



POTENTIALS FOR COOPERATION BETWEEN UKRAINE AND THE EUROPEAN UNION IN THE SPHERE OF SECURITY

VALENTYN BADRAK
VASYL' LAPTIYCHUK
LEONID POLYAKOV
SERGIY ZGURETS

POTENTIALS FOR COOPERATION BETWEEN UKRAINE AND THE EUROPEAN UNION IN THE SPHERE OF SECURITY

(POLICY PAPER OF CENTER FOR ARMY, CONVERSION AND DISARMAMENT STUDIES PREPARED FOR
KONRAD ADENAUER FOUNDATION)

Authors: Valentyn Badrak, Vasyl' Laptiychuk, Leonid Polyakov, Sergiy Zgurets

Introduction

Today, security environment on the European continent is shaped primarily within the frameworks of three collective security systems: European Union (EU), NATO and Collective Security Treaty Organisation of the Commonwealth of Independent States (CSTO). Together these systems include the majority of European countries. However Ukraine (like Georgia, Moldova, Serbia, Switzerland and some other countries) belongs to neither of them.

Having abandoned the policy of integration to both NATO and CSTO and declaring the ‘non-block’ policy, Ukraine nevertheless enthusiastically continues to pretend to want integration into the EU. In June 2010, Ukraine adopted the Law “On the foundations of foreign and domestic policy” in which the ‘non-block’ policy and refusal to join NATO were legitimised, but at the same time, among the key priorities of foreign policy the necessity “to provide for integration of Ukraine into European political, economic and legal space with the aim of acquiring membership in the European Union” was declared.

Ukraine makes significant diplomatic efforts in order to implement the selected course on European integration, which is supported by the majority of population. Particularly with regard to joining the Free Trade Area with the EU, adoption of the visa-free regime, as well as development of scientific, cultural, sports programmes, etc. However with time it becomes more and more evident that integration to the EU means considering not economic and social-political aspects alone. This unquestionably means integration to the security component of the EU as well as – the Common (recently – European) Security and Defence Policy (CSDP). At the moment, the EU can be viewed rather as an informal collective security and defence organisation, but if Ukraine achieves further progress on the way to EU membership, then, in the future when the issue of Ukraine’s membership may be considered, the security status of the EU could become formalised enough and Ukraine would obtain the security guarantees of full value; which the country lacks today.

On the way to the EU integration, Ukraine faces substantial challenges in the area of security:

First, the general security environment in the region became less favourable to the independent development of Ukraine than it was 5-10 years ago. The changes occurred both on the global and local scales. Globally includes such factors as financial crisis, instability and conflicts in the regions neighbouring Europe (Caucasus, Middle East, Northern Africa), and narrowing access to important resources. On the local level due to excessive dependence of Ukraine on decisions of more powerful regional players in the West and in the East. Ukraine’s position as a buffer-state, constantly balancing between the West and Russia, as well as economic weakness often makes the country hostage to the policies of other states.

Secondly, the visible potential for internal conflict inside the country has been formed. It is not subsiding due to the number of political, economic and social problems – the noticeable breach between the government and population, the excessive exploitation of populism by politicians, the unfavourable conditions for commercial activity and investment, the high level of corruption in the bodies of state power and in the economy, the low level of population’s well-being and quality of life, the unprotected rights and freedoms of Ukrainian citizens etc.

Thirdly, the low effectiveness of the security and the defence sector itself. This sector, despite existing achievements and potentials, is generally characterised by such problems as low effectiveness of security governance, low level of democratic civilian control, humiliating budgeting, high corruption, the low level of the trust of the population in the law-enforcement structures and their still unreformed state and militarization with evident traces of the old Soviet heritage in the professional technics, etc.

Disappointing results of the previous attempts to resolve many of the above problems, which Ukraine should have resolved over their 20 years of independence, constantly reduce effectiveness

and limit the potential of security cooperation between Ukraine and the EU. Which slows down development of cooperation in political and economic spheres.

Having started the practical cooperation with the EU in the framework of CSDP from adoption of the document *Arrangements for Consultation and Cooperation between the European Union and Ukraine on Crises Management*, which was approved on June 21-22, 2002 at the EU Sevilla Summit and also having subsequently signed on December 23, 2002 the *Agreement on Participation of Ukraine in the EU Police Mission in Bosnia and Herzegovina (EUPM BiH)*, Ukraine steadily worked to make the cooperation with the EU in the security and the defence sector more active. Today it is possible to discuss not only intentions, but also certain achievements as well, particularly, in the areas of using Ukrainian transport aircraft, participation in the EU peacekeeping and humanitarian operations, participation in the EU tactical battle groups, cooperation of defense industries of Ukraine and some EU countries, cooperation of the law-enforcement bodies in fighting illegal migration, organised crime, drug trafficking etc.

On the bases of the analysis of security challenges, achievements on the road of Ukraine to the EU, and the potentials which the country possess in the area of security, this policy paper suggests a number of recommendations for the EU and for Ukraine. Particularly, in this context it examines the security aspects of foreign and domestic policies, defence policy, intelligence, defence industry and law-enforcement activity. The paper of the Center for Army, Conversion and Disarmament Studies (CACDS) is aimed at shaping a more precise understanding of the key directions for Ukraine's security integration to the EU, as well as at developing approaches and recommendations in the area of security for further consideration by the authorities and society of Ukraine.

Nico Lange
Director of Konrad Adenauer Stiftung Ukraine

Kiev,
December 2011

Summary

Among the many issues of the agenda for Ukrainian integration to the EU, the issues of security gradually receive more attention next to traditional political and economic issues. There are good reasons for this – close security interests of Ukraine and the EU, as well as certain security potential of Ukraine, which can be utilized for common purposes. At the same time, both in Ukraine and in the EU there is an understanding that the current moderate security interest of the EU to Ukraine should by all means be supported by the practical results, particularly, through encouraging the cooperation within CSDP.

Based on significant experience of cooperation with NATO and with individual EU member-states (Germany, France, Poland, the UK and other), as well as possessing quite sizeable security potential, Ukraine has rather optimistic prospects for further development of cooperation with the EU in the area of security. However, in order to utilize this potential in common interests of Ukraine and the EU, Ukrainian experts have to address the number of institutional, legal and resource related concerns.

In particular, Ukraine needs to do a lot of work for implementing the value standards of the EU, achieving the balance of security interests between the cooperation with the EU and cooperation with Russia, improving the effectiveness of governing in the area of security and defence, increasing the volume of resources allocated for the needs of security structures, and expediting the reforms of these structure, especially law-enforcement ones.

In this policy paper experts of the non-governmental think tank CACDS suggest their vision of the state and prospects of the integration of Ukraine to the EU in the area of security, as well as offer their recommendations for improving the effectiveness of utilizing the potentials for integration of Ukraine to the EU in this area. In the CACDS experts' opinion, the adoption of suggested recommendations will promote successful implementation of the general course of Ukraine on European integration, widening of security dialog between Ukraine and the EU and deepening of cooperation in defence, defence industrial and law-enforcement sectors.

1. Cooperation between Ukraine and the EU in the area of security: common interests, challenges, trends

Among the many factors, which at the moment, directly influence the prospects for cooperation between Ukraine and the EU in the area of security, two can be distinguished by their decisive role: first, no country can effectively stand alone against the rapidly transforming security challenges and new threats; and second, tendency for multi-polarity of the future world order and current disagreements between the great powers make the creation of some kind of effective global government seem unlikely. Therefore, regional security will be shaped primarily by the regional security structures. In Europe such a structure could be developed on the basis of CSDP, which currently is significantly weaker than NATO (taking into account the allied obligations by USA and Canada), but in the future it is likely to assume full responsibility for regional security.

It also seems natural that success in developing the future regional security architectures, as before, will depend on the ability of the key regional powers to coordinate their interests horizontally – between each other, e.g. on the interstate level – and vertically, e.g. between the interests of some leading powers and of the common center of security architecture on one hand, and between the interests of the individual leading powers and the interests of less influential partners and foreign allies – on the other. Such progress would likely materialize on the next level of development. In particular, the EU in this context has already accumulated significant historical and modern experience of horizontal cooperation. But still needs to develop relations in security area vertically – between the EU member states and Union’s central security bodies (which currently are on the early stage of development), as well as between the EU and individual partners and allies, which will likely include the ‘non-block’ (moderately influential EU member in the future) Ukraine.

Naturally, the above considerations will be true in case Ukraine preserves its sovereignty and integrity; and will not deviate from the course on democracy and integration to the EU. Let’s hope the latter will never happen. So, today the task for Ukraine is to improve its own security potential, which is very much needed by Ukraine itself and can be offered to the EU and consequently, to the fullest possible integration to the EU security programs. The factor of common interests between Ukraine and the EU in the area of security could serve as a precondition for this. Today such common interests do exist.

According to the EU document entitled ‘European Security Strategy’ the key strategic interest for Europe is to maintain “secure Europe in a better world,” which is based, according to the Treaty of Lisbon, on “the universal values of the inviolable and inalienable human rights, as well as rights for freedom, democracy, equality and the rule of law”. The European Security Strategy, adopted in 2003 and its latest revision in the form of 2009 European Parliament’s Resolution identify the key threats facing European security interests as follows:

- Terrorism
- Proliferation of weapons of mass destruction (WMD)
- Regional conflicts
- State failure
- Organised crime
- Cyber threat
- Piracy

At the same time in the Annual Address by the President of Ukraine to the Verkhovna Rada of Ukraine delivered in April 2011, there is an appendix with the draft new edition of the National Security Strategy of Ukraine. According to the published document, the priority of the strategic interest of Ukraine is “creation of favourable conditions for implementation of the interests of citizens, society and the state; further progress of Ukraine as a democratic state with stable and

growing market economy, guided by European political and economic values, were respect and protection of rights and legitimate interests of all territorial communities, representatives of society and ethnic groups should guarantee independent, free, sovereign and democratic development of united Ukraine”.

It is important to note, that the list of threats, indicated by the draft National Security Strategy of Ukraine has basically coincided with the relevant list for Europe:

- Proliferation of weapons of mass destruction
- International terrorism
- Transnational organised crime
- Illegal migration
- Piracy
- Escalation of interstate and civil conflicts

Obviously, the proximity of approaches between Ukraine and the EU for identification of strategic interests and threats creates favourable environment for development of mutually beneficial cooperation. The desire of Ukraine to enter the EU creates additional incentives for this, particularly with regard to such issues as resisting to WMD proliferation or resolution of regional conflicts. The evident example of the latter is cooperation in the framework of the EU operation in Moldova, which provides for proper control over Transdnistrian borders.

In addition to the common interests as a favourable factor of Ukraine’s integration to the EU, Ukraine has substantial resources; technological, human and other potentials and in the future could quickly become not just one of the successful candidates for entering the EU, but an influential regional power and play an important role in the future of EU. However, despite official recognition by the leadership of the state that “membership in the European Union serves as major guarantee of the national security”, in the near future the weight of unresolved historical, modern, domestic and external problems would likely hamper the integration process between Ukraine and the EU. In this context it makes sense to remember also about the activity of competitors, who would prefer to slow down the integration of Ukraine to the EU security framework and who would not be happy to see existence of strong independent Ukraine in the region.

In general the resilience of any international security system under the pressure of challenges, threats and its stability depend not only on “pragmatic” ascertaining, a fact of the current coincidence of interests (which could be a temporary phenomenon), but also on more fundamental factor – availability of important long term common interests among the participants of the system and most important – common values. It also depends on firm readiness to protect them, as well as on availability of sufficient potential for protection of these common interests and values. In modern Europe, its security architecture depends primarily on close cooperation between NATO and the EU on one hand, and on their relations with Russia (as *de-facto* equivalent of CSTO) on the other.

In this regard, it is important to note that both in the EU (referring to security – in CSDP) and in NATO there are developed cultures of mutual trust. It is based on the recognition of common values among the members of these organizations and their readiness to defend them together. In the same fashion, close cooperation between these two organizations – NATO and the EU – in the area of security and defence, despite sometimes different approaches, is based on community of interests, values and visions for the ways to protect them in the territory of Europe.

For instance, pursuant to Article 49 of the Treaty on European Union the criteria for membership in the EU stand for adherence to the “principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States”. The latter generally imply for the readiness to strengthen trust, stability,

independence and effectiveness of institutions, which guarantee democracy and rule of law and to promote the harmonized process of constitutional reform on the basis of clear separation of powers and effective system of checks and balances between the state power institutions.

The same applies to conditions for accession to NATO (political and economic criteria of the Membership Action Plan) as stipulated in the so called Washington Document (1999). They practically replicate the value based criteria for accession to the EU: “peaceful settlement of all international, ethnic or territorial disputes; developing strong free institutions and demonstrating in practice the principles of democracy and individual liberty; democratic control over armed forces; promoting long-term stability and well-being through ensuring economic freedoms, social justice and environmental protection.”

Unfortunately at the moment, Ukraine does not meet many of the standards of European democracies united in the EU and in NATO. This problem is also admitted in the draft National Security Strategy of Ukraine: “Today the internal security challenges remain more urgent. Conservation of ineffective post-Soviet social system, first of all in the state governance, distortions of democratic procedures which artificially constrained the processes of *cadre* rotation in the bodies of state power led to weakness and sometimes to inability of the state to perform its functions, primarily in the areas of protection of human rights and freedoms of the person and citizen, as well as in growing distrust in society to authorities. Exhaustion of the inefficient economic model based on consumption, absence of incentives for innovative processes and dynamic development of the new technological practices condition low competitiveness of Ukrainian economy and make it impossible for the radical increase in the living standards of the population and bringing its quality in conformity to the European standards, provoke the growing social tension, and the spread of protests. The indicated factors together with the unsatisfactory condition of the national security governing system and the spread of corruption in its institutions create obstacles to resolution of the burning problems of social development, promote political radicalization, stimulate growing extremist intentions and movements, and in strategic perspective can possibly create real threat to the national sovereignty and territorial integrity of Ukraine.”

