Ibid.

lutions establishing procedures for the export of controlled goods and technology; takes decisions on initiating talks with foreign states with regard to engagement in nuclear energy and military technology projects.

Alongside the administrative vertical chain of command, there is a bureaucratic executive infrastructure, which is understood to include relevant units within ministries and government agencies as well as the division of powers and responsibilities between different executive authorities involved in decision-making on export control matters.

Other key stakeholders (in addition to the Ministry of Foreign Trade) are the Ministry of Foreign Affairs, the Ministry of Defence and the Ministry of Atomic Energy (currently referred to as "Rosatom," the successor of "Minatom"). These are the same ministries which, at any given stage of the Russian statehood development, tried to "play their own game" and play a role in the formulation of the country's international export and foreign policies.

Minatom, which was established in 1992 by a Presidential Decree, had a special role to play in the Russian arms export control system. It was set up with a primary mission of saving Russia's nuclear energy sector from economic collapse. Moreover, Viktor Mikhailov, the inaugural head of Minatom, even went so far as to pledge to make the industry in his charge a "driving force" for the development of the whole Russian economy. As a result, the goal of penetrating into export markets had been given the highest priority in the [Atomic Energy] Ministry's development strategy. However, some of Minatom's initiatives deviated from the country's policy declarations, and they often had to be disavowed by Russia's Foreign Affairs Ministry. There were even instances where Minatom, through lobbying for its sector's interests, achieved political decisions that prompted negative feedback from Russia's partners in multinational export control regimes. For example, Minatom had lobbied for passing Decree # 822 that was used as a substantiation basis for the supply of 58 MT of nuclear fuel for reactors at the Tarapur Nuclear Plant in India. However, Minatom was gradually losing in influence until the Ministry was dismissed as a result of administrative reform measures in 2004 and replaced by what is now the Federal Agency for Atomic Energy, with the nuclear weapons sector's affairs remaining in the jurisdiction of the Russian Ministry of Defence.

In recent years, Russia's **Security Council** (SC) has taken a more active role in formulating the country's export control policy. Over the past three years alone the SC started discussions around the non-proliferation of weapons of mass destruction and export control, with Vladimir Putin as Chairman.

The 1990s saw intense competition between different administrative agencies of the Russian government over the authority to enforce export controls, with relevant powers and responsibilities being continuously redistributed between and within Executive Branch agencies. The establishment of the Export Control Department at the Ministry for Economic Development and Commerce (MEDC)—which was conferred status of the federal executive agency with special authority to enforce state arms export controls—marked a milestone in the distribution and allocation of powers and responsibilities. The new executive authority was manned with export control specialists of the former Directorate of Export Controls at the Federal Service for Currency and Export Controls (FSCEC) and the Ministry of Commerce. Once the export control functions were transferred to the Ministry of Economic Development and Commerce, it took to forwarding export license applications via its channels to state expert assessment councils, thus making the license application process much shorter and easier to exporters (one-stop-shop principle). Previously, Russian exporters had to apply to several different agencies to obtain authorization for the export of controlled goods. The Minatom's role played in the export licensing process became more balanced. Its official representatives were taking part in state expert reviews of export license applications for items falling into its scope of competence, and a deputy Minister of Minatom was incorporated into the Commission on Export Controls.

In Russia, there are two export control mechanisms in place. The first is there to enforce control of military purpose products based on the requirements stipulated in Federal Law 114-F3 on "Military-Technical Cooperation between the Russian Federation and Foreign States" from 19 July 1998 (with amendments from 7 May 2009), as well as in the President's and government's acts implementing this law. Unlike the legislation regulating the export of products with dual-use applications, the laws that govern legal relationships in the area under review all proceed using the principle of

state monopoly on military-technical cooperation policy implementation. This means that transactions involving the export/import of military purpose products cannot be carried out other than by special entities, the state appointed intermediaries founded by decisions of the Russian Federation President, as well as Russian organisations – the products' designers and manufacturers who have been issued relevant licenses according to legally prescribed procedures. Other organisations and individuals are banned from carrying out arms export/import activities in the military-technical cooperation area. The government has sole authority over the price control of exported/imported goods with military and paramilitary applications. Furthermore, exporters are eligible for the compensation of losses resulting from the Russian Federation President's decisions to suspend or terminate military-technical cooperation with any given foreign state. There is no such institute as "general licenses" in Federal Service for Military-Technical Cooperation practice. Instead, only one-time licenses are in use.

Export control of dual-use products is the function of the Federal Service for Technical & Export Control (FSTEC) which has broad enough powers, outstretching far into various sectors of the Russian economy.[13] These, *inter alia*, include technical protection of information and accreditation and licensing of export controlled activities. Decision-making on export control mattes is done with the assistance of the Trade and Commerce Chambers which handle the matters in terms of the premise that export control is a non-tariff regulatory instrument of Russia's international trade activity.

