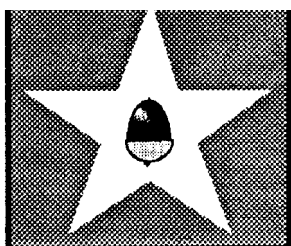


Conflict Studies Research Centre

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Ukraine's Security Policy:
A Sound Basis For Action?**

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The 2002 NATO-Ukraine Action Plan, the Law on the Foundations of National Security, the 2003 draft Military Doctrine and the 2002 Law on Counterintelligence reflect institutional thinking, and thus likely policy directions. Their strengths and weaknesses are analysed here.

Ukraine's 'full integration into Euro-Atlantic security structures' and the transformation ('reform') of its national security system are rightly regarded by NATO as indivisible pursuits. During June 2003 three events brought these pursuits into the spotlight. On 5 June, Ukraine's parliament, the *Verkhovna Rada*, approved the President's decision to send a contingent of 1,800 troops to the newly formed Polish sector in Iraq. On 20 June, Army General Volodymyr Shkidchenko, Minister of Defence since October 2001, resigned following two scathing attacks by President Leonid Kuchma on the state of Ukraine's Armed Forces.¹ Five days later, Kuchma announced the appointment of Yevhen Marchuk, Secretary of the National Security and Defence Council (NSDC), as Shkidchenko's replacement.

It would be naïve in the extreme to link these events exclusively to the issues of Euro-Atlantic integration and defence reform, vital as each of them is. In the current political atmosphere, where the President of Ukraine subordinates almost every cause to the questions of power and survival, decisions at the top may not provide the clearest indication of where the country as a whole is heading or where key institutional players wish to go. Fortunately, four more revealing indicators of the latest collective thinking are available for examination: the NATO-Ukraine Action Plan, adopted at the Prague summit on 22 November 2002, the Law on the Foundations of National Security, approved by the *Verkhovna Rada* on 19 June 2003, the draft Military Doctrine, approved by the Cabinet of Ministers on 8 April 2003 and the Law on Counterintelligence, approved by President Kuchma on 26 December 2002. All four of these documents reflect institutional thinking rather than presidential interests, and each of them has emerged after many months of deliberation. In the case of the Action Plan and the law on the foundations of National Security, they also reflect joint inter-agency work.

This said, documents can tell us only so much. It has become a cliché of NATO-Ukraine cooperation that whilst Ukraine has real strengths in planning, its weaknesses lie in implementation. True as the cliché is, documents matter. Unlike the operation of a market economy, national defence must be a planned activity. If the plans are misconceived, even a country as rich as the United States will squander its resources. Ukraine has few resources to squander. Either its national interests, national security concepts, military doctrines and military programmes correspond to one another – and to reality – or the economy, the Armed Forces and the national security will suffer. This is particularly the case for a post-Soviet country like Ukraine which, for good as well as ill, still preserves a classically Soviet

attitude about the syllogism that needs to bind policy, plans and action. Quite rightly, in this formalised hierarchy, first principles come first (the 1997 National Security Concept and its June 2003 successor). Military Doctrine (an authoritative statement of the purpose and the priorities of armed forces) and military programmes (detailed schemes for their development) follow. A second reason such documents matter is because they tell us much about those who write them. Welcome as it might be that their authors advocate 'full Euro-Atlantic integration', do they understand the implications of this choice? If this and other overarching objectives are contradicted by more specific provisions in these documents, not to say the working culture of the state, then the authors need to know this, and so do Ukraine's partners. Unless we resolve such contradictions at the analytical level, Ukraine will have no chance of overcoming them at the working level.

The Historical & Present Day Context

The term 'defence reform' is a woefully inadequate way of referring to dangers that threaten civic accord, national security and statehood. These are precisely what is threatened if Ukraine tinkers with and 'reforms' old structures rather than transforms them in function, capability and ethos. Transformation, not reform, is what is needed, and it is needed for three compelling reasons:

- The security structures that Ukraine inherited from the USSR were not only unsuited to present day needs. In today's context, their survival would be pathological because they were designed for purposes antithetical to those that are now so urgent: becoming a democratic state in spirit as well as form – and, in relations with neighbours and one's own citizens, shifting from intimidation, pressure and coercion to a pattern of cooperation, dependability and trust.
- If the process of transformation is confined to Ministry of Defence Armed Forces and not extended to other security and power structures, it will not only be incomplete, but distorted, and it will become a dangerous source of tension within the state.
- Changing the character of security structures is inseparable from the broader enterprise of changing the relationship between state and society. The two processes cannot be insulated from one another. Stagnation and failure in one sphere corrupt and undermine what is achieved in the other.

The term 'defence reform' also underestimates the magnitude of the challenge and the tenacity of the Soviet legacy that Ukraine has inherited. Overcoming this legacy demands will, courage, expertise and conviction. It also demands money. Yet even if these commodities become plentiful in the short term, the struggle will still be long term. It is essential that Ukraine's partners in this enterprise have requirements and standards, but it is equally essential that they have knowledge and patience.