The above assessment is proved by the population polling results. In particular, the data of the Sociological Service of Razumkov Center indicates the growing social tension in Ukraine: ratio of assessments by Ukrainian citizens made in February 2011, who suggested that following the presidential elections the situation in the country had improved (17.2%), and those who said that it had deteriorated (48.4%) and looks not in favour of authorities. “In general from April 2010 till February 2011 the level of full support for the activity of the institutes of governing declined more than two-fold: for the President from 40.9% to 17.8%; the Government from 26.6% to 10.8%; Parliament from 16.6% to 7.6%”.¹ There is also a decrease in assessment of the Government’s actions in the fields of guarantee of democratic freedoms, social policy and treatment of an ordinary citizen, humanitarian policy, fighting corruption and crime. More so, according to the polling data, Ukrainian citizens do not believe that the bodies set to defend the law and security act in line with that intent. They are sure that these bodies mainly defend the interests of representatives of the current Ukrainian authorities and they do not consider the attitude to fighting corruption to be regular and consistent. Accordingly, the sociologists observe “rather strong verbal readiness of citizens to take part in protests for defence of their rights and interests... Adherents of protest actions make a majority or relative majority in all regions of Ukraine”.²

Europe has already called many times for attention to the fact, that common values are declared in Ukraine. Yet there are significant problems with implementation of these declarations. In particular, it would be important in this regard to mention some moments from the Resolution of European Parliament on Ukraine, adopted in November 2010: “...whereas Ukraine is a European country of strategic importance to the EU; whereas its size, resources, population and geographical

¹ See: “Activity of the new authorities in public assessments”. *National Security & Defence*, №3, 2011, p.62-76.

² Ibid.

location give Ukraine a distinctive position in Europe and make it a key regional actor; ...whereas allegations have been made that democratic freedoms, such as freedom of assembly, freedom of expression and freedom of the media, have come under pressure in recent months; ...stresses that Ukraine has a European perspective and strong historical, cultural and economic links to the European Union and that it is one of the Union's key partners in its Eastern neighbourhood, exerting a significant influence on the security, stability and prosperity of the whole continent; ... is concerned at recent developments that could undermine media freedom and pluralism; calls on the authorities to take all necessary measures to protect these essential aspects of a democratic society ...; ...emphasises the need to strengthen the credibility, stability, independence and effectiveness of institutions, thereby guaranteeing democracy and the rule of law and promoting a consensual constitutional reform process based on the clear separation of powers and effective checks and balances between state institutions; ...calls on the authorities fully to investigate all reports of infringements of rights and freedoms, to remedy any violations identified and to investigate the role of the SBU with regard to interference in the democratic process; ...calls on the Ukrainian authorities to step up efforts to fight corruption; expects, in this regard, that positive political statements will be matched by decisive action in combating corruption at all levels, on the basis of political impartiality; calls for the establishment of a level playing field for business and for application of the same rules to domestic and foreign investors; ... consolidation of the rule of law and respect for fundamental freedoms will be crucial in order to meet the benchmarks for visa liberalisation; ...”.

The above trends in Ukraine look quite worrisome because the history and experience of not only Ukraine, but of the other countries too, warn that the lack of trust in authorities and their ignoring of public opinion may first lead to people's apathy, but later may provoke the actions of protest. For the sake of justice, it should be noted, that in Europe itself the double standards with regard to observing the values can also be sometimes noticed, e.g. between the declarations on the need to support democracy and practical efforts in this direction and economic interests of individual countries... However in Ukraine the problem of double standards (i.e. divergence between the declarations on observing the values and practice of their observance), so far, looks much more sensitive than in Europe. In the context of Ukraine's cooperation with the EU countries, this phenomenon can be seen vividly in the sphere of Ukrainian justice or on the issues of attracting foreign investments. Comments of European businessmen, officials and diplomats are quite telling in this regard.

In particular, the opinion of the Ambassador of France to Ukraine, Jacques Faure, reflects the number of problems in today's relations between authorities of Ukraine, business and non-governmental structures from the EU countries: "...unfortunately, during my contacts with Ukrainian media I had to mention more than once the difficulties, which European and, in particular, French companies faced in Ukraine; ...Ukrainian courts adopted decisions, which unfortunately looked strange because they did not correspond to legal principles functioning today in European countries; ...we would request explanations for the reasons of having such a gap between declared intentions and practical actions; ...we are witnessing the creation of a certain structure that is very odd for the country declaring its commitment to market principles. Creation of the system when a certain state-run company is introduced to the market is not in line with Ukraine's official statements and the principles of the European Union which Ukraine is trying to join; ...it is incorrect to think that remarks and judgments, which sometimes can be heard from foreign media, civil society organisations or politicians with regard to the tendencies observed in Ukraine in the sphere of civil freedoms and human rights, might reflect the wrong logic or could be guided by cruel intention towards Ukraine.”³

There are many other signs of the worsening of Ukraine's image in the eyes of democratic European and world communities. For instance, the transferring of Ukraine in 2010 from the

3 See: Jacques Faure:«Dialog between the government and opposition – essential requirement of modern democracy». Tetiana Silina, *Dzerkalo Tyzhnia*, №7, February 25, 2011.

category of “free” countries to the category of “partly free”, worsening of Ukraine’s positions on freedom of media, level of corruption, business environment and other categories. Obviously, it would be *naïve* and irresponsible to think that political and economic problems in relations between Ukraine and the EU would not influence cooperation in the area of security. They were, are, and will be among the factors hampering security cooperation and would negatively influence Ukraine’s chances for integration, unless the state becomes serious in improving the situation.

At the same time while noting current Ukrainian problems with observing the values in the context of integration to the EU, it is important to understand their roots, and whether there are chances to solve these problems. In this regard it can be suggested that internal aspects of current problems depend primarily on underdeveloped culture of the state government, general weakness of the ideas of unity and state building in Ukrainian society. It looks like the only unifying idea for the majority of Ukrainian citizens is the desire to live comfortably – as in Europe, or together with Europe. But next to this unifying idea there are many dividing historical, cultural, religious, language, geographical and other unfavourable factors.

However it is also necessary to mention the availability of positive factors and trends, which potentially could be supportive in strengthening the chances for European integration of Ukraine. This is not only experience accumulated during official security and other cooperative events, but also the availability of noticeable (though still rather weak) civil society, readiness of many Ukrainians to protect their rights and freedoms (historically proven but currently rather weak, too), supportive attitude to market economy, availability of the sizeable pool of professional journalists, intellectuals and independent experts. Their public opinions and comments are rather insufficient to influence the authorities directly, but nevertheless can make them listen to the opinion of the people, who by the Constitution of Ukraine constitute “the only source of power” in the country.

As far as the next important factor for European security system is concerned – readiness to protect declared common values – it can be said that currently, on the level of declarations about the readiness, everything looks quite nicely. It is true both for Europe itself and for documents regulating relations between Ukraine and the EU. In particular, the key document which currently regulates the issues of Ukraine’s integration to the EU – *EU-Ukraine Association Agenda* – contains quite a complete list of criteria which Ukraine needs to implement in order to achieve the progress. This is true both for the value standards (mentioned above) and for security aspects (see Table “EU-Ukraine Association Agenda”).

EU-Ukraine Association Agenda	
to prepare and facilitate the implementation of the Association Agreement	
.....	
III.	<u>Operational part</u>
.....	
2.	Political Dialogue
.....	
2.3	<i>Foreign and Security Policy</i>
	<i>Regional and international issues, cooperation on foreign and security policy, WMD non-proliferation and disarmament, conflict prevention and crisis management</i>
(i.)	<u>Further strengthen convergence on regional and international issues, conflict prevention and crisis management; work jointly to make multilateral institutions and conventions more effective, so as to reinforce global governance, strengthen coordination in combating security threats and address development related issues</u>
	<ul style="list-style-type: none"> • intensify consultations and coordination through available diplomatic and military channels to address international issues of common concern, including and especially challenges to commonly shared principles of international peace and security, as established by the UN Charter, the OSCE Helsinki Final Act and other relevant multilateral documents, also in view of Ukraine’s practice of aligning with EU CFSP declarations and common positions; • continue dialogue on implementation of the European Security Strategy; • enhance EU–Ukraine consultations on crisis management;

- continue the practice of jointly identifying opportunities for Ukraine to participate in future ESDP operations, building on the good experience of Ukraine's participation in EU operations in the Balkans, as well as the current discussions relating to Ukraine's possible participation in EU naval operation Atalanta;
- further implement "Seville" Arrangements for Consultation and Co-operation between the EU and Ukraine in EU-led crisis management operations, including continued participation of Ukraine in relevant crisis management exercises and ESDP-related training activities;
- increase interoperability where appropriate between Ukrainian peacekeeping units and EU forces through lessons learned from relevant EU crisis management operations to which Ukraine participated. Ukraine expressed interest to bilaterally explore the possibilities of involvement of the units of the Armed Forces of Ukraine into the formation of EU Multinational Tactical Battle Groups;
- Ukraine and the EU to enhance their joint efforts within the 5+2 framework, with the aim of reaching a viable settlement to the Transdnistrian conflict in the Republic of Moldova;
- the EU and Ukraine to continue cooperation with the Republic of Moldova on border issues;
- continue consultations on sanctions applied by the EU;
- explore further concrete ways of achieving convergence in the field of foreign and security policy;
- take measures to foster military and technological cooperation between the EU and Ukraine;
- encourage and facilitate direct cooperation on concrete activities, jointly identified by both sides, between relevant Ukrainian institutions and CFSP/ESDP agencies and bodies such as the European Defence Agency, the European Union Institute for Security Studies, the European Union Satellite Centre and the European Security and Defence College.

(ii.) Further develop co-operation in addressing common security threats, including combating terrorism, non-proliferation of weapons of mass destruction and illegal arms exports

- continue cooperation in the fight against non-proliferation of weapons of mass destruction, including on aspects related to the accession to and national implementation of relevant international instruments, such as CWC, BTWC and NPT, and export control regimes;
- further improve an effective system of national export control, controlling export and transit of WMD related goods, including WMD end use control on dual use technologies, in light of the EU regulation on export controls on dual use goods adopted in 2000 and on its updated version, further cooperate on the development of national lists of dual-use goods, controls over intangible transfer of technologies, enforcement of the export control system, including prevention and sanctions of breaches, and outreach to industry;
- continue cooperation in the fight against the trafficking of nuclear materials;
- continue cooperation in achieving the objectives of the G8 Global Partnership in all its aspects;
- cooperate in the enhancement of bio-security and bio-safety standards in the laboratories, other facilities and during the transport of dangerous bio-agents, in particular in light of the ongoing dialogue on possible cooperation on bio-safety and bio-security in the Ukrainian Anti-plague station (AR Crimea, Simferopol);
- cooperate in enhancing the security of outer space activities through confidence building measures, such as those proposed by the EU draft Code of Conduct;
- further cooperate on arms exports in the light of the content and principles of the Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment and also in jointly supporting the process leading to the negotiation of an Arms Trade Treaty;
- further develop cooperation in the fight against the illicit trafficking of SALW and their ammunition; jointly address threats for security, posed by Ukrainian stockpiles of conventional weapons and old ammunition, including SALW and their ammunition and anti personnel land mines, in accordance with the provisions of the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production, Transfer of Anti-Personnel Mines.

However in terms of practical efforts to implement the above agenda, there are difficulties for Ukraine and for the EU as well. First of all, it concerns the resource allocation for security purposes in the EU member states and providing support for democratic and market economy transformations in the countries on the EU borders which include Ukraine. The problem of insufficient financing of security and defence requirements in European countries has already become well known. Similarly, in terms of providing support for democratic and market economy transformations in the neighbouring countries, there are many critical expert opinions which were heard recently about the inconsistency and lack of enthusiasm on the part of the EU with regard to Eastern Partnership (initiated by Poland and Sweden), and about such events as Georgian-Russian

war of 2008, operations in Libya, Afghanistan etc., where current EU security potential was estimated as rather weak to cope with modern challenges and threats.

Furthermore, it is very important for European security in general and for the prospects of Ukraine's integration to the EU to keep in mind some controversies related to the issue of the cooperation with Russia. Until now, Russia never declared clearly its attitude towards security cooperation between Ukraine and the EU, but in political and economic areas this country considers Ukraine to be in its sphere of strategic influence. This is an essential factor because after the enlargement of the EU and NATO to the Western borders of Ukraine, after Ukraine's refusal to join NATO and declaration of 'non-block' status Ukraine once again found itself in a buffer zone between the West (EU and NATO) and Russia.

In attempts to implement seemingly 'pragmatic' goals of its 'multi-vector' policy Ukraine from time to time comes dangerously close to the line, which if crossed may lead to disproportionate dependence on one side and to the loss of strategic prospects on the other. This was sensed in such issues as: prolongation of the period of the Russian Black Sea Fleet lease of the base on the territory of Ukraine in Crimea, with regard to the controversial attempts of the WTO member Ukraine to connect signing of the Free Trade Area Agreement with the EU and with some kind of integration to the Customs Union of Russia, Belarus and Kazakhstan, who are not members of WTO. With regard to the latter, for instance, Ambassador of Germany to Ukraine Dr. Hans-Jürgen Heimsoeth had to make a warning that Customs Union with Russia will make it impossible to continue negotiations on Free Trade Area with Europe: «The President knows, that agreement on proposal for Customs Union will mean cessation of negotiations on Free Trade Area Agreement with the EU». Besides this, Ambassador of Germany noted, that signing of Free Trade Area Agreement and Association Agreement with the EU will first and foremost be considered as significant political signal that Ukraine has serious intentions to conduct reforms and to modernise its economy: «This signal would have a fundamental meaning for the Western economic and financial worlds. Its value is impossible to calculate in dollars.» Ambassador Heimsoeth further noted that in Ukraine «the dynamics, which can be developed by market economy, are not fully understood in Ukraine yet».⁴

Europe constantly faces a dilemma – on the one hand, there is an understanding that Russia should participate in European security process and its actions and initiatives should find a proper response. At the same time, from the value based point, Europe should not make big concessions at the expense of democracy in Ukraine, Belarus, in the Caucasus, even to serve some economic and selfish political interests. For example, recently some EU countries have demonstrated intentions to actively re-arm Russia. There are negotiations under way on supply to Russia of French *Mistral*-class power projection warships, Italian combat vehicles or German equipment for combat training fields.

Besides, it is important to remember, that between Russia and the EU there are not only common interests and cooperation, but also significant differences like issue of Kosovo independence (were Russia stands against the recognition of Kosovo's separation from Serbia, but in case of Transdnistria, Abkhazia and South Ossetia it is using Kosovo precedent to defend the legitimacy of separated territories), the political situation in Belarus etc.

Whether Ukraine succeeds to withstand the pressure in location between the West and the East and to protect independence, integrity, preserve its devotion to European values and simultaneously keep friendly neighbourhood relations with Russia – remains to be seen. At least, maximum possible participation of Ukraine in common European security endeavours would naturally provide for this and would correspond to the interests of both sides.