Rules of Procedure of the Federal Service for Technical & Export Control, approved by the President's Decree of the Russian Federation No 1085 dated 16 August 2004 on "Issues of the Federal Service for Technical & Export Control," stipulate that the FSTEC is a "federal body of executive authority responsible for implementing national policy, ensuring inter-departmental cooperation and coordination, and exercising special and control functions in the state security sector." One of the functions conferred to the FSTEC is the monitoring and oversight of foreign nationals' education and training, which does not exist yet in Ukraine.

[13] Federal Service for Technical & Export Controls, <www.fstec.ru/_razd/_osno.htm>.

In the scope of its state regulatory functions, the FSTEC interacts with the Federal Security Service of the Russian Federation.

In 2010, the FSTEC, acting within the scope of its competence over legal entities, carried out 230 scheduled inspections (226 on-site inspections and four desk reviews) for compliance with export control regulations and requirements. There were no inspections held vis-à-vis individual entrepreneurs during the period under review. Of the 230 legal entities inspected by the FSTEC, 102 entities (44.3 percent of the total number of the entities surveyed) were found to have committed a combined total of 413 violations of compulsory requirements imposed by the Russian Federation's legislation.

Based on the findings of the inspections and administrative investigations, seven inquiries into administrative offences have been opened and 33 improvement notices issued. The total amount of collected (levied) penalties topped 212,000 Rubles. The legal entities that have undergone inspections, methodologically assisted by the FSTEC of Russia, have developed corrective action plans for the violations and deficiencies identified during the inspections. The FSTEC of Russia has been monitoring the course of implementation of the corrective action plans.

CHALLENGES FOR UKRAINIAN AND RUSSIAN ARMS EXPORT CONTROL SYSTEMS

There are several areas of focus in the development of the export control systems in Ukraine and the Russian Federation which are aimed at preventing corruption and mitigate the risk of unauthorised export of sensitive goods and technology.

These areas are as follows:

- ✓ Improving the legal/regulatory framework of export controls with an eye on potential transition from the authorisation-based to the notification-based model.
- ✓ Strengthening parliamentary scrutiny and oversight over export control policy implementation.
- ✓ Strengthening public scrutiny and oversight over export control policy implementation.
- ✓ Taking additional measures necessary for the prevention of proliferation risk of intangible technology transfers.

In terms of improving the legal environment in Ukraine, the adoption of laws on international military-technical cooperation and on technology transfers is necessary.

A practical application review of the current export control legislation reveals the need for it to be improved through carrying out a set of measures.

First, the law adopted in 2003 should be amended with respect to consolidating and streamlining enforcement powers of the State Service of Ukraine for Export Control as well improving the procedures for interaction

between the SSUEC and other executive authorities dealing with export control matters.

Second, the SSUEC should be legislatively mandated to annually submit export controls reports to the Verkhovna Rada, fully detailed according to the standards applied in European countries.

Third, procedures for international transfers of goods that may potentially constitute state secret information should be ultimately streamlined.

Fourth, it is necessary to improve the system of penalties for arms export control violations, by adding provisions for: the differentiation of penalties for severe versus minor violations of applicable legal requirements and instructions; the introduction of more penalty types other than fines (cancellation of state registration certificate, suspension of export license, etc.); increasing individual responsibility of company chiefs and executive officers, particularly through establishing specific deadlines for the imposition of administrative penalties.

Fifth, there should be provisions incorporated into the regulations for pre-contract negotiations with potential export customers which would allow for the negotiations to be held on a simple notification basis.

The SSUEC has developed a draft Cabinet of Ministers resolution titled "On approving export control procedures pertaining to pre-contract negotiations regarding the export of goods, and on general demands on international trade contracts," which is currently undergoing an interagency agreement process. This resolution, if adopted, will allow the number of controlled negotiations to be reduced dramatically, with the requirement of control remaining only applicable to those negotiations which deal with the supply of goods to the countries vis-à-vis which Ukraine has to adhere to international limitations on the export of certain product categories.

Rebuilding the export control system and transiting from authorisation-based to notification-based procedures will require more comprehensive reforms and take more time than the SSUEC officials might expect. This will not be able to happen without a change of mindset of the domestic exporters, whereby national policy interests will prevail over their commercial interests to ensure that Ukraine's international obligations are strictly abided by, as well as other politically motivated state requirements regard-

ing the export of armaments and military equipment. The transition to a notification-based export control system will require exporters to assume a much higher level of responsibility for their actions. Not only does the Export Control Service assist businesses in establishing internal export control compliance programmes, but also provides advisory support, verifies the systems' validity and issues relevant certificates of compliance. It is expected that the companies using effective and reliable compliance programmes will be the first to be allowed to test and trial notification-based procedures. The very concept of in-house export control compliance system allows for export controls compliance by company units dealing with international trade and shipment of goods to customers to be controlled by medium-rank managers. Once internal export controls compliance programmes are installed in each and every company of Ukraine's defence-industrial complex, the SSUEC will have its role transformed, and activities by government authorised arms dealers will be based on notifications. However, this will require the government to effectively enforce a system of administrative and criminal penalties for non-compliance with regulations on international trade in products, services and technology for military and dual-use applications.