Even today, an alarmingly small number of people outside Ukraine, indeed inside it, understand how unfavourable the starting conditions have been and how difficult it is to overcome them. Although Ukraine inherited 30 per cent of the military personnel of the former USSR in 1991, it did not inherit an army, let alone a Ministry of Defence or General Staff. It inherited powerful force groupings,

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equipped and trained for strategic offensive operations and incapable of providing national defence. It began its life as an independent state with a military establishment largely ignorant of the non-military dimension of security and imbued with the conviction that the danger of large-scale war was inherent in the international system. It faced – and will continue to face – the burden of converting, ‘privatising’ and dismantling a military-industrial complex of 1,840 enterprises, formerly producing almost 30 per cent of GDP and organised on principles antithetical to the market. The USSR, moreover, bequeathed to Ukraine a centralised (Union Republican) Ministry of Internal Affairs (MVD) and KGB, the latter cross-bred with, and not only subordinate to, its All-Union analogue, the KGB USSR, each of them with their own heavily militarised formations established by the Communist Party of the Soviet Union on the principle of ‘divide and rule’. All of these establishments – centralised, compartmented and opaque – were subordinated to a scheme of ‘civilian’ (Party) control designed to confine authority and knowledge to very small circles of people. It is against this template, not NATO’s, that progress needs to be measured.

Progress there has been, some of it early and some more recent. The fact that troops of the Soviet Armed Forces, MVD and KGB numbering 1.4 million men were substantially reduced and thoroughly resubordinated – all of this without conflict and upheaval – was a contribution to European security second only to the country’s unilateral nuclear disarmament. But it was an early and finite contribution, not an ongoing and dynamic one. Fortunately, two subsequent contributions provide such a dynamic.

The first was the adoption by Ukraine of a radical, but reasoned and coherent set of first principles about the country’s security interests, its likely security threats and the type of military formations required to maintain security. Ukraine’s first National Security Concept (1997) drafted by the analytical staff of the National Security and Defence Council under the stewardship of Volodymyr Horbulin, was a model statement of first principles. It assaulted the general war ethos (which has been inbred in the Soviet-trained officer corps of Ukraine) by stipulating that in conditions where both state and society were weak, the prime security challenge would be to forestall and resolve local crises, emergencies and conflicts and prevent them from being exploited by actors (internal and foreign) with ulterior political ends. Proceeding from this analysis, the Concept identified ‘the strengthening of civil society’ as the first of nine security challenges for Ukraine.

Not until the adoption of the State Programme of Armed Forces Reform and Development 2001-5 were steps taken to give these principles definite content. Imprecise and unrealistic as some of the Programme’s aims and targets have been, they are clearly being revised under pressure of expert criticism and unforgiving economic reality. This State Programme has also been supplemented by others, notably the Concept of the Armed Forces 2010 and the State Programme of Armed Forces Transition Towards Manning on a Contract Basis, designed to transform today’s 295,000 mixed conscript-volunteer force into an all volunteer force by 2015.

The second dynamic has been the NATO-Ukraine relationship. Well before the conclusion of a Charter on Distinctive Partnership (July 1997), this relationship was always ‘distinctive’ and very different in nature from the NATO-Russia relationship. Even in the post-11 September environment, Russia’s preoccupation remains the securing of rights, status and a ‘seat at the table’. Ukraine’s principal concern, on the other hand, has been the development of military-political and military-technical cooperation, not least at working level. Whereas Russia’s

Ministry of Defence has been sceptical of the merits of participating in NATO's committee structure on the same footing as other partners, Ukraine has viewed such possibilities as opportunities, which it exploits to the limit of its still modest resources. Since the adoption of the State Programme, Ukraine believes that the purpose of this activity is (in the words of former Minister of Defence Oleksandr Kuzmuk) 'to support defence reform in the country'. Today this is accomplished through several distinctive mechanisms (notably the Joint Working Group on Defence Reform) that provide structured audit and consultation and, by comparison with post-Soviet norms, have brought about an unheard of degree of transparency. In 2001 Ukraine became an active participant in NATO's Planning and Review Process (PARP), a PfP programme requiring each participating country at regular intervals to supply NATO with a detailed inventory of its military assets and, jointly with NATO, identify real costs, as well as capabilities in short supply or surplus to needs.² These mechanisms and the networks they foster have become instruments of cultural change. This cultural change is a prerequisite to achieving the longer-term aims that Ukraine has identified. Whilst it would be premature to say that a mental revolution has occurred in Ukraine's Armed Forces, it has definitely begun.

For all this, the dynamics of modernisation, stagnation and decay remain precariously balanced. Command structures have been fundamentally overhauled in keeping with the new focus on local conflicts. The education sphere is being reformed and is acquiring a marked Euro-Atlantic orientation. NCO academies have been established. Professionalisation has had a promising, if limited start. Base closures and force reductions have begun and this year will assume significant proportions. Yet junior officer retention rates remain unsatisfactory, and the balance between expenditures devoted to maintenance (personnel, logistics, barracks and facilities) (80-90 per cent), procurement (3 per cent) and R&D (1.5 per cent) is alarming. In 2002 Major General Valeriy Muntiyan, Assistant to the Defence Minister for Budget and Financial-Economic Activity, stated that without a radical revision of financial support, 'the Armed Forces have no more than five years until self-ruination'.