⁴ See. "German Ambassador has cautioned Yanukovich, that Customs Union and European Union can not be united". *Ukrayinska Pravda*, April 08, 2011, www.pravda.com.ua.

Ukrainian authorities continuously stress their readiness to support Ukraine's participation in developing the new European security architecture, particularly, to take part in peacekeeping operations. For this purpose, Ukraine has both the interest to have maximum possible integration with CSDP, and sizeable security potentials in many areas – defence, defence industry, arms export control and in some aspects of the law-enforcement activity. However, the application of these potentials is hampered by the number of such weighty factors like ineffectiveness of governance in the area of security, incomplete reforms, poor budgeting and the spread of corruption. These factors and potentials, which either support or restrain the integration of Ukraine and the EU in the area of security, will be scrutinized in the next sections.

2. External security aspects: defence, intelligence, peacekeeping

As of today, the background legal base necessary to manage relations between Ukraine and the EU in the sphere of security has already been developed. The key document delineating current framework of cooperation is *Arrangements for Consultation and Cooperation between the European Union and Ukraine on Crises Management*. It is complemented by *Agreement between the European Union and Ukraine on Security Procedures for the Exchange of Classified Information* and *Agreement between the European Union and Ukraine Establishing a Framework for the Participation of Ukraine in the European Union Crisis Management Operations*. Together these documents create the minimal required level of formalizing of relations between Ukraine and the EU under CSDP auspices. In particular, they allowed for institutionalizing of cooperative mechanisms both on the permanent basis (establishment of the position of the point-of-contact for liaison with the EU Military Staff) and on 'ad hoc' basis. They also stipulate provisions for the deepening of the dialog and consultations on some CSDP aspects, full participation of Ukraine in Committee of Contributors (when a country participates in the EU operations), etc.

Thanks to the international diplomatic practice mechanisms of the defence cooperation already well developed, as well as to the existing capabilities of Ukraine on one hand, and needs of the EU in additional forces on the other, current cooperation between Ukraine and the EU in the area of defence has already gained a noticeable momentum. In the period of the late 2005 – early 2006, the first contacts between the military leadership of Ukraine and the EU were held. They were devoted to the discussion of the directions for future military cooperation. The Ukrainian side has prepared a list of directions of priority and passed them to the leadership of the EU Military Committee. Besides the traditional cooperative events, e.g. exchange of visits, military education and training, Ukraine proposed some practical steps: particularly, the participation in peacekeeping operations, utilizing the country's potential in the EU Tactical Battle Groups (TBG), and the use of Ukraine's military transport aircraft for the EU needs.

Since 2007, two sides annually coordinate the Working Plan of Cooperation between the Armed Forces of Ukraine and the EU Council Secretariat in the sphere of CSDP. By the end of 2010, the EU Military Committee among all non-member countries had such a document only with Ukraine, which was recognition of Ukraine's military capabilities. Thanks to this fact, the contacts between two military structures were well organized and allowed to develop a number of practical initiatives. In particular, proposals were prepared and submitted for consideration in the EU with regard to including in the EU tactical battle groups the An-26 *Vita* aeromedical aircraft, the Il-76 military transport aircraft, a group of staff officers etc. In 2009, Ukraine joined the Multinational Helicopter Initiative of the EU and NATO, and in February 2011, a decision was made to use Ukrainian Navy's Be-12 anti-ship patrol aircraft-amphibian against piracy in the framework of the EU operations.

In addition to the above mentioned equipment, Ukraine, of course, could have offered the EU a number of other capabilities, e.g. a military hospital, engineer units or chemical, biological and radiological protection units. However, financial limitations on the Ukrainian side, as well as the absence of CSDP mechanism for financial support of military cooperative events significantly constrain the possible scale of this cooperation with Ukraine. Sometimes, it does not even allow it to start within the framework of the EU peacekeeping operation. As it happened, for example, in the operation in Chad in 2007-2008 when the Ukrainian side could have contributed a military hospital for the operation, but needed some financial support to purchase equipment corresponding to the specific environment in the region of operation. Ukraine did not get the needed money and failed to contribute to that EU operation.

In some cases, the EU countries may conclude with Ukraine individual contracts, as in the case between Ukraine and Denmark with regard to using Ukrainian Il-76 transport aircraft to transport fuel to Greenland. In early 2011, already the third such operation *North Falcon* took place when Ukrainian heavy transport aircraft transported fuel to the distant point of Greenland – polar station *North*. It is also worthy to note the existing possibility of signing multilateral contracts, for

example, *SALIS (Strategic Airlift Interim Solution)*, under which Ukrainian and Russian An-124-100 *Ruslan* heavy transport aircrafts were used in the airlift to the areas of military and peacekeeping operations.

The significant experience of cooperation between Ukraine and NATO will undoubtedly be helpful for the development of cooperation between Ukraine and the EU in the sphere of security. In the framework of this cooperation, or, as it is called partnership, regular consultations within five working groups are being held, as well as programs of professional and language training for Ukrainian military servicemen and civilian personnel, exchange of lessons learned, support in achieving the standards of interoperability (within Planning and Review Process), cyber protection etc. – all at the expense of NATO. NATO also maintains cooperation with Ukraine on the issues of obsolete ammunition disposal, adaptation of retired military to civilian life, research projects, transportation of NATO equipment through the territory of Ukraine, management of the consequences of natural and technological emergencies, etc. In recent years, the process of the air situation data exchange, very important for the security of Ukraine and its NATO neighbours, has become a gaining momentum.

The considerable part of cooperation is devoted to military exercises under NATO auspices, or in the spirit of NATO partnership. In particular, it has already become a tradition to conduct in Ukraine the naval exercises *See Breeze*, the land forces exercises *Rapid Trident*, the special forces exercises *Barrier*, etc. In order to provide for their proper conduct, Ukraine declared a number of its contributions for NATO ‘Partnership for Peace’ Program. The most impressive among them is the dedication of a significant part of the *Yavoriv* military polygon to the creation of the International Center of Peacekeeping and Security. Ukrainian military also regularly takes part in NATO military exercises on the territory of the EU countries. In particular, they participate in communication troops exercises *Combined Endeavour*, NATO Response Forces exercises *Golden Mask*, special forces exercises *Jackal Stone*, medical service exercises *Medcure*, etc. A number of exercises in the spirit of partnership are conducted both on the territory of Ukraine and other countries like Ukrainian-Canadian-Lithuanian-Polish exercises *Maple Arch*, exercises of engineer units as multinational battalion *Tysa*, (Ukraine, Hungary, Romania and Slovakia) called *Light Avalanche*, and Ukrainian-British-Polish exercises *Cossack Steppe* etc.

The above mentioned experience has allowed Ukraine to become the only NATO partner-country, which participates in all current NATO peacekeeping operations:

Kosovo (Kosovo International Security Force – KFOR) – 133 Ukrainian peacekeepers serve with multinational battle group *East* under the US command;

Afghanistan (International Security Assistance Force in Islamic Republic of Afghanistan – ISAF) – 20 Ukrainian military servicemen, from which 1 officer serves in ISAF Headquarters in Kabul, 16 Ukrainian medical personnel support the Lithuanian-lead Provincial Reconstruction Team in Gor Province, and 3 military doctors serve in Polish military hospital in Ghazni Province.

Iraq (NATO Training Mission– NTM-I) – 8 officers of the Armed Forces of Ukraine;

Mediterranean – since 2007, Ukrainian military vessels take part in NATO Antiterrorist Operation *Active Endeavour* where they monitor the sea traffic in assigned zone.

It is not accidental then, that having such an intensive partnership with Ukraine, the Alliance regularly offers support during the unforeseen emergencies in Ukraine. In the past it happened in times of natural and technological emergencies, and for the future, for instance, Ukraine and NATO conduct consultations on providing support for Ukraine in organizing the air traffic control and air defence during the European Football Championship in 2012.

Referring to all the experiences of cooperation with NATO, it would be logical to expect that in case of the unity of interests, military cooperation with the EU can become as productive as with NATO. In such case, the already accumulated vast experience of the bilateral programs of military

cooperation between Ukraine and some individual EU member-states would play an important role in realizing the military potential of Ukraine. The number of countries like France, Germany, Italy, Poland, Sweden and the UK at their own expense provide Ukraine with many possibilities of language training, learning from their experiences, as well as receiving military education. Thanks to the ample experiences of their own militaries and having much more resources, these countries support Ukraine in military transformation processes. In particular, France, Germany and the UK at their own expense maintain their advisers of lieutenant-colonel or colonel level (France, Germany), or their civilian equivalent (the UK) in the Ministry of Defence of Ukraine. There is also an intensive military cooperation with Austria, Belgium, Bulgaria (which delegated the non-resident adviser on the issues of Armed Forces reform), Czech Republic, Greece, Estonia, Finland, Hungary, Latvia, Lithuania, Norway, the Netherlands, Romania and Slovakia.

After many years of orderly conduct of cooperative military events with individual EU countries, even certain specialization in the relationship could be noticed. For example, with partners from the UK especially, productive cooperation took place in language training, military education, and contacts in the fields of navy and special operations. With German colleagues, good relationship was built in the areas of defence planning, personnel management, chemical, biological and radiological protection, communication, disposal of obsolete ammunition etc. With French partners, successful cooperation was developed between representatives of the navies, combat engineers, as well as in military education, professional NCO training, peacekeeping, etc.

Important place in military cooperation with all these countries belongs to the practical training of peacekeepers at the specialized training centres and courses, as well as during the special military peacekeeping exercises. This peacekeeping cooperation allows the building of better interoperability between Ukrainian units and units from the EU countries in time of the real peacekeeping operations. In this context, Ukrainians received positive practical experiences during the many years of the joint mission of the Ukrainian-Polish battalion in Kosovo, when the Ukrainian brigade was included in Polish division in Iraq, during the mission of Ukrainian military personnel with the Lithuanian-lead Provincial Reconstruction Team and Polish military hospital in Afghanistan. Important lessons the crews of Ukrainian military vessels learn from contacts with the navy and ports of Greece during the annual rotations in the framework of Ukraine's participation in NATO Antiterrorist Operation *Active Endeavour* in the Mediterranean.

Alongside the representatives of the Ministry of Defence, their colleagues from the Ministry of Internal Affairs also took part in peacekeeping operations, Ukrainian peacekeepers took part in the European Union Police Mission in Bosnia and Herzegovina (*EUPM BiH*) from January 2003 till December 2005 and from February 2006 till December 2007, five representatives of the Ministry of Internal Affairs took part in renewed *EUPM BiH*. Later on in April 2009, another two Ukrainians arrived to serve in *EUPM BiH*, and in June 2009 – three more.

In addition to military diplomacy and peacekeeping cooperation, there are also attempts taking place with the purpose to create long-term permanent multilateral arrangements. The Ukrainian-Polish mechanized battalion (*UKRPOLBAT* – one company from each side and joint headquarters) and multinational engineer battalion, *Tysa*, (Ukraine, Hungary, Romania and Slovakia – one company from each country) were already mentioned. Besides, there are continued attempts to create a trilateral Ukrainian-Lithuanian-Polish peacekeeping brigade (*LITPOLUKRBRIG*). The Ukrainian side intends to delegate one airmobile battalion, artillery battery, several companies, and platoons of all-round support numbering over 500 total personnel.

In this context, it is important to note that experience gained from joint exercises, education, and joint participation in peacekeeping and antiterrorist operations creates the essential background for Ukraine's declared intention to take part in the process of Multinational TBG formation. This was identified as one of the priorities of the EU-Ukraine Association Agenda, as well as of the Working Plan of Cooperation between the Armed Forces of Ukraine and the Secretariat of the EU Council (referring CSDP) for 2010 and subsequently for 2011.

The military leadership of the EU and some individual member-states has confirmed their interest in Ukraine's involvement in the EU TBG under CSDP auspices. Coming from the fact of the mutual interest, Ukraine has already declared its proposals for contribution to the EU TBG *HELBROC* (Greece, Bulgaria, Romania, Cyprus), which is supposed to be on standby in the second half of 2011: marine infantry company, Il-76MD military transport aircraft and group of staff officers from the Armed Forces of Ukraine. More to the point, Ukraine is exploring the possibility to contribute to Italian-Hungarian-Slovenian TBG, which will be on standby in the second half of 2012, and the possible contribution of the Il-76MD military transport aircraft has already been determined.

It should also be noted, that probable participation in the EU TBGs will likely require the upgrading of the current legislation concerning participation of Ukrainian units in operations abroad. This is due to the fact that some designated forces will have to stay on alert during certain period of time and be ready for immediate deployment with multinational military formation under the EU auspices.

In this case, Ukrainian forces declared for participation in TBG would have to stay ready for immediate deployment during an extended period of time (at least half a year), but when the decision to deploy is taken by the EU, there will be a problem with the current rather lengthy decision-making and legal procedures inside Ukraine. Absence of the option for expedited legal procedure in case of deployment abroad of the unit on standby will likely become a serious limitation.

Besides, it is necessary to take into account the fact that today in the EU there is a rule under which contributing country is responsible for financial and other types of support for the national units. In case of Ukraine, this foreign policy factor may serve to stimulate the additional appropriation of finances needed to reform the Armed Forces of Ukraine in general. Because, despite the still available military potential of Ukraine which the country can offer to foreign allies, the needs of its own defence are covered inadequately, and today both authorities and opposition speak openly about the absence of the meaningful progress in the reformation of the Armed Forces.

For instance the President of Ukraine, Viktor Yanukovich, in January 2011 said publicly that "We face the task to create the national Armed Forces practically, as they say, 'from nil'".⁵ A very similar remark, though in more direct form, was made by the Chairman of the Verkhovna Rada Committee on Security and Defence, Anatoliy Grytsenko, who represents parliamentary opposition: "First, Armed Forces are unable to perform even the peace time missions. Second, the situation in the military is close to catastrophe. Third, Officers corpus is demoralized."⁶

The President, on his part, has promised that "The state will take care of military security, starting with increasing the social status of military servicemen and restoring combat spirit, the formation of a qualitatively new structure of the Armed Forces, modernization of armaments and the adoption of the Military Doctrine to the challenges of today's world."⁷ Time will tell how these ambitious plans will materialize. But so far, the President in his Address to the Verkhovna Rada indicated the task of "stabilization of the situation in the Armed Forces and ending the trend for reduction of their capability and readiness".⁸

⁵ "Address by the President of Ukraine, Viktor Yanukovich, at the grand meeting on the occasion of the Day of the Unity of Ukraine". Press service of the President of Ukraine Viktor Yanukovich, 22 January, 2011, www.president.gov.ua.