One challenge that remains unresolved globally lies in the field of rooting out the risk of arms exports ending up in the wrong hands. In the opinion of Leonid Rozhen, a former chairman of the President appointed Committee on Military-Technical Cooperation and Export Control Policies, none of the countries is currently capable of coping with the challenge of arms re-exports single-handedly. "Despite the measures taken by the Ukrainian government—particularly provisions incorporated into export trade contracts that ban the arms exported to a specific customer to be re-exported to another one—it is the international community that has to deal and cope with this challenge. For example, this might be achieved by way of introducing a practice whereby the delivery of goods to the end user will be monitored by having international observers accompany the goods throughout their transport, or by applying an internationally accepted label-

ling system to the armaments and military equipment being exported."[14] The law of Ukraine on "State control of international transfers of goods with military and dual-use applications" dated 2003 provides that before the start of international transfers of goods, the entity in question is required to submit to the executive agency with special authority to enforce state export controls, complete and reliable information on its knowledge of the end use of the goods that are scheduled for international transfer, along with the originals of the guarantee documents confirming the use of the goods exclusively for the purposes declared by the entity or some other end user. In order to confirm the end use of the goods, the entity must take steps to verify the delivery and end use of the goods in the event that they are exported and must submit information about this to the State Export Control Service, in addition to assisting the authorised state agencies in carrying out these checks. For the purpose of confirming the delivery and end use of the goods, the State Export Control Service and the other authorised state agencies have the right to verify the delivery or end use of the goods at any stage in their international transfer and to follow the actual delivery of the goods to the end user outside Ukraine, in the cases provided for in the foreign trade contracts that were cleared in the approved manner by the State Export Control Service or when this is required by international treaties to which the importing country and Ukraine are parties. However, not all partner countries of Ukraine are parties to the treaties in question.

Ukraine and Russia are regularly subjected to allegations of violating international agreements. Although these allegations often come from the mass media, there are also cases of sanctions being imposed on specific individual companies. Particularly in September 2004, the U.S. authorities imposed punitive sanctions on fourteen foreign-country companies, among them Ukraine's Zaporizhzhia's Regional Foreign Economic Association, charged with exporting military technology and armaments to Iran. As was explained by the then U.S. State Department spokesman Richard Boucher, there was reliable information confirming that, at the beginning of 1999, those companies had transferred items and technology to Iran which could

[14] Valentyn Badrak, "Who and why accuses Ukraine of illegal arms trade," *Defense Express*, 13 June 2004, <http://www.defense-ua.com/rus/news/?id=13283>.

be used for the purposes of developing weapons of mass destruction and manufacturing ballistic missiles.

The Ukrainian government responded quickly in a Foreign Affairs Ministry statement. It quoted the State Export Control Service as saying that "appropriate terminology" should be used when describing the case where Kh-55 missiles were exported from Ukraine to Iran. "This case should not be perceived as if Ukraine exported the missiles to China and Iran in violation of the Missile Technology Control Regime and the UN Security Council sanctions imposed on Iran, but rather as a case where the goods had been smuggled while in transit from Ukraine to Russia," the statement said.

Moreover, the problem such as the outflow of highly-skilled workers has remained unresolved, despite Ukraine's refusal to participate in the Bushehr contract [on the delivery of turbines for the Bushehr Nuclear Power Plant in Iran]. According to Oleksiy Breus, Nuclear Programs Manager at the Center for Army, Conversion and Disarmament Studies, Ukraine has experienced the outflow of research and scientific workers (about 1000 scientists, including 300 Doctors of Sciences, according to statistics available for the start of 2000), and about two hundred Ukrainian nuclear physicists have accepted employment offers in Iran.

The government of Ukraine has to this date handled international military-technical cooperation and export trade in sensitive products more as a specific process rather than as a component of international state activity. A consequence is the lack of an explicit information policy to support export controls, even where Ukraine's vital national interests are at stake. One of the ways to confronting potential hostile actions by Ukraine's arms export market competitors lies in implementing an explicit information support policy for the country's international arms trade activity. Nongovernmental organisations and the mass media could have an important role to play in creating a truly open information environment for the arms export business. To this end, it would be useful to set up a website providing up-to-date information on recently completed contracts involving international transfers of arms and dual-use products (at the level of detail provided by Ukraine for the international organisations concerned), as well as news on ongoing deliveries, in cases where this would not lead to the revelation of classified or confidential data incorporated in the texts of relevant contract agreements.

The establishment of effective parliamentary oversight over this activity still remains a highly topical issue, which, if resolved, will to a considerable degree help keep Ukraine clear of accusations of violating international norms and standards on arms export controls. Despite the work in this area being done by relevant parliamentary commissions, parliamentary scrutiny over sensitive exports remains too much politicised on the one hand, but lacking in consistency, coherence and coverage areas on the other. By enforcing oversight of sensitive materials' exports, Ukraine's Verkhovna Rada will share responsibility for export control compliance with government authorised arms dealers and the Executive Branch of the government. As a matter of fact, the legislature itself will become involved with the export control system by mandating that domestic arms dealers provide it with annual reports regarding arms sales. The legislature's greater involvement in arms export control matters will help prevent domestic political controversies over arms trading which only undermine Ukraine's image on the international arena.