The NATO-Ukraine Action Plan

The genesis of the NATO-Ukraine Action Plan is the 23 May 2002 declaration of the NSDC (over which the President of Ukraine presides) defining NATO membership as the 'long-term goal' of the country's Euro-Atlantic integration. This declaration represented a radical change of policy, for to that point policy had been predicated officially on non-alignment and, hence, a firm (but not always clear) distinction between 'integration' with NATO and membership of it. Because of its 'long-term' focus, the NSDC's declaration was not accompanied by an official Ukrainian application to join NATO. Because the declaration emerged at a time when President Kuchma's relations with most NATO governments had reached an impasse – and because NATO makes decisions by consensus – NATO did not issue Ukraine with an invitation to submit a Membership Action Plan. Yet both sides grasped that the moment had to be captured and exploited. The NATO-Ukraine Action Plan was the result.

As an officially Ukrainian document, drawn up in consultation with NATO and approved by the NATO Council in Prague, the Action Plan represents the definitive statement by both parties about what Ukraine must do to achieve its goal of 'full Euro-Atlantic integration'. It is an ambitious document and plainly meant to be so, because it sets no deadlines as to when this goal might be achieved. Consequently,

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its authors were under no pressure to provide an assessment of whether its provisions are realistic, let alone when they might be realised. Nevertheless, because of its status and joint character, it is now the template against which purely national statements must be judged.

There should be no doubt about the criteria and spirit against which they will be judged. Section I, almost half the document, focuses on political and economic issues, the better part of these directed towards entrenching democratic values and transforming *domestic* institutions and practices. The message is clear: it is the country, not the army that joins NATO, and the state of the country will be the principal benchmark that NATO will use to assess progress. This should be sobering and possibly unwelcome news to those tempted to use cooperation (eg the dispatch of a large Ukrainian military contingent to Iraq) as a substitute for in-depth internal change, as well as practical measures to make the Armed Forces and other force structures 'interoperable' in line with NATO standards. To be sure, Ukraine's cooperation is valued by NATO, its cooperation underscores Ukraine's independence and importance, and it even might guarantee NATO's continued engagement and assistance regardless of what happens inside the country. But in itself, political-military cooperation will merely prolong the status quo, set out in paragraph one, under which the 9 July 1997 Charter on a Distinctive Partnership, rather than membership, 'remains the basic foundation of the NATO-Ukraine relationship'.

Does this make the Action Plan helpful to Ukraine or not? As a statement underscoring NATO's priorities and criteria, and as an instrument of pressure, the Plan is definitely helpful. But in two other respects it is not. First, it makes no attempt to distinguish between long-term goals and goals that are achievable within current economic and political constraints. If the latter are not identified, the temptation will be to postpone every struggle into the distant future, rather than focus on areas where progress is both urgent and feasible. At the minimum, the latter must include publication of development and reform programmes for non-MOD force structures and the establishment of joint working groups within the framework of the Joint Working Group on Defence Reform (JWGDR) to see them through.

Second, the Plan's 'Mechanisms of Implementation' (Section V) are mechanical. What is needed are indicators of progress that allow for no equivocation on the part of Ukraine or NATO. Annual Target Plans are required, but what should they demonstrate? Astonishingly, there are no mechanisms inside Ukraine or NATO for auditing the career progression of Ukrainian military officers with NATO experience. Is the progress of officers with NATO mindsets not a vital indicator of Ukraine's purpose and progress? Even a full year after accession to NATO, many Hungarian officers with NATO experience complained that they were thwarted by senior officers trained under the Warsaw Pact system. Where Ukraine is concerned, should we rely upon such complaints and other 'anecdotal' evidence, or would it not be better to have a proper inventory and record of NATO capable personnel and their progress through Ukraine's military and civilian hierarchy? Although a large number of 'principles' and 'objectives' are listed in the Action Plan, to Ukrainians with limited knowledge of Western values and practices, many of these are mere abstractions. The challenge for NATO and Ukrainian experts is to devise concrete requirements and targets that would give these abstractions meaning in the specific conditions confronting Ukraine.

For a Plan to be a plan, it must not only contain goals and criteria, but a sequence of measures to be achieved, a logical relationship between them and, if at all possible, a timescale for achieving them as well. As it stands, the NATO-Ukraine Action Plan is not a plan, but a statement of principles and aspirations. The burden of giving substance to them will therefore fall on Annual Target Plans.

The Law on the Foundations of National Security

From a Western perspective, many of the official 'concepts', 'laws' and 'normative acts' of the post-Soviet era lack clarity. Often, like their Soviet era predecessors, they do not rank priorities, but 'answer all questions'. They frequently contain impenetrable, convoluted passages and contradictory provisions. The result, and perhaps the intent is to allow the *vlada* ('powers') to change direction as and when they see fit – and keep the 'subjects' of these 'acts' confused about what is permitted, what is expected and what is forbidden. On top of these ills, post-Soviet documents express something new: the ambivalences and schizophrenias of 'transition'. Many contain 'something for everyone'; they seem to be written by several hands, rather than one; they mask arguments rather than resolve them.

The 1997 National Security Concept was a refreshing exception to this pattern. It was drafted by a tightly knit team. It was concise. It had a clear theme: the weakness of state and society and the fragmentation of the state by design or mishap. It stuck to first principles, as an overarching concept should, and did not dilute its message by 'comprehensiveness' and detail.

Nevertheless, its time is past. The international environment and Ukraine's international relationships are very different from what they were in 1997. Internal vulnerabilities have assumed a definite form. Many of them have become chronic, and a new Concept/Law is needed to identify them and map a route out of today's impasse.