⁶ See: interview by Anatoliy Grytsenko: "A.Grytsenko: Situation in the military is close to catastrophe". *Glavnoye*, 18 January 2011, www.grytsenko.com.ua.

⁷ "Address by the President of Ukraine Viktor Yanukovich at the grand meeting on the occasion of the Day of the Unity of Ukraine". Press service of the President of Ukraine Viktor Yanukovich, 22 January, 2011, www.president.gov.ua.

⁸ See: "Modernization of Ukraine – our strategic choice. The Annual address by the President of Ukraine to the Verkhovna Rada of Ukraine". National Institute of Strategic Studies, Kyiv, 2011, www.niss.gov.ua.

Statistics of defence budgeting practically for all years of Ukraine's independence is not at all optimistic. According to the universal norms of defence budgeting in the world, about 50% should be spent for training and modernization, while in Ukraine this share almost never exceeded 10-15%. The rest 80-85% usually were "eaten" – spent for maintenance of personnel and infrastructure. Even this share, if taken in its very low total amount, was not enough to provide for minimal needs. For the sake of comparison – neighbouring Poland during the last years has been spending over \$5 billion for defence, while Ukraine having bigger forces spent much less – about \$1.2-1.5 billion.

The Defence budget for 2011 is equal to 13.6 billion hryvnia (about \$1.7 billion) – 12% increase from the previous year. There is also a certain change in the share of expenses for development rising to 30% of the total budget. Meanwhile the dual nature of the structure of the defence budget is still preserved, dividing it into the general fund provided by the state, and the special fund which the Ministry of Defence has to accumulate from different sources. The good news is that there is a 30% growth in the share of the general (guaranteed) fund of \$1.4 billion. However, about \$300 million still has to come from the special fund, which has never been fully implemented in the past. In particular, budget apportions of \$71.4 million for weapons procurement, of which over half will come from the special fund. So, there is no guarantee for all the required acquisitions. While such phenomena as a special fund may have been justified ten years ago, today it should not be accepted any more. Such practice does not correspond to the European standards, does not allow to implement all planned programs, and some sources of the special fund are fraught with the high risk of corruption among the military.

It should also be noted, that the low level of the social protection of Ukrainian military servicemen and high corruption in Ukrainian society in general create a favourable environment for spreading corruption in the military. Unfortunately, Ukrainian peacekeepers were not immune to this negative phenomenon as well – complaints were registered during the operations in such countries as the Former Yugoslavia, Iraq, Lebanon and Kosovo.

It is obvious, that the simple increase of Ukraine's military appropriations for cooperative military programs with the EU will not be enough to raise the opportunities for integration with the EU in the area of security. Absence of meaningful progress in defence reforms and fighting corruption will likely influence the quality of Ukraine's participation in security programs of the EU. Without completion of the defence reforms and without rearmament it will be difficult for Ukraine to become an effective security partner with the EU. While both Ukraine and the EU are interested in an effective partnership, the topic of defence and security reform remains marginal for the EU. At the moment, this issue seems to be important only for NATO and some individual EU member-states, but not the organizations in general.

As for the cooperation of intelligence services in addition to traditional contacts and exchange of information, Ukraine and the EU started exploring the potentials for practical cooperation. Representatives of the special designated units of the Security Service of Ukraine and of the Ministry of Defence of Ukraine in cooperation with other governmental bodies study the possibilities and conduct negotiations with some EU countries in preparation for participation in the EU naval operation *EU NAVFOR - ATALANTA*. In November 2008, the EU Council has made an official decision to launch the EU naval operation against piracy near the coast of Somalia under the codename *ATALANTA* (to support the UN Security Council Resolutions 1814, 1816 and 1838 adopted in 2008). The operation started on 8 December, 2008. The General Secretariat of the EU Council and the operation's headquarters (Northwood, the UK) expressed their interest in Ukrainian proposals concerning participation in the operation with sending armed teams to protect civilian ships. Preparation for the operation included exchange of visitors, coordination of logistic support etc. However, failure to resolve some of the issues of legal, diplomatic and financial responsibilities delayed the deployment of Ukrainian special operations personnel to the operation *ATALANTA* zone.

Today, there is substantial legal base for Ukraine's participation in this operation. In particular on 20 January 2010, the President signed the Decree 'On Decision by the National Security and

Defence Council of Ukraine ‘On Participation of Ukraine in the EU operation *EU NAVFOR ATALANTA*’. In accordance with the Decree a letter has been sent to the High Representative of the Union for Foreign Affairs and Security Policy with information about the adopted decision. Soon after this Ukraine received from the EU an official invitation to participate in the EU operation *ATALANTA*. Ukraine, similarly to non-members of the EU Norway and Croatia, is recognized officially as participant in the operation. However, the practical contribution by Ukraine so far is limited to sending one representative to the operational headquarters in Northwood.

Generally speaking, the opening of the EU intelligence office will promote the broader cooperation of intelligence structures. However, the issue of further development of cooperation between Ukraine and the EU in the field of intelligence similarly to defence is hampered by the humiliating level of finance. In particular, the 2010 budget of the Foreign Intelligence Service of Ukraine was about \$50 million, while the budgets of the similar intelligence services of leading EU countries are about ten times higher.

Summing up the analysis of external security aspects of utilizing Ukrainian potential in the EU security interests, it is possible to say that for the moment the general legal basis and certain practical experience are already available which would allow for the further progress of cooperation. To a larger extent it concerns defence and peacekeeping issues, while development of cooperation between intelligence bodies requires more efforts.

It is also important to note, that the future level of integration in these areas would primarily depend on Ukraine, which needs to improve its legal procedures for taking decisions and for preparation of forces to the EU missions abroad, as well as to improve the general level of security and defence structures effectiveness and their interoperability with partners from the EU. The future level of the security cooperation between Ukraine and the EU will also depend on the effectiveness of the EU coordinating mechanisms for the management of cooperation with probable partners like Ukraine, and on the amount of resources the EU will be willing to offer to support such would-be partners.

3. Perspectives in military-technical cooperation

A review on the potential for Ukraine-EU military-technical cooperation (MTC) reveals an interesting paradox. While there are almost no legal obstacles left on the way to the development of MTC, Ukraine-EU cooperation in this specific area, according to CACDS figures, has – in all of the years since independence – never been higher than 2.5% of all the volumes of MTC between Ukraine and foreign states. A logical explanation to this is that too many obstacles still remain in the way to using the current potential to its full capacity. It is in the self-interests of both Ukraine and EU states that these obstacles should be removed as soon as possible.

First and probably most important, Ukraine has been doing practically nothing to re-arm and re-equip its own military due to the lack of state defence procurement orders. This makes it highly problematic for this country to enter the European community of arms and military hardware (AMH) manufacturers. On the other hand, European states have pursued a policy of self-sustainability of their defence industry sectors and consequently have been more appealed by defence designs created under multinational programs.

Second, a certain degree of distrust has remained in place between Ukraine and Europe in the MTC sphere, over which the shadow of the *Antonov An-70* military cargo aircraft can be easily recognized. The fact that in the late 1990s a joint project, which was to reconfigure a Ukrainian-Russian military cargo aircraft into a new design, had never been accomplished is regarded by some Ukrainian managers as a striking example of the European states' moderate stance on the defence industrial cooperation with Ukraine. Europe's refusal of the AN-70 was a real frustration for defence industry officials in Ukraine. However, the picture of MTC potential's perception would be incomplete without the mentioning of some of the achievements of the past few years. Specifically, perceptions of the two parties' potentials have changed over the past four to five years. This was contributed by multiple confidence-building measures under the aegis of NATO or individual EU states, first and foremost those of the Visegrad Group. A range of international conferences and round table discussions, combined with stepwise decisions by the Ukrainian government to embark – despite the ongoing economic troubles – on re-armament and re-equipment programs for the national military, allowed it to embark on selected far-sighted R&D projects for new AMH designs which will be detailed below.

Overall potential and current challenges faced by Ukraine's defence-industrial complex

For an accurate assessment of potential for collaboration between Ukraine and the EU, it would be appropriate to give here a brief review of the Ukrainian defence industry capacities. Basically, the development of defence industry companies ensures the development of national economy in some technology intensive industries. Specifically, this is about missile and aircraft industry, shipbuilding and navigation engineering, armoured fighting vehicle (AFV) industry, car manufacturing, radiolocation, communication facilities and control systems, laser and gyroscope technologies, precision instrument engineering, satellite navigation and special chemistry. Defence companies provide for the development of arms and military hardware technologies and consequently, for the Armed Forces' operational effectiveness. Ukrainian defence companies' current product range allows for Ukraine to be highly visible on the global defence market to sell the products to foreign-country markets and thus ensure the influx of substantial amounts of hard-currency resources to the national treasury.

Necessary preconditions have currently been in place for Ukraine to successfully accomplish a range of design and development projects including: an indigenous naval corvette, current-generation radar systems, electronic warfare equipment, digital radios and radiation/chemical protection systems. Furthermore, the national defence industry has designed and built a current-generation *Oplot* main battle tank, in addition to precision-guided anti-tank missile systems and new military vehicle designs. Moreover, incremental upgrading works have been done for the national

Air Force's MiG-29, SU-25 and L-39 combat aircraft fleets, programs for further improvement of the An-70 and some air-to-air missile designs have been unlocked.

Ukraine's defence-industrial complex in its current state is multi-branched yet unevenly developed and obviously disjointed. Up to 90% of defence-industrial complex companies still remain state property, which not only determines the sector's special status, but also is keeping a heavy lid on the development of its potentialities. In more specific terms, this prevents mainstream companies of the defence-industrial complex from being integrated into international scientific-manufacturing associations. It furthermore hinders the development of multinational cooperative projects and also is clogging up the influx of investment money. The core of the defence-industrial complex is made up of about 40-50 companies which have been steadily progressing thanks to extensive defence exports, with almost a quarter of the companies being either privately owned or having a mixed ownership status. Those are primarily newly-established, rather than privatized, entities, which well demonstrates the Ukrainian government's systemic reluctance to reduce state involvement in the defence-industrial complex. About 150 more companies are facing uncertain future or gradually but surely falling into stagnation. Jurisdiction over the defence-industrial complex companies continues to be dispersed among various ministries, which along with the protracted absence of a unified administrative vertical power structure, is all detrimental to the development of the defence-industrial complex and MTC potential. As a result, decision-making becomes highly problematic when it comes to prioritizing defence projects or distributing the state defence procurement orders, in particular, and lobbying for large-scale defence projects or MTC, in general. Decisions on sharing intellectual property rights, where international companies are engaged as co-designers or co-producers, are still difficult to make. An example is non-transparent implementation of a project where the Polish partner was exploiting a Ukrainian-designed explosive reactive armour system for AFV applications. Instead of advertising the success and expanding cooperation potentialities, the two partners have hushed up silent about implementation of the project.

At the same time, the defence-industrial complex itself has been undergoing a transformation, with never-ending restructuring and manager changes. Especially in 2011, the Russian Federation expressed dissatisfaction with Ukraine lacking an administrative vertical control of MTC.⁹ Although most of defence-industrial complex companies' jurisdiction is concentrated in the Ministry of Industrial Policy, in late 2010, the State Company (SC) *Ukroboronprom* was established,¹⁰ and plans were announced to transfer selected defence industry entities to jurisdiction of the newly-established State Company. As of early April 2011, a range of companies of the ministries of industrial policy and defence had been transferred to SC *Ukroboronprom* (especially, under the Cabinet of Ministers' Resolution of January 17, 2011, six defence companies have been incorporated into SC *Ukroboronprom*). Afterwards, the Government ordered some one hundred more defence industry companies to enter *Ukroboronprom*. On the other hand, a substantial number of repair enterprises have remained under jurisdiction of the Ministry of Defence, and a few continue to be part of the National Space Agency of Ukraine.

In the wake of such a decision, the issue of the defence-industrial complex management has become even more complicated, where a lack of agreement and coordination was observed in

⁹ On March 15, 2011, Russian State Duma deputy Mikhail Nenashev of the Defence Affairs Committee, speaking during a TV bridge show, said that the Russian party cannot apprehend who exactly represents the Ukrainian Government in the MTC domain. This comment, by the Russian parliamentarian, came in relation to a news report that Moscow has prepared a cooperation program in the MTC sphere. The Russian Federation (RF) intends to raise its share of Ukraine's overall exports to 25% as soon as in the few coming years, and afterwards raise it even further by placing government orders. Military-technical policy of this kind is intended to demonstrate the benefits of cooperation with the RF and create a favourable environment for Ukraine to refuse any projects aimed to the good of Western states.

¹⁰ See: Presidential Decree "On Measures to Maximize Efficiency of the Defence-Industrial Complex" # 1245/2010 of December 28, 2010.

relation to AMH repairs and maintenance works for the Ministry of Defence on the ground of the change of jurisdiction. Moreover, CACDS analysts consider Ukroboronprom's incorporation of companies with world-renowned brand names, such as *NPKG Zoria-Mashproekt* (designer and manufacturer of gas-turbine engines for navy vessels) or *ZMBK Progress* (designer and manufacturer of aircraft engines), a mistake. Furthermore, some defence industry companies are operating "under the umbrella" of the Ministry of Internal Affairs or the Security Service of Ukraine. As of late April 2011, a single coordinating body has never emerged in the defence industry and the prospect for identifying an adequate solution to this issue continues to be in a limbo.

The system in which the Ukrainian defence-industrial complex exists and operates therefore remains imbalanced with no direct link to homeland defence capacity issues. This is indeed a major factor that impairs the capacities' development of both the defence-industrial complex and the Armed Forces. Government decisions aimed at strengthening MTC levels combined with poor management have led to notorious disputes within the defence industry leadership.¹¹

Such a situation in defence-industrial complex, complicated by traditionally low levels of state defence procurement orders during long periods of time, has resulted in the loss of entire defence-industrial complex sectors. For example, as early as at the end of 2002, the then Industrial Policy Minister Anatoly Mialytsya accepted that the national electronic industry output had reduced almost 100 times, and "...further decline of electronic industry may lead to economic reliance on imports".¹² A review by CACDS experts shows that Ukraine has lost potentialities for the manufacture of ammunition and high-resolution earth imaging satellites, in addition to some other AMH product ranges. In regards to defence industry companies' capabilities to meet the national Armed Forces' requirements, according to CACDS figures, the industry can provide 60% to 65% of the AMH product range required by the Ukrainian Armed Forces for fulfilling the tasks assigned to them.