Nongovernmental organisations and the mass media still have to rely on unproven information to base their arguments, which effectively prevents the public from getting an objective perception of how Ukraine fares with sensitive products and technology exports. Areas of focus for further developing cooperation between nongovernmental organisations and government executive agencies should include strengthening international ties at the level of nongovernmental organisations. It should also include holding of information and publicity measures on the one hand, and the official publication of government reports on Ukraine's sensitive goods exports on the other hand. The Ukrainian mass media covering the situation in the international arms trading business are at the current stage acting more as non-professional observers. The mass media are uninterested and lacking in expertise to conduct investigations in the area in question, given the general lack of transparency in this business and traditionally complicated relations between the media and the authorities.

Another area that needs further improvement is the system of nongovernmental organisations and the mass media's cooperation with intangible technology holders, particularly scientists and other employees in sensitive industry sectors such as nuclear, biological or chemical, where some work-

ers, due to persistent underfunding problems, may contribute to sensitive information flowing out from Ukraine to foreign locations, including "high risk" countries.

Arms export information could reach the public domain via the means such as:

- ✓ official publication in the media (for example, in a website) of annual government reports on activities in the area under review;
- ✓ open parliamentary debates on arms export matters;
- ✓ reviews and publication of generalised data on regional and international arms export markets.

The proliferation risk of intangible technology transfers typically takes place in the domains which could be conventionally subdivided into three major types:

- ✓ uncontrolled publication of sensitive information on the internet, whereby integral perception of a specific developed weapon type is scattered across different websites;
- ✓ unauthorised transfers of technology or partial descriptions (parts of technical documentation) of expertise via the internet, by way of e-mailing or deploying information on the internet in a way that it will become available to the intended recipient;
- ✓ proliferation of knowledge and technical expertise through direct engagement with their holders, including most notably arms researchers and designers as well as highly specialised experts in related activity sectors. The same type could also include undocumented additional works (studies or consultations) carried out under concluded contracts.

Measures to prevent the proliferation risk of intangible technology transfers could include, *inter alia*:

- ✓ establishing limitations on the transfers in question;
- ✓ setting up a direct control system;
- ✓ physical control over the transfers;
- ✓ implementing inquiries and relevant sanctions.

In practice, however, each of the above measures is difficult to implement because of issues stemming from the need for an adequate resource support. Particularly, for example, it is fairly difficult to define a specific concept of "intangible technology transfers subject to limitations," and it is still more difficult to enforce control over intangible technology transfers via modern electronic media. Indeed, the very concept of the 'export' of intangible technology is hard to identify inasmuch as, in contrast to tangible transfers, there is no physical (in the customarily accepted sense of the word) crossing of the customs border with intangible technology transfers over the internet, for example. It is furthermore difficult to assess prospective viability and novelty of technology or to outline the potential areas of technology application. Doing so requires an extremely high level of knowledge and a broad technical outlook which grassroots employees in export administrative agencies do not have. Currently, the most realistic and effective way to prevent intangible technology transfers is to educate government authorised arms dealers and potential holders of intangible technology about their degree of responsibility for the proliferation of sensitive information, as well as to establish specialised security systems within companies and research organisations (including rigorous export compliance programmes). Conditions allowing unauthorised intangible technology transfers could be eliminated by 'legitimating' the use of technology, which would include evaluating fair market value of technology, maintaining a registry of technology as well as to legally qualify technology specialists for copyright (the right to possess, use, and dispose of technology) and royalties. With intangible technology legalised and the copyright issue resolved, there will be no longer a need for the state to protect intangible technology from unauthorised transfers, insofar as technology developers and holders themselves will be the most effective guards of their secrets, and the state will be left with no responsibility other than to prevent technology from being transferred to blacklisted countries.

The SSUEC has been urging the State Agency for Science, Innovation and Information Affairs (SASII) to intensify effort to that end. Rules of procedure for the SASII mandate it to carry out state expert reviews and registration and maintain the State Register of technology transfer agreements. It is therefore only sensible and necessary that this Executive

Branch Agency should be involved in matters related to unauthorised transfers of export controlled intangible technology.

Mitigation of the proliferation risk of intangible technology transfers (or transfers of electronic format documentation) over the internet could be achieved through measures such as strengthening controls over the use of documents constituting state or commercial secrets, or limiting the number of employees with 'free' internet access. However, the practice has shown that this method may be counterproductive as it would actually lead to self-isolation, obstructing knowledge sharing in the research and scientific community, widening the gap with technology leaders and a loss of competitive power in global markets.