In four respects, the law is an impressive document. Its authors have made a conscientious, if not always successful attempt to harmonise language and principles with the NATO-Ukraine Action Plan. Second, the law revives the term 'military organisation of the state', and in so doing rightly puts reform of the security sector on the same footing as reform of the Armed Forces. Third, the language is usually clear, often blunt and, by implication, critical of the state and many who wield power within it. Fourth, alongside traditional threats to national security, the law addresses unconventional, but more acute ones: the 'merger of business and politics', attempts by shadow structures 'to use the state's military formations and law enforcement agencies in their own interests', monopolisation of 'energy supply sources' and the perilous ecological condition of the country, which according to Yevhen Marchuk (then Secretary of the NSDC and now Minister of Defence), has been responsible for the deaths of 70,000 Ukrainian citizens since independence.³

This said, it would not be surprising if the law's impact fell short of hopes. If so, part of the blame should fall on the law itself:

- Unlike the 1997 law, its successor does not provide a clear and concise statement of what threatens Ukraine and how to meet these threats. Instead, 91 'threats to national interests and security' are presented under three headings in an apparently random sequence. Nearly all of

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these threats are illustrative of a very small number of overarching vulnerabilities that threaten the security of the state, localities and individuals. Unless these 'first principles' are presented cogently and unambiguously, it will be difficult to mobilise people and direct them.

- As in the Action Plan, no attempt is made to distinguish between primary and secondary issues. By the same token, there is no distinction drawn between the threats that can be addressed by Ukraine on its own, threats that can only be addressed with the help of partners, and threats that, for the moment, can only be monitored. Absent a clear statement of what is urgent and what is possible, the law is more likely to stimulate talk than effort.
- The provisions of the law appear to reflect the views of two sets of people and two contradictory ideologies of the state. Amongst fourteen National Priorities (Article 6), one finds 'development of civil society', but nothing about creating a culture of political neutrality, responsibility, accountability and decency within state structures, let alone proper remuneration for those who serve in them. In the body of the document, the ills of ethnic conflict are repeatedly cited, but in contrast to the Action Plan, the ills of ethnic discrimination are not. Information policy seeks to maintain 'freedom of speech and public access to information' but also protect people from 'manipulation of the public consciousness' by politicians and 'informational expansion' by foreign states. There is an unhealthy preoccupation with 'interference in the domestic affairs of Ukraine' – and by International Organisations and NGOs, no less! No clearer reminder is needed of the gap between Euro-Atlantic aspirations and Euro-Atlantic values.

The Military Doctrine of Ukraine (Draft)

The failure of Ukraine until this year to revise its notoriously unrealistic 1993 Military Doctrine has puzzled many.⁴ It is also an anomaly, leaving a 'normative' gap between the 1997 National Security Concept and the State Programme of Armed Forces Reform and Development 2001-5. Yet the delay is understandable. The authors of Ukraine's draft Military Doctrine have been handed an all but impossible task. What type of doctrine is best suited to a state that wants to join NATO (or, before May 2002, 'integrate' with it) but has no confidence that it will be invited to do so? If military threats arise, will Ukraine find itself acting as part of a coalition, or will it need to act alone? The two variants have very different implications for command-and-control, force structuring, mobilisation and possibly training and procurement as well. Deference to the orthodoxies of 'compatibility' and 'interoperability' will not remove the need for tough choices. This Military Doctrine makes a choice. The unstated, but clear premise in both the Military/Political and Military/Strategic sections is that Ukraine will need to act alone. Given the absence of a clear signal from NATO about future membership, no one can fault this premise.

But questions must still be raised about the geopolitical assessment presented and the military priorities that arise from it. The military/political situation around Ukraine, 'characterised by a certain fluidity and instability' is said to be 'both positive and negative'. But of the nine bullet points that follow, only two of them are positive. There are two striking omissions. First, there is no mention of the fact

that no later than 2004 all states on Ukraine's western border, apart from Moldova, will be NATO members and, probably no later than 2007, members of the EU as well. If 'NATO and the EU are guarantors of security and stability in Europe' (Section II, paragraph 19), is this not an immensely positive development? The implication is that Ukraine's military and political leadership regard the second wave of NATO enlargement (because of Romania's inclusion?) with ambivalence. Second, there is no mention in this key section of the multiple security threats posed by state weakness, the power of shadow structures, the breakdown of trust between state and society and the presence of criminalised entities on Ukraine's border (Pridnestrovie) and the wider Black Sea region (South Osetia, Abkhazia and Nagorno-Karabakh). Whereas connections between business, crime and politics are major sources of state weakness in Ukraine (as the National Security Law acknowledges), in these 'de facto states' the all but complete merger between these spheres is a key source of their strength.⁵ For this reason, they can be called pathological states. Yet like a parasite feeding on a host, these entities also draw strength from the weaknesses found in the states surrounding them – in local governments and law enforcement first and foremost.

A Military Doctrine premised on the primacy of soft security factors – internal, local and regional – would have taken a decidedly different form from this one. 'The aim of Ukraine's defence is to prevent possible armed attack and to repulse any armed aggression' (Section III, paragraph 1). From whom? From Romania? To be sure, the admission of Romania to NATO provides no guarantee that mischief and ambition will not surface in its policy, but it makes military aggression on its part virtually inconceivable. The same holds true for Turkey and for the same reason. From the Russian Federation? From the Russian Federation, military means of pressure are wholly unnecessary (there are so many others – vastly less provocative and more effective).