Reputable experts in Ukraine are almost all unanimous about the ineffectiveness and low quality of the country's military-technical policy. For instance, during his address at a conference on "Perspectives in the development of arms and military hardware designs for the Ukrainian Armed Forces for period up to 2005" in December 2009, Volodymyr Horbulin, director of the Institute of National Security Studies, noted that Ukraine's defence budget continues to be distorted with the proportion of re-armament/re-equipment programs not exceeding an average 6% of overall expenditures, as opposed to up to 30% for industrialized nations.

The result is that most of the defence designs that enter service with the national military are created as private financing initiate projects, with the MoD's participation being limited to the provision of simple oversight. Examples are the *Adros-KT-OIAVE* electronic-optical jamming system intended for active protection of helicopters from IR-guided missiles, the tank-gun-launched anti-tank laser-guided missile *Stugna*, millimeter-wave radar systems *Lis* and *Barsuk* and many more others. Some of the designs are funded both by *Ukrspetsexport* and a variety of equity investment companies. Specifically in radiolocation, the R&D project for the passive electronic monitoring radar system *Kolchuga-M* was funded by *DAHC Topaz* (the designer), *Ukrspetsexport* and privately-owned company *Investment & Technology*. According to Oleksandr Niemchyn, president of *Investment & Technology*, the company is currently funding R&D for a digital stabilizer for AFV applications.¹³

One more important problem for the Ukrainian defence-industrial complex is the presence of very few "closed loop" AMH-production cycles. As various expert accounts reveal, the proportion

¹¹ Such cases were reported by some Ukrainian media outlets in January-April 2011: *Ukrainska Pravda* online newspaper, January 20, 2011, *Delo* newspaper, February 2, 2011.

¹² See: *Arms Export and Defence-Industrial Complex of Ukraine*, #1-2, 2003.

¹³ Valentyn Badrak, Sergiy Zghurets. "Lack-of-armament syndrome", *Mirror Weekly*, #5, 2007.

of “closed loop” manufactured products does not exceed 6-8% of the country’s defence industry output, the remainder being accounted for by components for AMH and maintenance/repair services. This, among other things, is the driving reliance on imported components, including from the RF. For instance, the level of Russian-supplied components in the Ukrainian version of the R-27 air-to-air missile (most established precision-guided ammunition type) tops out at 50% and higher.

Legal framework for MTC

Basically, a substantial legal framework has been developed for MTC over the period in question. This includes the *Agreement on Cooperation in Science and Technology between Ukraine and the European Union* and the *Agreement between the European Union and Ukraine on security procedures for the exchange of classified information*. Mention should also be made of the *Agreement between the Government of Ukraine and the European Space Agency Concerning Space Cooperation for Peaceful Purposes*, and the *Agreement on Cooperation in Science and Technology between the European Community and Ukraine*.

It would be fair to say that there are almost no regulatory or legal impediments in the way to the development of Ukraine’s MTC with the EU states. Still, there are certain areas that need to be improved and harmonized. This is especially about the MTC legislation which has not been adopted in Ukraine to date making relevant regulations shaky and unclear for Western partners. The absence of offsets legislation in Ukraine continues to be one more area of concern.

The majority of agreements in the MTC sphere are currently implemented on the basis of bilateral contracts and agreements. More importantly, strict requirements related with defence procurements are lacking in Europe itself. So the conclusion of bilateral agreements is a high-priority task for each and all projects in the MTC sphere. These include the *Agreement between the Cabinet of Ministers of Ukraine and the Government of Romania on Military-Technical Cooperation*, the *Agreement between the Cabinet of Ministers of Ukraine and the Government of Bulgaria on Military-Technical Cooperation*, the *Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Croatia on Military-Technical Cooperation*, the *Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Italy on Military-Technical Cooperation*, the *Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Hungary on Military-Technical Cooperation*, the *Agreement between the Cabinet of Ministers of Ukraine and the Government of the Kingdom of Denmark on Cooperation in Technology and Finance*. There is also the *Agreement between Ukraine and the Federal Republic of Germany on the Development of Large-Scale Cooperation in Economy, Industry, Science and Technology*. The *Agreement between the Government of Ukraine and the Government of the French Republic on Cooperation in Culture, Science and Technology* also deserves attention.

History of Ukraine’s MTC with EU states

Ukraine has a long history of MTC with EU states. Back in 1997, a three-national project was launched by Ukraine, France and the Czech Republic to upgrade the T-72 tank for third countries. In the mid-1990s, Ukrainian design companies were engaged in a research project launched by NATO to improve the fire safety of naval corvette ships. Over that period Ukraine had supplied military hardware to Greece, Macedonia, Poland, the Czech Republic, Belgium and some other countries. In the past few years, a number of joint projects with European partners have been launched to meet the requirements of Ukraine’s Armed Forces. Especially positive experience that Ukraine had with Poland and this experience is highly encouraging. Also, analysts assess as highly promising the understanding reached by Ukraine to supply gas-turbine engines to equip the French-built ships designed for third-country markets.

The Western party's interest in an informal discussion on MTC potentials proved to be so great and strong that such world-renowned defence contractors as *Thales*, *Finmeccanica*, *DCNS*, *MBDA Pratt & Whitney*, *Selex* and *Fincantieri* summoned their officials to attend and speak to international conferences hosted by Ukraine during 2008/2009. That was the first time when the two parties launched an expert/industry-level discussion on specific interaction mechanisms for the Ukrainian defence industry – through the European Defence Agency and NATO's *NAMSA* organization. Subsequent actions have led to the conclusion of contracts to design and build a naval corvette ship for the Ukrainian Navy and carry out attack helicopter upgrades for the Army.

Even though the level and intensity of contacts have reduced substantially with the coming of the new Ukrainian administration to power in 2010, for the moment, no signs of the refusal of MTC can be seen.

Potentials for Ukraine's MTC with the EU in the interests of third countries

Given Ukraine's traditionally high-profile presence on the global defence market, more and more Ukrainian analysts tend to believe that exactly this area of MTC is most appealing both to Ukraine and its potential partners in the MTC sphere. Indeed, against the background of decreasing state defence procurement orders, a few dozen relatively high technology sectors, which have survived within the Ukrainian defence-industrial complex, could provide a boost for cooperation of this kind. Furthermore, the transfer of selected manufacturing operations to Ukraine – with its substantially lower labour value – will make finished products far cheaper to manufacture than in Europe. For a better insight, a few examples are given below.

Ukraine has since Soviet-era days possessed a range of leading-edge technologies in hydro location. Some still continue to be without an analogue in Europe, which fostered conditions for Kiev's Scientific/Research Institute of Hydro Instruments to fulfil a contract with German company *Atlas*. The MTC ideology was targeted at third-market countries.

The design company *DKKB Luch* has created a whole range of precision-guided ammunition designs for land, sea and air applications; allowing for combat potentialities of, first and foremost, armoured fighting vehicles to be improved significantly. Importantly, designs of this kind are closely related to upgrade packages for Soviet-designed military hardware and, where appropriate, could be adapted to AFV designs of the Western make. Substantial market potential of these precision-guided munitions is evidenced through multiple purchases by Ukraine's MTC partners, among them an EU member – Belgium. Unique performance capabilities of the Ukrainian high precision ammunition designs had been proved during trials in the territory of a European country.

The protection of armoured vehicles against precision-fire attacks could be one more fairly interesting area of cooperation. For example, the Ukrainian armed forces accepted for service the explosive reactive armour (ERA) system *Nozh* (or 'knife'), which was installed on the upgraded version of the T-64 main battle tank – the T-64BM *Bulat*. The USA, in its own time, bought from Ukraine several tanks equipped with *Nozh* systems. State Company *Base Center for Critical Technologies 'Microtech'* offers *Duplet* -- a fundamentally new ERA design capable of effectively protecting the host armoured platform against tandem-warhead shaped charge threats. It is known that the overall ERA protection concepts for each of the tank's areas, as well as ERA elements and the functional concept embedded in the *Duplet* design are fundamentally different from counterparts employed in the *Nozh* ERA design. Moreover, as regards Ukraine's achievements in this specific area, it should be noted that the above mentioned systems are already operated by some European armies, including Poland's. In addition to this, a Ukrainian armoured glass technology developed by one of Kharkiv scientific research institutes has been adopted for AFV designs by one European company (this is about the *Dingo* family vehicles).

Also of interest are practical applications of Western-made components to Ukrainian AMH products designed for third market countries. Cooperation experience of this kind dates back to

1997, when *Sagem* of France provided its thermal imaging system to equip an upgrade of the Soviet-era T-72 tank. Afterwards, Ukraine successfully employed a Swiss-designed tank gun when bidding in a Turkish NATO-compatible tank tender. One more example is the BTR-3E armoured personnel carrier, which Ukraine equipped with a German engine *MTU* as required by a Thai customer.

Potentials for Ukraine's MTC with the EU in the interests of European countries

The potential, in the first sight is not big because of the policies of self-sustainability and protectionism, which EU countries pursue. However, examples of positional success are there to be found. Potentially, these can serve as kind of a “travel guide” in labyrinths of Ukrainian-European military-technical relations. MTC in this particular area should begin to be developed within the Visegrad Group, and this prospect is strongly supported by NATO. Poland and the Czech Republic have already been buying counter-MANPAD helicopter optical-electronic jamming systems designed by Ukrainian privately owned company *Adron*. Also gaining momentum is a Ukrainian-Polish joint venture which works on the introduction of a Ukrainian-built active protection technology for lightweight AFV applications. Another Ukrainian-Polish initiative, the one that concerns joint design and development of unmanned aerial vehicles, could well be a success, too.

One more direction, even though it is not related directly to Europe, should be mentioned here as an indication of the high potential offered by MTC. This is about a Ukraine-USA cooperation agreement on R&D, development and building of new satellite launch vehicle (SLV) system, the *Taurus*. The USA could well have obtained a SLV already existing in Ukraine -- for use in trails of its nation-wide antiballistic missile defence system – but the possibility of this happening was not very much favoured by Moscow, whose interests have to be reckoned with by Kiev. A diplomat, from a key NATO member state, made an explicit note that “...close engagement with Ukraine in the defence-industrial area could prove that Ukraine is on our side of the fence, and this is what makes us ready for compromises of some kind”.¹⁴

In regard to Europe, there are some achievements in the space industry area, as well. Ukraine has been engaged in Europe-wide project for the lightweight space launch system *Vega*. Also engaged in this multinational project are Italy, Belgium, France, the Netherlands, Spain, Sweden and Switzerland, in addition to two non-EU states – Ukraine and Russia. The latter's *Lavochkin NPO* is responsible for liquid tanks, while Ukraine's *KB Pivdenne* (formerly known as *Yuzhnoye*) Design Bureau and *Pivdenmash (Yuzhmash)* Industrial Group undertook to provide key components for the booster engine. The European Space Agency included this among its three subsidized launch projects, along with the *Ariane-5* and *SOYUZ-ST* (the latter being developed under a special agreement with Russia's *Roskosmos*). In 2009, *KB Pivdenne* delivered to *Avio S. p. A.* of Italy an initial example of the main rocket engine for bench testing, which was accomplished successfully in late 2010. In December 2009, the European Space Agency awarded France's *Arianespace* a contract for flight testing with a *Vega* launch from the *Kourou* Space Center, French Guiana.

Ukraine was engaged (along with Russia) in many more dual-use space projects. One of these involved the *Dnepr* space launcher (commercialized version of the SS-18 ICBM) which deployed a German special-purpose satellite into an Earth orbit.

Potentials for Ukraine's MTC with the EU in the interests of the Ukrainian Armed Forces

Once army re-armament process comes to its full swing, this may become the dominating direction in Ukraine's MTC with EU countries. Most important of all, Ukraine has come to the understanding of the need to re-equip and rearm its military forces up to present-day standards and,

¹⁴ Valentyn Badrak. “Ukrainian defence-industrial complex. Between NATO and Russia”. *Mirror Weekly*, # 37, 2008.

also, to understanding that the potentials of the national defence industry are not sufficient for this ambitious task to be accomplished qualitatively and effectively.

In 2008, the Ukrainian Ministry of Defence purchased an unmanned aerial vehicle from Israel. This minor purchase was perceived as a big political message that Ukraine can buy weapons from a country other than Russia. Furthermore, the design project of the future corvette for the Ukrainian Navy had envisaged integration of a good third of Western-supplied components, which had a positive impact on Western companies' perceptions of potentials of MTC with Ukraine. Selection of Western-supplied components often was fairly justified. For example, French and Swedish naval radars are already available for acquisition, while a Ukrainian equivalent will take four years more to complete (provided that the R&D efforts are brought to an end successfully, which is less certain). According to initial plans, the first-of-class corvette was to be built already in 2012, but afterwards this deadline was delayed to a later time. Overall, the Ukrainian Navy corvette project provided for 38% of parts and components to be supplied by Western manufacturers, including from France, the Netherlands, Germany and other European countries.

In 2010, all the already ongoing projects for new AMH designs were suspended, while the development of the new administration's policy on armed forces' rearmament issues is yet to be completed. What has an especially adverse impact on that process is the fact that the defence industry in Ukraine has none of the basic guidelines, nor does it have officially accepted programs. Key documents concerning the development of the Ukrainian Armed Forces have to move up the government approval chain during 2011. The Program for the development of weapons and military hardware types up to 2015 involved over 200 defence companies, the Navy Corvette Program – over 60 defence-industrial complex companies, and the An-70 military cargo aircraft program – more than 40 Ukrainian companies.

Also deserving attention is a well known fact which is indicative of deepening contacts between Ukraine and EU countries. Specifically, more than 200 rounds of pre-design negotiations on the future Ukrainian corvette were held with international companies, and in follow-up to the complex negotiations, naval weapons procurement permits were obtained from the governments of France, Italy and Switzerland.⁶

One more facilitating trend in the development of Ukraine's MTC with Western defence companies, according to CACDS, is the gradual diversification of foreign-country sources supplying Ukraine's defence establishment with advanced technology and armaments required by its armed forces. An emblematic example is a joint project with France to develop and implement an upgrade package for the Ukrainian Army's attack helicopter fleet. The project had been implemented by the Ukrainian *Aviakon* and French company *Sagem* until 2011, when joint work was discontinued by unforeseen troubles and lack of coordination.