In this context it should be emphasised, however, that matters related to unauthorised transfers of classified information, including intangible military technology go beyond the jurisdiction of Ukraine's State Service for Export Controls. To illustrate this, one can use the SBU (Security Service of Ukraine) statistics for 2002, when it revealed 36 instances of illegal actions in the military-technological cooperation area.[15] The proliferation of sensitive knowledge and expertise was among the most common offences. For example, an assistant chief executive officer from the Zhytomyr's Institute of Radio Systems received a sentence for attempted unauthorised export of defence-related technology to a destination outside Ukraine. A foreign national was detained and deported from Ukraine after having been caught for smuggling some missile control system elements to Iran via Ukraine's territory. The SBU officers prevented an attempt by officials at a research institute in the Luhansk region to transfer scientific and technical documents including state-owned confidential information, to a foreign country. In the Khmelnytskiy and Zaporizhzhia regions, attempts were averted to release state secret data to a foreign country.[16]

The outflow of intangible technology is an international problem that is addressed primarily by raising awareness and the knowledge of law among the staff of the economic entities holding and developing such technology.

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15 SBU's press-release of 25 March 2003.

16 *Defense Express*, 13 September 2004.

Addressing the concerns of unauthorised transfer of intangible technology is directly related to a nation's legal/regulatory framework's adaptation to market conditions. The Ukrainian Verkhovna Rada has already approved in a first-reading vote a bill on state regulation of activities in the area of technology transfers (the bill has been awaiting final parliamentary approval since 2004) which provides for commercialisation opportunities for the outputs of research and development and industrial research projects, intellectual property items, manufacturing equipment as well as product manufacturing methods and sequences. In considering ways to improve the situation at the national level, advice and recommendations from information holders will be most welcome. One of the biggest challenges facing the entire technological domain in Ukraine is that intellectual property is not formally registered and protected in patents and know-how, nor is it personalised, evaluated, included on companies' books and records or factored in production costs. This situation results in researchers and developers being effectively barred from the technology trading and the managed transfer (commercialisation) of knowledge in critical areas, leaving them without any other option than to search for 'outlets' on their own. Experts in technology transfer and commercialisation are expecting that, with copyright costs adequately factored in production costs, companies will be able to legitimately pay definite amounts of money in royalty fees to train bureau employees, technology developers and individual researchers.

Russia's national export control regime, similar to the Ukrainian one, has encountered a number of challenges that stay in the way of further improving the regime's effectiveness and efficiency. Some are stemming from inconsistencies in national export control regulations, others are associated with the need for enhancing decision-making mechanisms, strengthening law enforcement and improving the overall business culture in Russia, and others are more related to policy influences. In such a situation, it would probably be reasonable to give thought to streamlining multilateral arms export control regimes. For example, the current legislative acts almost never refer to federal executive branch agencies. Instead, agencies responsible for any specific function or duty are referred to in the texts of legal norms as the government of the Russian Federation.

Russian analysts admit the need for a 'rigorous' export control system to effectively prevent unauthorised transfer of technology, most particularly nanotechnologies.[17] The analysts single out the uncontrolled export of nanotechnology products suitable for the purposes of space exploration (communication devices, sensors, construction of materials, fuels, power sources, etc.) among the highest risks to be addressed in protecting the country's technological security. It was back in 2005, when Administrative Offences Code of the Russian Federation was amended with a view to reinforce penalties for export control violations with respect to the products, information, works, services, or the outputs of intellectual activity which could be used while developing or manufacturing weapons of mass destruction and other types of weapons and military equipment.[18] At the same time, there is some ambiguity in how Russian lawmakers perceive the situation. Particularly, it was noted that "export control legislation contains many obscure clauses and ambiguities which easily allow abuse of discretion by the Economic Development Ministry's Export Control Department." Some Russian legislators pointed out that the current laws do not clearly explain the concept of "specialist technology," in absence of which the internal security service (the FSB) investigators must not be allowed sole discretion to determine whether export control violations took place or not in any given case.

In the past, the Russian Federation encountered cases whereby technology and materials were transferred out of the country without proper authorisation. Particularly at the end of 1998, the FSB boasted that it had put out of business a group of employees at a nuclear sector company in the Cheliabinsk region, who were about to take out 18.5 kg of radioactive materials.[19] The year 2003 saw a 'show' trial of Valentyn Danilov, a professor at Krasnoyarsk State Technical University, who was charged with espionage for allegedly leaking 'secret' information to China.[20] In May 2009, a group of Russian army officers were caught attempting to smuggle 20 tons

17 <http://portalnano.ru/read/prop/pro/part9/role>.

18 *cnews.ru*, 11 November 2005.

19 *ITAR-TASS*, 18 December 1998.

20 *RosBusinessConsulting*, 26 May 2003.

of top-secret components of surface-to-air missile systems out of Russia.[21] These same sources reported that a 200-kg load of military property—including gauge pressure transmitters and air engine starter parts which experts subsequently identified as designed for the Su-27 jet fighter and Ka-27 helicopter—was intercepted while in transport on board a cross-border commuter bus travelling into Latvia at the start of 2007.