True, the diminution of classical military threats does not eliminate all military danger. One source of military danger (as we have already seen during the Kosovo and Chechen conflicts) is the employment of intelligence and combat components of the Black Sea Fleet without Ukraine's consent and without regard for Ukraine's interests. But this is very different from aggression against Ukraine. A second source of military danger is that a third party in conflict with Russia might attack Russian forces on Ukraine's territory. But who outside NATO would have this capability? Who inside NATO would seek to respond in this way? How would an alliance of 19 (soon to be 26), including Germany, Poland, Hungary and the Baltic States and bound by consensus, possibly agree to such a deluded course? The most acute source of military danger (demonstrated on 12 June 1999) would be a demand from Russia to open Ukraine's airspace and territory to transit by Russian armed forces. But if this is the danger to be forestalled, then possibly Ukraine's first steps might be to withdraw from the 1994 Ukraine-Russia air transit agreement and the 1995 CIS Joint Air Defence Agreement and concentrate long-term resources on devising an air defence system as compatible with NATO's as possible. 'Military danger' to Ukraine is certainly not absent, but 'armed attack' is the least likely form it will take. In the absence of resolute measures of transformation and reform, the most likely threats will continue to come from those who would undermine Ukraine rather than attack it.

Alongside these issues, four strengths must be noted, as well as two additional points of scepticism. The strengths are:

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- Reiteration of the 'Euro-Atlantic integration policy, whose final aim is to join NATO'. Although 'use of the capacities' of the UN Security Council, OSCE and EU is also cited, here as in the Law on the Foundations of National Security, no mention is made of the CIS or Collective Security Organisation. The implication is plain: in the security (as opposed to economic) sphere, the aim with respect to Russia is cooperation; integration is on the agenda with NATO and the EU and with them alone. (Noteworthy too is the failure to mention G121: proof that it has no security dimension, or a tacit belief that it is dead – a belief that might need to be revisited after the revival of US interest in the organisation after the July G121 summit?);
- The linkage established between the 'integration process towards joining NATO' and 'considerable reform of the defence sphere';
- Continued emphasis on participation in international peacekeeping activities;
- The careful linkages established at different stages (peacetime, before 'aggression', during conflict and 'after repulsing aggression') between 'tasks and missions' of the Armed Forces and 'other military formations and law enforcement agencies'. But instead of securing the 'collapse' of an 'aggressor' and 'the prosecution of combat action on [his] territory' (III.14), would it not make sense to return to the classic 1997 wisdom that 'in local conflicts and national disasters' military forces 'should set up a zone which would make it possible to direct or influence the processes occurring outside it'?⁶

The two points of scepticism relate to:

- *Professionalisation*. Is this cause in retreat? No one reading the Doctrine could deduce that a State Programme of Armed Forces Transition Towards Manning on a Contract Basis is in effect, let alone conclude that the goal of military policy (here defined as maintaining 'combat readiness')⁷ is the creation of a small, professional military force organised on the principle 'better fewer but better'. The emphasis on 'mobilisation', on 'military/patriotic education of Ukrainian citizens' and 'preparation of youth for military service' point in a different direction.
- *Military-industrial policy*. This policy calls for the 'development of the military-industrial complex scientific, technical, technological and manufacturing base'; 'prevention of any gap in Ukraine's military-technical and technological development'; 'the reduction of Ukraine's dependence on external supply of weapons and military equipment and other material and technical resources'.

How is this to be done? Why should it be done? Only the United States has succeeded in preventing 'any gap' between its military-technical capabilities and those of other states. The United Kingdom, with a GDP at least ten times larger than Ukraine's, has not achieved this. Moreover, not even the Americans can claim full independence from 'external supply'. More to the point, not even they aspire to it. If 'full integration' is Ukraine's real policy, should it not begin here whilst this complex still has some assets and knowledge to offer?

To be sure, Western countries are not blameless. They have not invested in projects (like the An-70) that Ukraine insists they 'need'. Where Western firms have presented their own needs, they have been deterred from investment by the absence of property rights, by protectionism and by Soviet style laws on 'secrets'. The United States, too, has barriers and secrets, but it can afford them. In Ukraine and in Russia, the consequence of attempts to preserve this 'strategic sector' has been its wholesale evisceration and the impoverishment and dispersal of a highly skilled corps of scientists, engineers and technologists (many of whom find profitable employment abroad). Perhaps it is here that Ukraine faces the starkest choice of all: maintain the pretence of equality and suffer destitution or enter the world economy on the world's terms.

The Law 'On Counterintelligence'⁸

One consequence of the events of 11 September 2001 has been the decision of Ukraine to adopt a long-standing principle of Western conventional wisdom: defence reform and security sector reform are inseparable pursuits. Reform of interior forces and border troops had already been placed on the agenda of NATO-Ukraine cooperation at the meeting of the NATO-Ukraine Commission on 6 December 2000; nevertheless, reform of the Security Service of Ukraine (*Sluzhba Bezpeki Ukrainiy – SBU*) did not become a subject of open discussion until after the attacks on New York and Washington. Following the NSDC's declaration of 23 May 2002, identifying NATO membership as the 'long term goal' of Ukraine's Euro-Atlantic integration, NATO reminded Ukraine of the importance of security sector reform.