Mention should also be made of a few isolated projects of interest. On February 18, 2011 in Kiev, *Systema*, a Ukrainian finance company and *Leica Geosystems*, Switzerland, signed a Memorandum of Understanding to establish a joint partnership on the building and employment of global navigation satellite systems (GNSS) and carrying out research and development on prospective systems for rendezvous and docking in outer space. The two parties aim to jointly create a Ukraine-wide ground support network of up to 100 stations to enable high-precision GNSS-based measurements of coordinates to be carried out with position accuracy on the centimetre level. The agreement also provides for the distribution of *Leica Geosystem's* products in Ukraine and the launching of navigation instrument assembly lines at Ukrainian factories. *Systema* is a major stakeholder in the Kiev-based companies *NPK Kurs* and *PAO Elmis* who are specialists in the design and manufacture of sophisticated electronics, control systems and automation equipment. The two are most renowned for the radiotechnical system *Kurs* used for the automatic rendezvous and docking of manned spacecraft with the International Space Station.¹⁵

¹⁵ See: *Spaceinform*, February 18, 2011.

Another remarkable example is related to modernization of the defence industry's manufacturing facilities. For example, the SC 'Research and Manufacturing Complex of Gas-Turbine Engineering Zorya-Mashproekt' intends to invest about UAH 200 million (€ 20m) in technical re-equipment and renovation programs in 2011. The programs would replace older-generation nonsystematic machines for highly productive computerized and numerically controlled machine tools to reduce the duration of manufacturing cycle and provide an attractive working environment for young operators. In so doing the company places a priority on reputable international contractors. "These are high precision multi-axis super abrasive surface grinders from *Elb-schliff*, Germany, and *Jones & Shipman*, the UK; broaching machines from *Hoffman*, Germany; processing centers from *SHW*, Germany, vertical turning machines from *Hessapp*, Germany, and electric-spark machines from *Agiecut*, Switzerland, in addition to other equipment types", the company announced in a press release.¹⁶

Nonetheless, the greatest challenge continues to be the inadequate level of the state defence procurement order in Ukraine. Further still, the presence of the so called 'special' fund within the defence budget is effectively putting both the public and international partners on a false track and creates a favourable environment for corruption. In such a way, an idea of 'virtual' money which the defence establishment is meant to earn itself has been actively promoted. A review of the current situation gives no reason to hope that implementation of bi-national and multinational projects would be accomplished during this year. This especially concerns the corvette program, which is highly unlikely to get underway as planned. That the defence order issue is still there to be solved is evidenced by the Ministry of Defence annual performance report released on March 12, 2011. As seen from the report, the ministry will have to give priority to AMH upgrading and repair projects in the next few years, while timeframes for implementation of MTC projects with Western defence contractors have been delayed by several years.

Defence export control

Ukraine's export control system was effectively set up in 1993, after a number of irregularities had been found in activities by some companies licensed for foreign trade. At that time, the Expert Technical Committee was established as the defence export licensing authority of the Ukrainian Government. As early as 1999, with technical assistance from the USA, an up-to-date system of export control was put in place in Ukraine. International analysts found the system to be fully compliant with standards adopted by industrialized nations. Furthermore, Ukraine's export control system is more of a 'prohibitive' nature, as opposed to many countries including the U.S., who operate less restrictive 'notification-based' systems.

For the moment, effective and efficient implementation of export control presents no great difficulty to Ukraine. The Law on 'State control over international transfers of defence and dual-use goods' stipulates explicit requirements as to the structure and procedures of export control.

Moreover, in carrying out export operations involving defence and dual-use goods, Ukraine abides by its obligations under international non-proliferation treaties and agreements such as:

1. The Treaty on Non-proliferation of Nuclear Weapons (ratified in 1994);
2. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (ratified in 1994);
3. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (ratified in 1998);
4. The Comprehensive Nuclear-Test-Ban Treaty (signed on September 24, 1996 and ratified by Ukraine in 2000);

¹⁶ See: *Ukrainian News*, February 14, 2011.

5. The Principles Governing Conventional Arms Transfers, approved by five UN Security Council Permanent Member States and the OSCE Forum for Security Co-operation;
6. The Group of Nuclear Suppliers;
7. The Missile Technology Control Regime;
8. The Wassenaar Arrangement.

Since the early 2000s, the company export control compliance programs began to be actively introduced in the defence-industrial complex community, contributing further still to the effectiveness of export control over sensitive goods and services.

Over all the years since the export control system has been in place in Ukraine, there has been only one occurrence reported of individuals trying to bypass export control regulations. Specifically in 2001, a Ukrainian citizen was sentenced for his part in smuggling Kh-55 cruise missiles to Iran and China.

However, analysts do not regard the Ukrainian export control system as flawless pointing to deficiencies such as low-level public and parliamentary oversight over the export of sensitive goods and services. On the other hand, some believe such an approach to be well justified, citing the confidential nature of arms deals and Ukraine's obvious vulnerability as a global arms market actor.

Management, abuses and corruption problems

The issue of abuses and corruption in the defence and defence-industrial spheres remains high on the agenda both for the Ministry of Defence and the defence-industrial complex managers. It can be said that corruption continues to be a Ukrainian tradition that makes Ukraine far less attractive as a partner in MTC.

It would be erroneous to think that this problem is new to Ukraine. Rather, there is a great deal of episodes of various kinds that suggest such a situation has always been there. For example, an attempt to set up an ambitious project on the disposal of old ammunition stockpiles ended up in a high-profile scandal in the late 1990s, when American firm *Alliant Techsystems Corp.* came to probe in the Ukrainian market. Moreover, a parliamentary investigative commission on Ukrainian companies reported abuses related with the sale of arms and military equipment in March 1998. It revealed a whole variety of irregularities, law infringements and abuses.

Coming back to this day, facts of abuses by MoD's managers were reported several times by Ukrainian media. For instance, *Mirror Weekly* newspaper made public a range of materials documenting specific abuses that involved both previous and sitting government members. The materials described existing schemes of abuse and misdeed by defence sector managers ranging from biased selection of single-source suppliers to overpriced procurements.¹⁷

Among the most notorious instances of corruption in the defence industry sphere, mention should be made of the disruption of the An-70 military transport aircraft series production program and the facts of state property misappropriation at Kharkiv aircraft production plant. Importantly, this is not about isolated instances, but rather, typical situations which should be taken into account in setting up MTC.

Especially in 2009, the Auditing Department at the Ministry of Industrial Policy revealed numerous financial irregularities at Kiev's aircraft factory *Aviant*, which was impacted directly on the country's major aircraft building programs. Aviant failed to adequately account to the Ministry of Defence for 100 million hryvnias (\$12.5 million) appropriated in funding for the An-70 military transport aircraft program for the fiscal year 2007. Irregularities of the same kind were also revealed

¹⁷ See materials available at: <http://news.zn.ua/articles/75833#article>, <http://news.zn.ua/articles/79224>, <http://news.zn.ua/articles/76844>

in the An-148 regional jet program which was about 150 million hryvnias (\$20 million), as an aircraft industry manager put it, “was nowhere to be found”. This is how the misappropriation of resources by senior officials of a state-run defence company was placed on record.

The issue of aircraft industry control and coordination has proved highly problematic, as well. Over a very short period from 2005 to 2008, three different individuals, including those reinstated in office through court proceedings, had held appointments as director-general of *Aviant*. The amount of abuses, according to the Ministry of Industrial Policy’s figures, was running into hundreds of millions of hryvnias over the period in question. Further still, the company had not paid contributions to the Pension Fund during a one-year period, while the accumulated wage debt to personnel had to be settled at the cost of aid money provided by *ANTK Antonov*, who appropriated 40 million hryvnias (\$5 million) of its own profit, returned for that purpose.¹⁸

Yet none of the senior officials at *Aviant* have been convicted, but former director-general of Kharkiv aircraft production plant, Pavlo Naumenko has been sentenced to ten years in prison on a charge of “large-scale theft of state assets”. For that matter Andriy Mukhatayev, the chief of Security Service’s Kharkiv Office, noted the company’s senior officials’ involvement with a plethora of privately-owned partner companies which carried out works to the benefit of the company’s leadership.

Conclusions and recommendations for EU states

Ukraine, despite low level of its MTC with EU countries and the presence of a host of domestic problems, still continues to be a strong actor on the global arms market. This fact, combined with a far lower labour cost as compared to European countries, determines the high opportunities for developing cooperation with European states on third-country markets. The current legal basis is sufficient for Ukraine to implement international agreements in the MTC sphere without almost any strings attached. Important positive factors related to Ukraine developing MTC with EU countries are the absence of political conditions attached to state policy of MTC, flexibility of MTC policy and the availability of selected high-tech areas of the development and manufacture of AMH.

On the other hand, many obstacles still remain on the way to using the current potential of MTC to its full capacity. The low level of the state defence procurement order continues to be the key factor which impairs the development of Ukraine’s MTC with Western defence contractors.

It will not let Ukraine get engaged in serious projects involving investment and procurement of new products to meet its own defence requirements. Furthermore, the weak purchasing power of Ukraine effectively cuts it off from high-value defence systems. At the same time, the need for Ukraine to embark on re-armament of its military will force it to turn to other states for technical assistance.

EU countries are more attractive as potential partners in MTC than Russian companies – simply because the former have cutting-edge technologies which Russia does not. However, we should take into account the fact that Ukraine is linked to Russia by the political factor, defence-industrial cooperation traditions, shared traditions of fundamental science and manufacturing and, finally, a common language of communication. For this reason, the terms and conditions of cooperation to be potentially offered by Western defence contractors should be developed with due consideration given to that factor. Furthermore, they should provide for a possibility for Ukraine to obtain technologies for AMH manufacturing, technical re-equipment or renovation. On the other hand, the possibility of Ukrainian defence companies being engaged in joint military designs with Western counterparts would drive the Ukrainian Government to set up individual targeted (state or national) programs – each funded directly by passing the MoD’s budget.

¹⁸ See: *Defence Express*, September 11, 2009, www.defence-ua.com.

The Western defence contractors' policy of direct supplies of fully integrated systems may potentially become an impediment on the way to the development of MIC with their Ukrainian counterparts. Considering Ukraine's position on the global defence market and the sheer size of its defence industry, a more realistic approach would be for Western companies to set up joint ventures and co-production programs, create investment-friendly and attractive offset conditions, and transfer to Ukraine assembly lines for parts and components from which to build weapons systems required by the Ukrainian Armed Forces.

Conclusions for Ukraine

Ukraine is facing a host of problems with management and coordination of its defence sector in general and the defence industry in particular. Each and all of the decisions the Ukrainian Government made in the past two to three years in relation to defence industry restructuring and transformation – even though formally aimed at the development of MTC – did not take into account issues concerning the development of the defence industry as such or ensuring the defence readiness of the State. There should be a coordinated approach to issues related to the provision of the defence readiness of the State and defence industry development, and also improving and expanding global defence market opportunities for the nation.

State ownership of majority of the defence-industrial complex companies, with their senior management being traditionally inclined to engage in corruption and conflicts of interest – reduces dramatically Ukraine's attractiveness as a MTC partner; particularly when it comes to co-development and co-production of new armaments and military hardware types. There is a range of issues which need to be resolved legislatively, particularly through the adoption of law on cooperation in military technology. Ukraine is lacking legal succession traditions, and even key policy decisions are subjected to a detailed review by each subsequent government. It is also necessary to set up a state oversight system to ensure compliance with international treaties and agreements in relevant spheres.

The development of Ukraine's MTC with the defence companies of EU countries is facing a great deal of challenges and threats. It is to be acknowledged that there is little opportunity for Ukraine to embark on large-scale MTC with Western defence companies. Ukraine continues to be a low attractive market for foreign investment in the defence industrial sector and co-development/co-production projects for new AMH types. However against the background of the Western defence-industrial community's rising interest in the Ukrainian market, provided the process is kept well organized and managed, it is fairly realistic for Ukraine to resolve, almost on a parallel track, the tasks such as intensive re-armament of its armed forces and revitalization of the national the defence-industrial complex, which would benefit the interests of both Ukraine and the EU.

4. Law-enforcement aspects of Ukraine's EU integration policy

Ukraine's law enforcement agencies – as it is interpreted today – are primarily intended for punitive purposes, and they are routinely authorized to have recourse to strong-arm tactics or fiscal pressure. Obviously, in the context of Ukraine's EU integration policy there should be more specifics as to what kind of organizations are to belong to the law enforcement sector and why exactly. This is important in terms of a clearer identification of agencies who are the subjects of Ukraine's EU integration policy and who are responsible for its implementation.

Given the current realities and traditional perceptions of the Ukrainian law enforcement agencies, and considering the fact that there is no such concept as “law enforcement agencies” defined in terms of legislation in Ukraine, we suggest that the list of law enforcement agencies as identified by the Law on State Protection of Judges and Law Enforcement Personnel¹⁹ (enacted in 1993) be adopted as basic, clarified and expanded. So for this review we accepted the classification as follows:

Fully-fledged law enforcement agencies: the Ministry of Internal Affairs (MIA), the Security Service of Ukraine (SBU), and prosecution agencies.

Quasi-law enforcement agencies: the State Border Guard Service of Ukraine, the Chief Directorate of State Protection of Ukraine; the External Intelligence Service of Ukraine, the Military Law Enforcement Service in the Armed Forces of Ukraine, the Chief Intelligence Department of the Ministry of Defence.

'Nominal' law enforcement agencies: The State Tax Service agencies, penitentiary authorities and institutions, pre-trial detention centres, state auditing authorities, fishery and forestry inspection agencies.

In the aforementioned classification (with the prospect of the ‘nominal’ law enforcement agencies eventually being not regarded as such), the law enforcement agencies are arranged in the order of their perceived ability to protect *human rights and freedoms*, as well as the extent of their involvement in the law enforcement activity in its traditional sense.

The EU-Ukraine Action Plan of Freedom, Security and Justice provides for law enforcement cooperation in the areas as follow:

- Combating terrorism and organized crime;
- Prevention of trafficking and smuggling of migrants, drugs and other restricted or prohibited goods;
- Combating corruption, document fraud, as well as money laundering and other illegal activities.

It should be noted that those cooperation areas are only attributed to the initial stage of cooperation the EU law enforcement agencies carry out with the countries with EU membership aspirations. Ukraine's successful advancement on the way to EU integration will provide a gateway for the scope of its law enforcement cooperation with the European Union.

This is to be expanded much further – up to intelligence cooperation, on which extent and specific nature the EU states have yet to agree, however. In this context, it must be noted also that Ukraine-EU law enforcement cooperation on the eve of and during the 2012 UEFA European Football Championship, for which Ukraine still has to prepare to the fullest extent, will be perhaps the first serious trial of the joint law enforcement work between Ukraine and the EU.