At the same time, it may be noted here that many of the former Soviet successor states, including Ukraine and the Russian Federation, have often been attacked by the international mass media for alleged involvement in illegal arms sales and violating the international traffic in arms regulations. Admittedly, however, the former USSR countries have not been the only targets for international media attacks, and Kiev was not the only one to have been forced to explain the accusations away. History of accusations of this kind is remarkably rich. Specifically, back in June 1996, *The Washington Times* published a series of articles alleging that Ukraine maintained secret weapon and military technology deals with Muammar el-Qaddafi's government. Ukraine brushed off the allegations, providing arguments which the U.S. Administration apparently accepted. The publications revealing Kiev's covert cooperation with Tripoli did not pass unnoticed to American lawmakers. In September the same year, the U.S. Congress amended the Foreign Assistance Act to include a provision that might link the provision of assistance to Kiev to its covert cooperation with Tripoli. This amendment requires that the U.S. President must urge the Congress to deny development assistance to Ukraine if there was unquestionable evidence in place to prove such cooperation.[22]

Ukraine's engagement with African countries has time and again also featured in the international media. Some countries attacked Ukraine for being too indiscriminate in selecting military-technical cooperation partners. This issue was taken so seriously that it had even become a subject for discussion in parliaments. Particularly the United Kingdom formally called on Ukraine to stop providing support for Angola's UNITA rebels, after some

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21 *NewsRu*, 22 May 2009.

22 Valentyn Badrak, "Who and why accuses Ukraine of illegal arms trade," *Dzerkalo Tyzhnia*, 13 June 2004.

British parliamentarians alleged that Ukrainian aircrews were recruited to assist in the delivery of military supplies to the UNITA forces. *The Guardian* and *The Financial Times* newspapers published numerous reports alleging that Ukraine was supplying arms to the UNITA guerrillas. In so doing, the newspapers quoted UN documents listing countries with a history of support for the UNITA. By being featured in these listings, Ukraine ranked among countries involved in arms-for-diamonds trafficking – Togo, Rwanda, Burkina-Faso, South Africa, Morocco and Bulgaria. UN experts found that most of the arms supplies to the Angolan rebel organisation originated in countries of Eastern Europe, and many of the aircraft used for transporting smuggled arms to the country were piloted by Ukrainian aircrews. However, unlike the two newspapers mentioned above, the UN experts acknowledged they had not found any evidence to implicate the Ukrainian Government in arms sales to Angola.

CHALLENGES OF GOVERNANCE, ABUSES AND CORRUPTION

Challenges of abuse and corruption in the Ukrainian defence and military-industrial sectors remain high on the agenda both for the Ministry of Defence and the defence-industrial complex managers. We are even so bold as to say that corruption continues to be a Ukraine-specific tradition that takes its toll on the performance of the arms export control system. This is the challenge that makes Ukraine far less attractive as a military-technical cooperation partner of foreign countries.

It would be erroneous to think that this problem is new to Ukraine. Rather, there are lots of various stories proving that it has always been there. For example, an attempt to set up an ambitious project to help Ukraine dispose of its huge stockpiles of old ammunition ended up in a high-profile scandal in the late 1990s, when the American firm *Alliant Techsystems Corp.* entered the Ukrainian market. Moreover, a parliamentary inquiry into Ukrainian companies' abuses and involvement in arms sales in March 1998 revealed a whole variety of irregularities, law infringements and corrupt practices.

Today, facts of abuses by the Ministry of Defence's executive officers have been reported numerous times by Ukrainian media outlets. For instance, the *Dzerkalo Tyzhnia* (*Mirror Weekly*) newspaper published a series of reports documenting specific abuses that involved both previous and sitting government members. The publications described specific schemes

of abuse and fraud by defence industry managers, ranging from a biased selection of single-source suppliers to overpriced procurements.[23]

Most notorious instances of corruption in the defence-industrial sector include the disruption of the An-70 military transport aircraft series production programme as well as offences involving state property misappropriation at the Kharkiv's aircraft factory. Importantly, these are not isolated instances but rather typical situations, which should be taken into account in developing military-technical cooperation with foreign nations.

In 2009, the Auditing Department at the Ministry of Industrial Policy revealed numerous financial abuses at Kiev's aircraft factory *Aviant*, which impacted directly on the country's major aircraft building programmes. *Aviant* failed to adequately account to the Ministry of Defence for UAH 100 million appropriated in funding for the An-70 military transport aircraft programme in the fiscal year 2007. Irregularities of the same kind were also revealed in the An-148 regional jet programme; approximately UAH 150 million "was nowhere to be found," according to an aircraft industry manager. Investigators were treating the case as "misappropriation of public funds by senior officials of a state-run defence-related company."