Yet a number of Ukrainian experts and opposition figures see little sign that a reformist impulse is present. To the contrary, they fear that the issue of 'terrorism' can be used by an unpopular president to weaken democracy in the country.

The Law 'On Counterintelligence', approved by President Kuchma on 26 December 2002, provides one way of assessing the realism of NATO's hopes and the reasonableness of the opposition's fears. The law is a document of approximately 3,500 words, divided into 13 articles:

- Article 1: 'Definition [of Counterintelligence]';
- Article 2: 'Goals and Objectives';
- Article 3: 'Legal Basis';
- Article 4: 'Principles';
- Article 5: 'The Right to Carry out Counterintelligence';
- Article 6: 'Grounds [Justification] for [Conducting] Counterintelligence';
- Article 7: 'Functions and Authority of the Counterintelligence Bodies, Divisions and Personnel of the Security Service of Ukraine';
- Article 8: 'Fundamental Principles of the Organisation of Counterintelligence Activity';
- Article 9: 'Protection of Information on Counterintelligence Activity';
- Article 10: 'Social and Legal Guarantees for the Personnel of the Counterintelligence Bodies and Divisions of the Security Service of Ukraine';
- Article 11: 'Guarantees of Legality of Counterintelligence Activity'
- Article 12: 'Control over Counterintelligence and Oversight of Law Compliance by the Counterintelligence Bodies and Divisions'

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- Article 13: 'Final Provisions'

To those familiar with counterintelligence and security practices in advanced democracies, two provisions of the law immediately stand out. The first is the definition of counterintelligence itself:

'Counterintelligence' shall mean a special activity carried out to ensure the national security through a system of intelligence, counterintelligence [sic], detective and administrative measures taken to prevent, timeously reveal and intercept any external and internal threats to Ukraine's security, any intelligence, terrorist and other unlawful attempts on [actions against] the interests of Ukraine undertaken by special services of foreign states as well as organisations, separate groups and individuals. [Article 1]

Apart from the fact that this is a confusing definition (defining 'counterintelligence' as counterintelligence), it is also a permissive and ambitious one. In the Soviet Union, much intelligence activity had a counterintelligence orientation, as its main focus was to seek out and neutralise activity capable of damaging Soviet interests and the Soviet system. By the same token, counterintelligence was extensive in its objectives and scope; it was proactive in its animus and methods, and it was not always confined to the territory of the USSR. Moreover, counterintelligence, security, police and judicial functions were not always clearly distinguished. The KGB not only had its own troops; it also could subordinate several other armed formations when required. In the Russian Federation, this permissive and proactive tradition was relegitimised by Boris Yel'tsin in a wide ranging address to senior officers of the FSK (predecessor to today's FSB) on 27 April 1994. During this address, he declared that the 'main rule' of counterintelligence 'is that *any* action capable of damaging national interests should be prevented or neutralised'.

Since 11 September 2001, one can also observe a more aggressive focus in Western counterintelligence activity. It is not only more proactive; it is (to the apprehension of a number of civil rights groups) more extensive in its targets, it is (allegedly) more permissive in its methods, and a greater proportion of it begins abroad. Nevertheless, Western counterintelligence services remain limited in their functions and objectives: monitoring the activity of hostile intelligence services, uncovering attempts to overthrow the constitutional order by violent means, exposing terrorist groups, organised crime and other conspiracies designed to threaten the state and its citizens. It usually falls to other state bodies to take action ('administrative measures') against the threats so identified. Moreover, the notion that counterintelligence should be designed to counter any 'actions against the *interests*' of the state is alien to the democratic tradition, because national interests are a legitimate and continual subject of politics and debate. Therefore, even when the post-11 September changes are taken into account, Ukraine's definition of counterintelligence comes closer to the Soviet and Russian model than to the Euro-Atlantic one.

The second striking feature of the law emerges in the first sentence of Article 5:

The Security Service of Ukraine shall be the special authority responsible for counterintelligence.

In democratic orders, this is the responsibility of the government. Democratic governments grant *powers* to counterintelligence and security bodies, but never cede *authority*. What is more, all democratic orders have elaborate mechanisms for

monitoring these powers (formal oversight), reviewing them and enforcing limitations on them. Whilst systems of oversight and enforcement differ widely, they invariably involve systems of 'checks and balances' within the executive and between the executive, parliament and judiciary. As already noted, advanced democracies will also establish clear demarcation lines between counterintelligence, police and judicial functions.⁹ The Law on Counterintelligence makes very fleeting and inadequate reference to such mechanisms and for very good reason. Ukraine is a country of new institutions and, apart from the Presidential Administration, several power ministries and a few other executive structures, relatively weak ones.¹⁰ Conspicuously absent in Ukraine's scheme of 'democratic civilian control' is an obligation on the part of the SBU and most other non-MOD security bodies to provide parliament with a breakdown of their budgets, expenditures and sources of finance, their staffing levels and their scheme of command, recruitment and training. Thus, when the Law refers to the 'legal basis' ('other laws of Ukraine', 'implementing legislation') of counterintelligence activity, it is referring to something that is often absent and quite often unsatisfactory when it is present – e.g. laws 'On State Secrets', 'On Operational Detective Activity' and 'On the Security Service of Ukraine' that are as permissive as the Law On Counterintelligence.