¹⁹ “Law enforcement agencies – agencies of prosecution, internal affairs, Security Service, Military Law Enforcement Service in the Ukrainian Armed Forces, customs authorities, border guard authorities, State Tax Service agencies, penitentiary authorities and institutions, pre-trial detention centers, State Auditing Service agencies, fishery and forestry inspection agencies and other agencies with law-giving and law-enforcement competences”. (See <http://zaron1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3781-12.>)

For Ukraine to be qualified for EU membership, its law enforcement agencies must not only and not just work together with their foreign-country counterparts but, rather, provide for the basic standards of state and public life, by which a country's compliance with EU membership criteria is assessed.

Facilitating factors of the Ukrainian law enforcement agencies' approach with the EU's

As regards the classification of Ukraine's law enforcement agencies as suggested above, it should be noted that the Ukrainian media community and traditional public perceptions do not identify 'nominal' law enforcement agencies as belonging to the law enforcement domain proper. This is due to the obviously punitive nature of their missions or their protection of the civil rights that are not fundamental. Furthermore, relevant key EU requirements are almost in no way related to the government organizations in this given subcategory of law enforcement agencies.

Practically all of the 'law enforcement agencies', both the aforementioned or perceived as 'other' thereof, are relatively compact, structurally mobile, and – in the presence of political will and an adequate set of integration requirements – would be able to easily restructure themselves, change agency regulations, 'fill in' new employees and even really raise the effectiveness and efficiency of their activities in accordance with new hypothetical requirements.

For example, the national penitentiary system, in and of itself, does not determine regulations concerned with the detention of citizens in places of deprivation of freedom. For the moment, the level of human rights and freedoms protection in places of detention in Ukraine is far from being compliant with relevant EU standards and regulations. However, in the event that the national law-making authority adopts otherwise norms and regulations, they will be as binding for the penitentiary system as the current norms and regulations are.

Quasi-law enforcement agencies, in our judgment, are to a substantial extent prepared for the EU integration process. Considering that all of the agencies mentioned in this section are perceived as only partially belonging to law enforcement – for a variety of reasons, for example, because of being accountable to an entity not directly involved with law enforcement, or because law enforcement is only a part of their assigned functions – the level of inadequacies in their existence and performance will be equally partial and not exceed similar levels across the government and society. Given the real situation in this particular area of the law enforcement spectrum, our assessment is that 'quasi-law enforcement agencies' possess significant inner potential and – with the political will of the State and well-qualified agency management in place – could be regarded as preliminary (or nominally) ready for EU integration.

The Military Law Enforcement Service (MLES) in the Armed Forces of Ukraine is a full-fledged law enforcement agency by its nature and functionality. We, however, suggest that MLES be considered 'quasi-law enforcement agency', since its jurisdiction does not extend across government but, rather, is strictly limited to the Armed Forces and also that the key mission of the Armed Forces is other than law enforcement. MLES is there to prevent offences and other law infringements across the Armed Forces, as well as to protect the life, health and legitimate interests of military servicemen.

The Chief Intelligence Department (CID) of the Ministry of Defence, although being an integral part of the military department, has several features characteristic for a law enforcement agency. According to its legislatively established duties, the MoD's CID is engaged in combating terrorism, global organized crime, illegal drug trafficking, the smuggling of armaments and related manufacturing technologies, preventing immigration law infringements, as well as protecting the life and health of Ukrainian citizens based in foreign countries.

The MLES and CID both are organic parts of Ukraine's Ministry of Defence. Their abilities in facilitating Ukraine's EU integration policy should therefore be considered in the overall context of the Armed Forces reform and transformation processes. Personnel of the two agencies,

depending on their respective levels of professionalism and law enforcement proficiency, are to a considerable extent prepared to embark on the EU integration processes.

Foreign Intelligence Service of Ukraine (FISU) cannot be seen as a full-fledged law enforcement agency either. Actually, some of its legislatively determined duties (particularly those of the external counterintelligence) cannot be regarded otherwise as purely in the nature of law enforcement. The FISU is particularly engaged in:

- Providing security for Ukraine's institutions, agencies and missions operating in foreign countries, for their employee staffs and members of their families in the host countries; providing security for Ukrainian citizens entrusted with State secret information, when they are abroad on official assignments;
- combating terrorism, global organized crime, illegal drug trafficking, the smuggling of armaments and related manufacturing technologies, and illegal migration;
- Counteracting external threats to Ukraine's national security, life and health of Ukrainian citizens and items of the State property of Ukraine in foreign countries (see Article 3 of the Law of Ukraine on the Foreign Intelligence Service of Ukraine).

The FISU has cooperation agreements with counterpart organizations in all of the EU member states. Security officers at Ukraine's diplomatic missions in foreign states are liaison officers at the same time, maintaining permanent contacts with relevant law enforcement agencies in host countries. Among examples of FISU's effective cooperation with EU law-enforcement agencies (and also with those of the U.S. and some others) is successful joint operation of 2008-2009 to liberate Ukrainian, Russian and Latvian crew members of the *Faina* vessel captured by Somali pirates.

It must be noted here that the national intelligence as a *quasi-law enforcement organization* is perhaps the least problematic entity in terms of Ukraine's EU integration – not only in its own subcategory but among all of the three subcategories of law enforcement agencies in Ukraine. We attribute this first and foremost to high educational status of personnel, demanding service entry criteria, the absence of conditions which are conducive to corruption and, as of consequence, the absence of corruption proper; as well as the personnel's awareness of living standards and circumstances in the EU states and other countries across the civilized world.

State Border Guard Service (SBGS) of Ukraine. In addition to its key function – ensuring inviolability of the state border and protecting Ukraine's sovereign rights in its exclusive (maritime) economic zone – Ukraine's Border Guard Service is the nation's outpost of the fight against organized crime, illegal migration, smuggling, illegal drug trafficking, individual types of economic corruption and so forth. The Border Guard Service provides security for Ukraine's diplomatic missions and their employee staffs based in foreign countries. Moreover, the SBGS is a subject of the Law of Ukraine 'On State Protection of State Authorities and Public Officials'.

The State Border Guard Service of Ukraine, being a unique entity in terms of organic combination of military and law enforcement functions, already has the considerable practical experience of international cooperation. Ukrainian and EU border guards have been successfully and effectively sharing intelligence information for the prevention of law infringements in the shared frontier areas.

SBGS's cooperation agreements with its European counterparts are all concrete and binding documents. The Border Guard Service has got positive experience with dedicatedly implementing Ukraine's obligations under international treaties and verifying compliance by the other party. In the Ukrainian public perceptions, the Border Guard Service is one of the most trusted and credible government institutions.

The Chief Directorate of State Protection (CDSP) of Ukraine. With the start of real-life integration processes aimed to bring this country closer to the EU, the CDSP personnel – for the most part, conscientious and highly disciplined – will be able to easily perform the functions already assigned

to them, but with due regard to the European Union's policy to the effect that 'protection of the rights of one individual or group can in no way permit infringement upon the rights of another individual or group'. Sad to say, during public events involving CDSP guarded individuals, 'misunderstanding driven' violent incidents still occur between bodyguards and members of the media or public organizations. However, such incidents can be precluded with adequate additional training and education of the CDSP personnel. The CDSP has effectively and efficiently collaborated with counterpart organizations in the European Union and elsewhere in the world as it pertains to joint planning and organization of manned guarding activities.

In this 'positive' section, law enforcement activity by the *Internal Troops of the Ministry of Internal Affairs of Ukraine* can and must be singled out. Starting from 1994, the Internal Troops personnel have been engaged in multinational peacekeeping operations under the UN aegis. They have successfully accomplished hundreds of missions, a legion of offenders detained, myriads of units of arms, ammunition and drugs confiscated and thousands of human lives saved. In October 2009 till March 2010, the Internal Troops had been a subject of the EU-funded *Twinning* project for the 'Introduction and Development of Quality Management within the Ukrainian Police'. The project, jointly implemented by the Ministry of Internal Affairs of Ukraine and the National Police and Gendarmerie of France, was aimed at bringing the Ukrainian Police and Internal Troops operations up to the European Union standards in terms of compliance with the principles of democracy, the rule of law and protection of human rights.²⁰ Ukraine's Internal Troops have got direct cooperation agreements with EU counterparts from Italy, France and the Federal Republic of Germany.

Depolarization of law enforcement activities in Ukraine is one of the positive changes that have taken place in normative and procedural support for law enforcement agencies recently. Relevant laws contain conflict-of-interest provisions that prohibit political-party membership for law enforcement personnel. However, the ban does not, so far, affect civil officers employed with law enforcement agencies.

Restricting factors of Ukrainian law enforcement agencies' approximation with those of the EU

Basically, law enforcement activity in Ukraine is largely considered in the context of the agencies of prosecution, the Ministry of Internal Affairs and the Security Service, or 'fully fledged law enforcement agencies', according to the classification accepted for this review.

Overall problems – Infringements on human rights. In the "legal" traditions of the state entities to which Ukraine belonged in previous periods of its history, the focuses in the citizen-State equation, in terms of the present-day European perspective, used to be imbalanced or distorted altogether. In the USSR, for example, human rights minded citizens who attempted to protest freedom abuses had been subject to victimization by "law enforcement" agencies. At that time, the balance of rights in the citizen-State equation was strongly in favour of the State, not the citizen. In real life, only members of the ruling elite or those who accepted such a 'system' of relations between the two sides of the equation had their rights secured and protected.

For Ukraine's law enforcement agencies and the general public, the knowledge and understanding of human rights is of priority. Without it, this state will never be governed by the rule of law, neither will it be able to become fully developed, both politically or economically, or accomplish membership in the European Union, whose basic values are all focused on respect for human rights.

The Constitution of Ukraine encompasses basic provisions of the Universal Declaration of Human Rights and provides a comprehensive understanding of fundamental human rights. The basic problem that underlies and determines the quality of the law enforcement in Ukraine is related to a lack of knowledge or obvious reluctance by law enforcers to accept the concept that it is

²⁰ See the Internal Troops website: www.vv.gov.ua

precisely protection of human rights, including equality of all before the law, which should make up the focus of their activity. The other issues – corruption, official misconduct, crime and others – are all stemming from lack of knowledge and understanding or of accepting the need for the respect of human rights.

Corruption. According to the *Transparency International* Corruption Perceptions Index (CPI) 2010, with a CPI of 2.8 (10 = clean, 0.0 = highly corrupt) Ukraine ranks 134th of the 178 countries surveyed. Ukraine, along with other countries that scored less than 3 on the CPI, is believed to be highly corrupt. The survey also revealed that state authorities, the legislative branch and the judiciary are perceived to be most corrupt institutions in Ukraine, with 28%, 25% and 21%, respectively.

On the part of the European Union, anticorruption effort in Ukraine has been surveyed by the Council of Europe's Group of States against Corruption (also known as GRECO). In a compliance report on Ukraine, the anticorruption situation and the levels of institutional and legislative support for the fight against corruption had been recognized by GRECO as unsatisfactory. In a follow-up evaluation report, GRECO set out 25 anticorruption recommendations, compulsory for Ukraine as a GRECO member. In its Report on Ukraine fulfilling the anticorruption recommendations, GRECO made the conclusion that Ukraine fulfilled 8 recommendations completely and 17 – partially. The report notes that the overwhelming majority of measures taken concern draft laws presently awaiting consideration by Parliament.

In 2006 when Ukraine joined GRECO, the anticorruption situation in this country was better: with a CPI of 2.8, Ukraine ranked 99-104th among the 163 surveyed countries. One of the factors, which had a direct adverse impact on the progress in Ukraine's anticorruption effort, is the overlapping competences of various law enforcement agencies. Corruption issues have been addressed, among others, by the office of the public prosecutor, the Ministry of Internal Affairs and the SBU, each having investigative branches of their own. Obviously enough, the investigative agencies cannot be truly independent and unbiased, given the political nature of nominations for top-level positions at the agencies, which effectively depend on one single public official.

Insufficient level of public oversight. This issue has been thoroughly investigated by dozens of analysts, both in and outside Ukraine. Still though, as a matter of fact, effective public oversight over the law enforcement agencies is virtually absent as a systemic 'common-and-garden' phenomenon in Ukraine. Dozens of comprehensive surveys by reputable think-tank organizations, specializing in relevant spheres of expertise, provide yet more evidence that Ukraine's civil society and law enforcement agencies co-exist in two parallel worlds. The Public Councils, established for each of the law enforcement agencies, instead of evolving into effective instruments of democratic civil control have, as a matter of fact, degraded into ineffective bureaucratic entities of sheer declarative character.

Militarization. Militarization of all law enforcement agencies came to Ukraine as a legacy from the totalitarian state of the USSR, whose ruling party had waged permanent war with own people, using brutal military force as the strongest argument in favour of its own right cause. Punitive agencies were demanded to fulfil, without thinking at all, whatever the authorities might order them to do and the uniformed were the best men for that job.

Even though some of Ukraine's law enforcement agencies enjoy the same status as military formations, their officers not only do not have official uniforms by which they could be clearly identified as belonging to the military, but also are not required to have compulsory military service experience prior to entering service and are often not eligible for firearms. Certainly the SBU's anti-terror unit 'Alfa' well deserves its status as a military formation, but a military servicemen's status is obviously of no use for a press officer, analyst, or a computer technician specialist. However, in the present day conditions, a serviceman's status is getting more appealing to potential candidates for law enforcement employment in that it carries certain social security benefits, particularly in terms of relatively early retirement from public service.

The serviceman's status entitles its owner to wage increments for rank, position, length of service etc. This tradition, which law enforcement agencies are so far reluctant to abandon, often reduces their ability to employ individuals of adequate education and intelligence levels. For example, a university graduate with a degree in international relations, who may wish to serve with EISU's intelligence unit, will be financially discriminated as compared to a graduate of any of entry-level military officer training institutions. Since the later, immediately after graduation, will have 5 years of active military service entitling him to a relevant wage increment, for which a graduate of the Kiev Institute of International Relations, for example, will not be eligible.

Problems involved with top-level appointments. In the 'real-life' domain of the work environment, each top-level reshuffle frustrates work across a law enforcement agency for a certain period of time, and typically involves all of the deputy chiefs, in addition to chiefs of departments or directorates, and often even heads of lower level services and units. This has a direct adverse impact on the efficiency and effectiveness of work, making it highly problematic in terms of maintaining already established traditions or exploiting the knowledge derived from previous operations and also, in terms of ensuring stability of the field operational/investigative work. As consequence, law enforcement officers begin, as politicians do, to live between elections and between leadership reshuffles.