Equally problematic is the issue of governance and coordination of the national aircraft industry. Over a very short period of time from 2005 to 2008, three different individuals, including those reinstated in office through court proceedings, held appointments as director-general of *Aviant*. The amount of financial abuses, according to the Ministry of Industrial Policy's figures, was several hundreds of millions of Hryvnias over the period under review. Further still, the company failed to pay contributions to the Pension Fund during a one-year period, while its accumulated wage debt to personnel had to be settled at the cost of aid money provided by Antonov who appropriated UAH 40 million of its own profit return for that purpose.[24]

While none of the senior officials at *Aviant* have been convicted, former director-general of Kharkiv's Aircraft Factory, Pavlo Naumenko has been sentenced to ten years in prison on a charge of "large-scale theft of state

[23] See *Dzerkalo Tyzhnia* web-site: <http://news.zn.ua/articles/75833#article>, <http://news.zn.ua/articles/79224>, <http://news.zn.ua/articles/76844>.

[24] See *Defense Express* web-site, 11 September 2009, <www.defense-ua.com>.

assets." For that matter, Andriy Mukhatayev, the chief of the SBU's Kharkiv City Office, noted that the Company's senior officials were involved with a number of privately-owned partner companies which were carrying out works to the benefit of the company's senior executives.

CONCLUSIONS

Studies of the performance of arms export control systems in Ukraine and the Russian Federation show that these states have in place rather effective export control mechanisms for weapons, military equipment, special-purpose services, sensitive materials and technology. The export control system, being multi-level in structure, reduces to the minimum the risk of the state becoming involved in 'black' or 'grey' arms market deals. Ukraine's legal framework for export controls has yet to be fully shaped and requires to be completed by the addition of legislation regulating the country's international cooperation in military technology, and it needs to be expanded further through the gradual signing of bilateral agreements on military-technological cooperation with individual states.

The export control systems put in place in Ukraine and the Russian Federation are similar in terms of their objectives, tasks and functions. Still, they differ in that the Russian export control system, unlike Ukraine's, is coordinated by the Ministry of Defence of the Russian Federation.

Russia's export control system is more divergent in structure than Ukraine's; it is divided into two interrelated subsystems, one dealing with military goods supplied under military-technological cooperation agreements and the other controlling the export of dual-use products. The Russian export control system is more rigorously regulated administratively and has a more extended reach into various sectors of the Russian economy. Simultaneously, Russia's 'tough' administrative regulation system does not allow for simplifying export control procedures nor does it provide for a gradual transition from an authorisation-based to a notification-based mode of operation. Overall, export control regulations in the Russian Federation tend to become more rigorous and comprehensive. For example, there is a

draft decision proposed by the Federal Service for Technical and Export Controls (entitled on the "Approval of document package required to be submitted to the Federal Service for Technical and Export Controls for reaching agreement on the disposition of property furnished by the federal government to federal state-owned unitary enterprises and the Federal Autonomous Establishment subordinated to the Federal Service for Technical and Export Controls") which provides for establishing supervision and control over the disposition of the federal government assets that are subject to export controls and could potentially be stolen, particularly when being discarded or disposed of. At present, it would appear that there will be a further redistribution of labor between relevant government agencies in Russia, and export control procedures will become more detailed and sophisticated, which will likely result in a reduction of business for the small defence-related companies that have not been incorporated into major defence industry corporations.

In Ukraine, the process of the division of labour between different central government authorities and the construction of an export control system was completed with the adoption of legislation on export controls in 2003. At the same time, the work of a body responsible for considering key policy decisions on initiation or termination of military-technical cooperation with any given state has been effectively brought to a halt, which implies a conclusion that the current Ukrainian administration handles international cooperation in military technology and export controls as if these are just only a peculiar business, rather than a form of international activity of the state. Moreover, further strengthening the President's vertical chain of command over the country's international military-technical cooperation system creates a beneficial environment for tendencies which could have a potentially negative impact on the state's international authority. Potentially the most challenging aspects of export controls include:

- ✓ the lack of legal mechanisms to ensure parliamentary scrutiny and oversight over military-technological cooperation policies implementation
- ✓ the termination of practices of establishing ad-hoc parliamentary panels to deal with oversight issues in this given area

- ✓ the lack of practices of nongovernmental organisations' involvement in public oversight and citizen's control
- ✓ low-level involvement of the mass media in public oversight and citizens' control.

The challenge of raising the role of the legislature, the mass media, the citizenry and nongovernmental organisations in supervision and oversight in arms export control is currently of concern to the Russian Federation as well. Despite the presence of a divergent network of field-specific authorities, decisions are quite often made based on well-dosed selective information provided to the authorities. Also quite obvious are signs of censorship, which, even with a 'rigid' vertical chain of command over the military-technical cooperation system in place, may give way to breeding ground for risk-prone deals whereby critical technologies can—through re-export trade, for example—end up in potentially high-risk locations.

It is important to note that arms export control system's validity is also hinged upon the overall administrative management pattern applied to the defence industry and other holders of critical information and materials. A reform of the state's governance system for managing Ukraine's defence industry has been launched but never brought to its logical end. There has been no single authority selected for the defence industry yet, with jurisdiction being scattered over a multiplicity of government agencies, which obstructs effective coordination and teamwork in the scope of military-technical cooperation policy implementation. Ukraine's Cabinet of Ministers should take urgent action to redistribute powers and responsibilities of the abolished, integrated or reorganised ministries. As mentioned above, this is last but not least the reason why the Presidential Interagency Commission on military-technical cooperation and export control policies has stopped working. The body that is temporarily replacing it—a council attached to the State Service for Export Control—has restricted membership and by far a lower level of representation of government agencies and ministries.