Despite these provisions and several others referred to below, it is clear that the authors of the law wish to ensure that arbitrary and wilful behaviour on the part of the security services will not take place. The substance of Article 7, Para 13 (and reiterated under several other headings) – 'the personnel of the counterintelligence bodies and divisions may not use the afforded rights to pursue unlawful purposes' – clearly relates to two other points: 'no entities, other than those described in this Law, may undertake any counterintelligence activity' (Article 5); 'officials and personnel' of the SBU 'shall be subject to disciplinary, administrative, pecuniary or criminal liability' (Article 11). Plainly, the leadership of the SBU is concerned that even their own staffs (whose salaries in 1999 were 40 per cent above those of MOD officers of equivalent rank) might not be immune from the privatised agendas and entrepreneurial activity which in the *militzia* (police) and several other components of the MVS (Ministry of Internal Affairs) have reached notorious levels. In other parts of the document, there is a clear attempt to show sensitivity to democratic judicial norms and the rights of citizens, e.g.:

- The right to interview persons is subject to 'their consent' and 'voluntary assistance' (Article 7);
- 'Any information on the private life, honour and dignity of a person that becomes available in the course of counterintelligence activity shall not be disclosed' (Article 11);
- 'Citizens shall have the right to receive explanations in respect to any restrictions of their rights and freedoms' (Article 11);
- The detention of individuals unlawfully entering restricted facilities – 'up to 72 hours in case of urgent necessity' – is contingent upon 'having notified a court within 24 hours of detention' (Article 7).

Yet where rights are concerned, the law as a whole appears to be less consistent with democratic practice than with the old Soviet principle: 'what we give with one hand, we take with the other'. The law affords the SBU a considerable range of powers over official and independent institutions, local government and businesses, for the most part without reference to 'their consent' and 'voluntary assistance':

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Law enforcement and other government agencies, local authorities, companies, institutions and organisations of Ukraine *irrespective of the form of ownership* shall provide, within the limits set out by laws of Ukraine and other acts and regulations, assistance to bodies and divisions of the Security Service of Ukraine in their counterintelligence activity in the interests of national security. [Article 5]

The SBU may also:

request, collect and examine...information describing activities of companies, institutions and organisations as well as the style of life of certain individuals, sources and amount of their income for the purpose of prevention and suppression of any intelligence, terrorist or other unlawful attempts on [actions against] the national security of Ukraine. [Article 7, Para 5]

And:

have unimpeded access, in a due manner, at any time to the territory and premises of government agencies and their divisions, local bodies of government, companies, institutions and organisations of any form of ownership and guarded military facilities only for the purpose of the prevention of intelligence, terrorist and other attempts on [actions against] the national security of Ukraine. [Article 7, Para 8]

The Law on Counterintelligence is not a charter for a police state. Yet it is no obstacle to the establishment of one. It would be difficult to avoid concluding that the authors of the law are more alert to the danger posed by shadow structures to the state (and the SBU itself) than they are to the danger of a state that has excessive powers over its citizens. In a country with strong parliamentary oversight and a strong civil society, the law would be cause for concern, and it would certainly arouse controversy, but there would be countervailing mechanisms and powers to insure that it did not become a threat to democracy. In the absence of these institutions and powers, the Law must raise serious questions about Ukraine's direction and the sustainability of its Euro-Atlantic course.

Bridging The Gap

In the round, the four laws examined in this paper amply testify to the schizophrenia that characterises Ukraine's defence and security establishment: a schizophrenia that we first drew attention to at the start of Ukraine's defence reform in 2000. For the most part, this is a well ordered schizophrenia, demarcating and distinguishing the NATO orientated and relatively reformist Armed Forces, Emergency Services and (thanks to growing EU engagement) State Border Guard and State Customs Service from a far less Euro-Atlantic and vastly more 'unreconstructed' security, intelligence and counter-intelligence establishment. The urgent and practical question is how to reform the latter establishment. The radical question is whether it is reformable. Both questions lie outside the remit of this paper. But they are vital for Ukraine, and the country's course will not be fixed or settled until the questions are properly answered and the necessary conclusions drawn.

Yet the laws also demonstrate that the schizophrenia is not as ordered and well defined as many Ukrainian and NATO participants in programmes of defence reform believe. The struggle to establish armed forces appropriate to real security

needs and economic possibilities is not only a struggle against political indifference and deficient finance. It remains, still, a struggle against unrealistic expectations and very dated mentalities. 'In the near term, the wide-ranging use of military power against Ukraine is seen as improbable' (III.1). True enough. But an attentive reading of Ukraine's Military Doctrine, with its emphasis on 'aggression', 'strategic action', 'economic mobilisation' and a defence-industrial policy autarkic in all but name, reveals that the general war ethos and fear of prolonged conflict remain deeply rooted. Ukraine cannot indulge these fears and at the same time hope to address the acute, unconventional threats that threaten its cohesion and survival. A new generation of junior officers, a large number of senior officers, and an equally large number of state officials and Peoples Deputies now understand this. The State Programme on Military Reform and Development, the Concept/Model of the Armed Forces 2010, the new Law on the Foundations of National Security and the 1997 National Security Concept reflect much of this new thinking. No less significant is the fact that a number of actions also reflect it. Ukraine is now committed to demobilising 68,500 officers and warrant officers from the Armed Forces in the next few years, 35,000 of them in the current year alone. It is also committed to closing 140 military bases. Yet despite these changes and challenges, new thinking has yet to prevail. NATO needs to address this problem in concrete and explicit terms, not only in the Joint Working Group on Defence Reform, but through broader and more informal 'doctrinal' discussions. More prosaically, NATO and its Ukrainian partners need to map out a transition from Action Plan to Membership Action Plan. This transition should include:

- Transforming the JWGDR into a Joint Working Group on Security Sector Reform, with subcommittees dedicated to each non-MOD force structure and NATO liaison officers assigned to each of them;
- The establishment of a Planning and Review Process for Personnel, analogous to PARP, but designed to monitor and strengthen the career structure of 'NATO capable' officers in Ukraine's military system;
- Provision of assistance to strengthen Ukraine's ability to resettle and retrain officers retired from the service. Current Ukrainian resettlement capacity is 2,500 per year, less than ten per cent of the total expected to be demobilised before the end of 2003. Without far greater capacity, force reduction could become a 'soft security' threat in itself;
- The establishment of a Joint Working Group on Defence-Industrial Policy and Conversion, with substantial private sector input;
- The establishment of a joint, but Ukrainian led commission to assess the economic impact of state secrecy laws and revise them in accordance with the requirements of 'full integration' and the demands of a market economy.

ENDNOTES

¹ The first, described as a 'secret' speech delivered at the end of April 2003 was published by the Ukrainian opposition newspaper *Svoboda* [Freedom] on 13 May. The second, as reported by *STB TV*, was delivered at a 'conference' (forum unspecified) that Shkidchenko attended on 20 June. According to *STB*, Shkidchenko tendered his resignation at this meeting. Shkidchenko had first tendered his resignation on 27 July

2002, immediately after the Skynliv (Lviv) airshow tragedy, which resulted in the loss of 84 lives. On that occasion, Kuchma refused to accept his resignation. See James Sherr, 'Implications of the Lviv Airshow Tragedy', CSRC Occasional Brief No 94, 4 August 2002.

² In the former USSR only the Baltic countries participate more intensively in PARP. Out of 27 Partners, 19 participate to some degree.

³ Interview with Interfax-Ukraina, 11 November 2002.

⁴ See C J Dick, 'The Military Doctrine of Ukraine', CSRC Occasional Brief No 27, December 1993.

⁵ The term 'de facto states' was coined by Dov Lynch in his excellent study, 'Managing Separatist States: A Eurasian Case Study', (Paris: Institute for Security Studies - Western European Union), November 2001.

⁶ The full quotation from (then) Rear-Admiral Yuriy Shalyt, Deputy Commander of NATO exercise Sea Breeze 1997 was: 'In local conflicts or national disasters, which can also provoke conflicts, it is precisely military units with the right training that can and should set up a zone *which would make it possible to direct or influence the processes occurring outside it*, promote the consolidation of stability and order in the country or region and create the necessary conditions for the work of units from the Ukrainian Emergency Situations Ministry' (UNIAN 28 August 1997). Rightly, the emphasis then was not on 'armed aggression' but the possible transformation of 'national disasters' into local conflicts. So it should be now.

⁷ The full quotation is, '[t]he basic objective of the state's military and technical policy is to maintain combat readiness, to modernise, develop and equip the Armed Forces and other military formations with armaments systems that are fit for purpose' (VI.6).

⁸ The text analysed is an English language translation provided by the *Verkhovna Rada* (parliament). Where necessary, linguistic corrections are indicated by the author in brackets.

⁹ Most will also seek to 'avoid a monopoly of the intelligence function by one organisation or agency' on the grounds that 'a proliferation of different intelligence organisations, perhaps corresponding to separate structures such as the armed forces and policy, or domestic and foreign intelligence, may be less efficient and foster bureaucratic competition, but is generally considered to be more conducive to democratic control'. Yet *caveat emptor!* This can be an unwise model to follow in post-Soviet countries like Ukraine and the Russian Federation, where 'bureaucratic competition' is more likely to facilitate 'divide and rule' methods by an authoritarian president than effective democratic civilian control by parliamentary and executive structures. Philipp Fluri, Anders Johnsson, Hans Born, eds, Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices (Inter-Parliamentary Union and Geneva Centre for the Democratic Control of Armed Forces, Geneva and Belgrade, 2003).

¹⁰ As the author noted in a speech in the *Verkhovna Rada* (parliament) on 8 May 2001, the *Rada* might have some formal *powers* that the British House of Commons lacks (e.g. approving the defence budget), but it has far less *capacity* to use these powers effectively. Although the defence budget is now far more detailed than it used to be, parliament still has little basis for making an independent assessment of the figures and 'needs' presented. The relevant committees have some, but very few professional advisers or staffs, and, whilst the quality of NGOs is improving, parliament cannot rely upon powerful, independent allies in the country at large. Moreover, the *Verkhovna Rada* does not have the right to approve the budget of security services, and these services have no obligation to present the *Rada* with a breakdown of their establishments, personnel or finance.

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