A review of arms export control systems in Ukraine and the Russian Federation reveals the need for a clear term and highly detailed definition of the level of public access to official statistics on international transfers involving weapons, military equipment, special-purpose service, sensitive

materials and technology. This most notably concerns the deals which may go beyond the scope of disclosure requirements under Ukraine's international obligations, and information on which can be deployed on a dedicated website along with statistical reports submitted by the Ukrainian Ministry of Foreign Affairs to concerned international organisations.

Overall, it is necessary to set the conditions for Ukraine's and Russia's export control systems to gradually transit to a model referred to as "catch-all controls" implemented in Europe and elsewhere. These controls provide a legal and/or regulatory basis to require government permission to export unlisted items when there is reason to believe such items are intended for a WMD/Missile end-use or end-user, to ensure problematic dual-use exports that do not otherwise require a specific license, do not reach destinations of nuclear, chemical/biological, or missile proliferation concern. With "catch-all controls," arms exports are managed with account taken of possible negative implications – humanitarian, political and others.

One of the highest priority tasks for all of the post-Soviet governments should be ensuring that the vast majority of defence industry companies have in place robust export control compliance programmes to pave the way for the export control system's subsequent transition from an authorisation-based to notification-based mode of operation. For this purpose, however, there should be in place a clear differentiation of penalties for severe versus minor violations of applicable export control requirements and instructions.

Supervision over intangible technology transfers and a 'civilised' control of the behaviour of critical information holders remain to be among the least regulated and most complex issues of concern to be addressed by governments of not only Ukraine, Russia and other former Soviet states, but even top suppliers of critical information from Europe and America. A comprehensive solution to this challenge should include setting an environment to ensure that knowledge and technology are transferred in a civilised manner. This would particularly imply measures to ensure that the cost of technology is adequately factored into production costs and that intellectual property items are included on companies' books and records, as well as to amend applicable legislation dealing with copyright issues. The adoption of legislation on technology transfers could bring Ukraine a big

step closer to this goal. Also very useful in this context are global R&D and training initiatives on export control issues. Creating leverages of influence on the behaviour of information holders requires more intensive and better coordinated effort to be made at the international level. The use of best practices and expertise accumulated by NATO and the International Scientific-Technical Center in promoting sustainable civil sector employment for former nuclear weapons scientists is one example proving the effectiveness of this approach to building relationships between governments and research and scientific communities. One more area of great use and importance in this context is in sharing information and communication on issues of shared concern, most particularly those addressing corruption in the defence industrial and scientific research communities. Important elements of an anti-corruption strategy in this given area include building shared databases, *inter alia*, blacklists of "undesirable contact men" and individuals having a history of non-compliance with actual or attempted breaches of arms export control regulations, as well as putting in place an effective system for fast communication between customs authorities, the State Export Control Service and other relevant authorities in foreign countries. It is equally imperative that such communication should involve an exchange of information and viewpoints with the public nongovernmental civic sector and think tank institutions, which would serve as a powerful deterrent factor for autocratic presidential systems of government present in countries such as Ukraine and the Russian Federation.

CENTER FOR ARMY, CONVERSION AND DISARMAMENT STUDIES (CACDS)

The Center for Army, Conversion and Disarmament Studies (CACDS) was established in 1999 as a non-governmental, nonpartisan, non-profit research organization for contribution to the development and democratization of Ukrainian society through increasing civil control over the country's Military Strength (Armed Forces, National Guards, Internal Troops and others), studying disarmament and armament processes in the country and abroad, and facilitating the effective conversion of Ukrainian defense enterprises.

CACDS was created on a voluntary unification base of journalists, scientists and specialists in military-civil relationship, military-industrial complex and global disarmament areas for joint work to research and to cover issues of transformation of Ukrainian defense industry, civil control over country's armed structures and Ukraine's participation in international regimes of control over arms and technologies transfer.

Center for Army, Conversion and Disarmament Studies, *Challenges Facing Arms Export Control in Ukraine and the Russian Federation*, DCAF Regional Programmes Series # 14 (Geneva: Geneva Centre for the Democratic Control of Armed Forces, August 2012).

DCAF Regional Programmes Series no. 14

Original Version: English, Geneva, August 2012

Geneva Centre for the Democratic Control of Armed Forces
<www.dcaf.ch>
P.O.Box 1360, CH-1211 Geneva 1, Switzerland

Proofreading: Lydia Amberg

Cover Design: Angel Nedelchev

Format: 6.25 x 9

ISBN 978-92-9222-194-2

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The publication of this book has been funded by the Directorate for Security Policy (SIPOL) – Swiss Federal Department of Defense, Civil Protection and Sports.

DCAF Regional Programmes Series no. 14