Obviously enough, this threatening tendency must be reversed by vigorous administrative measures, particularly by introducing more effective regulations and limiting unsubstantiated staff turnovers. There should also be a legally established norm requiring that feasibility of each leadership reshuffle to be considered during public (parliamentary) hearings, to which both parties (the outgoing and incoming leaders) must be invited to provide their comprehensive explanations and comments on the situation as they see it.

In practical terms, the above-mentioned problem undermines the law-enforcers' ability to perform their assigned tasks effectively and with high quality. Also, incompetent leaders often issue orders or instructions which not only preclude competent and proficient performance of relevant law enforcement tasks, but even may be illegal in some of their aspects. Under the current circumstances, an intelligence/counterintelligence officer who may be given such an order or instruction has no real chance of disputing its feasibility or legality. An officer who may be so bold as to do so will almost certainly face a transfer to a different job (subdivision) with the unmanageable label.

One such fact of Ukraine's top-level leaders giving illegal orders was revealed in public by Valeriy Kravchenko in 2004.²¹ Kravchenko, an external intelligence general and adviser of the Ukrainian embassy in Berlin, said in a statement to the Berlin studio of the German radio station *Deutsche Welle* that he had been given an order to "spy on Ukrainian opposition MPs and government members from ministers and higher up". Remarkably, none of the SBU's security officers based both in and outside Ukraine, who almost certainly was aware of the existence of such orders and instructions, did in any way attempt to protest the illegal orders by their leaders. It apparently looks as if the national security system services had only one courageous and high-toned officer, on whom a file was opened by law enforcement agencies immediately after his incriminating statement (at the beginning of Viktor Yushchenko's tenure as President, the case was terminated 'for lack of evidence').

Low level social security standards and chronic underfunding of the law enforcement sector

Given the specific character, occupation-related risks and limitations of the law enforcement jobs (law enforcement officers in Ukraine are barred from entrepreneurship, membership in political parties, etc.), individuals in this category naturally expect and demand an adequate social

²¹ <http://umoloda.kiev.ua/number/124/113/3959/>

security. This is the case in the European Union countries where candidates for employment with law enforcement agencies can count on certain material and social security standards during the entire length of service (employment), and these transparent and, most important, predictable relations between the State and the citizen are inserted into employment contracts.

Reasonably enough, wage packages for law enforcement agency employees, on the one hand, should be such that appeal to the desired individuals, and on the other hand, be comparably sized to material security levels of other public sector employees.

If the Government, for whatever reason, is not in a position to provide decent living standards for law enforcement officers, then there should be a revision of the set of functions and missions assigned to them, with an eye to enable the relevant manpower requirements to be reduced to a reasonable minimum with the funds to be released through such a reduction to be committed to salary increases for law enforcement personnel.

The absence of a system-of systems approach to law enforcement sector reform. Challenges faced by the Ukrainian law enforcement sector have taken on chronic proportions. In addition to excessive militarization, the lack of effective democratic oversight, chronic underfunding and obviously insufficient social security provision, they are also attributed to inadequate regulatory support and to the current overall principles underlying requirements for job performance, control and the provision of high quality manpower.

The need for law enforcement sector reform has been discussed since the first years of Ukrainian independence. This theme has been the subject of a whole range of National Security and Defence Council meetings. There has been an abundance of the highest level orders and decisions to this effect, but no real progress has been forthcoming so far. Reform efforts in Ukraine are typically boiled down to structural reshuffles where a few entities emerge in place of a once integral entity, with the same functions and authorities. In the experts' opinion, Ukraine currently surpasses all the other countries across Europe in the number of independent security sector entities, which amounts to about a dozen and a half independent entities (largely in the law enforcement sector) with extremely diversified jurisdiction.

Agency-level challenges. *Prosecution agencies.* Certainly from the perspective of the European Union's requirements made on the public prosecution office as an exclusively important law enforcement institution, corruption is the key challenge. The corruption level in a country is the measure by which effectiveness and efficiency of the public prosecution system are assessed, and the corruption level within the public prosecution system makes a forecast for the possible future of the public prosecution system and the State as such.

The Law of Ukraine 'On the Public Prosecution Service' enacted on November 5, 1991, defines the office of the public prosecutor as the country's sole authority empowered to exercise control over the Cabinet of Ministers, executive ministries, and national and local authorities (Article 1). Public prosecutors provide an overall coordination on issues related with crime control in agencies of internal affairs, the Security Service, the Tax Police, the Customs Service, the Law Enforcement Service in the Armed Forces of Ukraine, and other law enforcement organizations (Article 10). Against the background of public prosecutors in other European countries, their Ukrainian counterparts are entrusted with immense powers, allowing them to enter whatever premises without special entry permits, carry out inspections, and demand the provision of whatever documents including those containing confidential data on privately-owned banks' financial transactions or deposit accounts (Article 20).

It is therefore obvious that every kind of action that contradicts Ukrainian laws, all corruption related offences, all infringements on human rights and all unexposed crimes are covered first and foremost by the jurisdiction of the public prosecution agencies.

In contrast to the President of Ukraine or the Parliament (the Verkhovna Rada), the Ukrainian civil society does not have in its possession any of the effective tools for carrying out the oversight

of public prosecution agencies, except for disclosing known facts and subject information through the Internet or the media. Every now and then, usually in online newspapers, ‘live’ materials on public prosecution agencies emerge, which if proven to be true – like the evidences of polarization, the abuse of office or official misconduct, instances of the lack of response to criminal action, or information on some public prosecutor’s real estate assets abroad – will explain why Ukrainians feel no confidence in the public prosecution system. According to an opinion poll conducted by the Laboratory of Legislative Initiatives in February 2011, only 17% of the Ukrainian population has full or partial trust in the public prosecution system – the lowest public trust index across the law enforcement sector.²²

Ministry of Internal Affairs of Ukraine. The most notorious problems associated with this given government institution include abuses of human rights, corruption, the carrying out of political and commercial put-up jobs of a criminal nature, involvement with organized crime, the commitment of crimes and offenses of various natures and extents, and the neglect of official duties.

The level of public trust in the law enforcement system is a barometer showing the real state of affairs in a country in terms of the provision of fundamental human rights and freedoms. For example, according to an opinion poll carried out by the Razumkov Center think-tank organization in October 2009, a meager 5.3% of the individuals surveyed said they “fully support actions by the Militia”.²³ An opinion poll carried out by the Laboratory of Legislative Initiatives in February 2011 showed that 17.4% of the Ukrainians have full or partial confidence in the Militia.²⁴

In the European Union states, law enforcement agencies in general and those responsible for public order in particular have traditionally enjoyed high levels of public confidence and support. The outputs of opinion polls by a variety of European polling agencies show that an average 60% of Western European population trust police officers, with respective percentage figures being 90% for Finland, 85% for Sweden and Denmark, 80% for Switzerland, 78% for Germany, 76% for the UK, 97% for Italy, 76% for Austria, 74% for the Netherlands, 73 % for Spain and Belgium, 63% for France, and 60% for Greece.²⁵

As far as Ukraine is concerned, the number of criminal offences committed in 2010 was up 30% from the previous year, while the number of unexposed crimes rose 52%.²⁶ Reasonably enough, this does not contribute to the public trust of law enforcement agencies and much less to Ukraine’s EU integration endeavour. With that low level of public support, it is hardly possible in this country to wage effective war on crime solely by European methods and this issue must be taken into account in planning Ukraine-EU law enforcement cooperation, particularly in advance of the 2012 UEFA European Football Championship.

Media analysis of the Militia performance is over-flown with critical comments in the nature as follows:

1. **Premises of the Militia effectively are turning into torture chambers.** The media regularly reports on instances of detainees and suspects being subject to physical abuse by MIA’s officers and sergeants. On many such cases, fair verdicts were delivered particularly by the European Court of Human Rights. On numerous occasions citizens detained by law enforcement officers die, defenceless after often brutal mob beatings by militiamen. Over January-March 2011 alone, fifteen individuals died while being in MIA’s custody, according to the Kharkiv Human

²² http://parlament.org.ua/upload/docs/Omnibus_2_2011.pdf

²³ http://www.golosua.com/ru/main/article/politika/20100607_nova-miliciya

²⁴ http://parlament.org.ua/upload/docs/Omnibus_2_2011.pdf

²⁵ http://www.nbu.gov.ua/portal/soc_gum/usoc/2005_4/13-21.pdf

²⁶ <http://www.zn.ua/newspaper/articles/75324#article>

Rights Group. The actual figure of those who died in Militia custody or following militia contact may be much higher given that only a fraction of such sad incidents come to light.²⁷

According to *Amnesty International*, over the period from January to October 2009 alone, nongovernmental human rights organizations received up to two hundred complaints of torture and other cruel, inhuman, or degrading treatment primarily on the part of the Ukrainian Militia. *Amnesty International* gives specific numerous instances of the Militia applying torture to illegally detained citizens.

This underlies the fact that legal proceedings have not been launched against any of the militia officers suspected of illegal actions.

In a recent statement, Ukraine's Public Prosecutor General Viktor Pshonka said that over the past two years alone there have been more than 13,000 complaints and reports on citizens being subject to tortures and inhuman treatment by the members of the Militia.²⁸

2. **Members of internal affairs units are often merged into criminal groups.** For example, an organized criminal group of members of the Militia have been acting in the territory of the city of Kyiv and Kyiv Region focusing on kidnapping for ransom. In all the cases, the abductees were invariably killed regardless of whether the ransom was paid or not. The criminal gang was effectively a 'professional conglomerate' consisting of members of the Directorate for Combating Organized Crime (UBOP), Criminal Investigation, Visual Security Section, Investigation Department and a member of the Personnel Directorate.²⁹ There were reports on similar organized criminal gangs consisting of active and retired members of the Militia operating in the Donetsk Region and other regions in Ukraine, as well.

3. **There are a lot of opinions that positions are sold and bought in the Ministry of Internal Affairs.** The termination and, sometimes, the launch of criminal proceedings, which are conditional upon severity of offense and the degree of potential punishment incurred, often carry price tags.

4. **Heavily corrupt traffic police (the State Road Traffic Patrol Department).** In addition to being notoriously unpopular among motorists and the public in general, the Ukrainian traffic police are kind of an 'equality benchmark' of the MIA's treatment of citizens. For the purpose of precluding 'inconveniences' (when drivers are rightfully pulled over by traffic police for driving violations) for officials, their wealthy sponsors, members of their families, assistants, etc.; the traffic police officers issued papers listing vehicle registration plate numbers of owners which must be immune to punishment for traffic infringements. For example, the 'law enforcement agencies' section of the list of the 'untouchables' for Odessa Region featured public prosecutors and top-level Militia officers.³⁰

On the other hand with appropriate management in place, a part of the Ukrainian Militia personnel, excepting most of senior officers, could well continue with law enforcement service within a new reformed entity similar to the Ministries of the Interior of the European Union states.

The Security Service of Ukraine. Key issues there include the inadequacy of the agency's procedural/regulatory framework; the low levels of education, morale and patriotism across personnel; the low level of being integrated into society (the organization is too internally focused); and the inability to work effectively in an open democratic environment.

The major and particularly important internal challenge faced by the SBU is related to its procedural regulatory framework. A great majority of documents comprising it are 'top secret'

²⁷ <http://www.radiosvoboda.org/content/article/3541784.html>

²⁸ <http://www.radiosvoboda.org/content/news/3541845.html>

²⁹ <http://www.zn.ua/newspaper/articles/75324#article>

³⁰ <http://www.pravda.com.ua/news/2011/02/22/5945011/>

documents, the remainder being labelled with ‘secret’ or ‘for official use only’ stamps. So given this, we have to constrain ourselves to sheer generalizations and comparisons.

Directives of the SBU Chief effectively regulate each step by an operative or other employee. So their importance and place in the secret service’s work cannot be emphasized enough. All day-to-day work by an SBU officer is monitored and supervised, by senior staffers and a number of inspecting agencies, for ‘compliance with directives’. As a matter of fact, service during many years turns into the fight for strict compliance with directives, which all are bottom-lined to proper conduct of cases. This is obviously a direct legacy of the Soviet secret service, the KGB, which inspecting units, beginning in 1991, simply rewrite with little changes. The ideology of the SBU directives is that the society within which the secret service operates can be termed as *hostile*. Therefore, the service needs to infiltrate in a stealthy way into society by way of engaging in the confidential cooperation of as many Ukrainian citizens as possible. This engagement is achieved through the opening up of cases against citizens, for example, by way of collecting ‘incriminating materials’. As one operative, who had worked for the SBU since its earliest days, put it “The set of this agency’s internal directives is “sometimes analogous to the procedural regulatory framework the Soviet secret service used in the 1950s for operations in rural areas of Western Ukraine.”

A most recent incident proving that this is the case occurred in 2010, when the rector of the Ukrainian Catholic University in Lviv, Borys Gudziak, was approached by an SBU operative with a proposition (which was more in a nature of demand) to ensure political control over students.

However, the SBU regards, as rightful, its approximation to the European Union realities. The agency’s public website reads: “In pursuance of Ukraine’s strategic course of European integration, the Security Service of Ukraine: carries out international cooperation with the European Union countries on counteracting international terrorism, proliferation of mass destruction weapons, cybercrime and other threats to national and global security; implements provisions of the *Ukraine-EU Association Agenda*; carries out measures envisioned by the EU-Ukraine Action Plan of Freedom, Security and Justice...”. Well, some positive results on the issues declared in the aforementioned documents may well be there already, but they are little known.

The SBU, as a national law enforcement agency, is authorized mainly for counteracting illegal operations by foreign-country intelligence services in Ukraine, for combating high-level corruption, and terrorism. These are the three key areas of the secret service’s field investigative work, which are concentrated in a few Operations Departments, the remainder performing oversight, logistic or servicing functions.

In fact, the SBU is first and foremost the national counterintelligence authority. So the methods and tools it employs in other areas of activity – counteracting terrorism, corruption and organized crime – are equally in the nature of counterintelligence, meaning the infiltration of agents (or using technical means) into a hostile environment with the aim of obtaining information of immediate operational interest concerning offensive intentions, threats and so forth. Overall, the scope of the SBU’s competence covers about a dozen and a half articles in Ukraine’s Criminal Code.

It is not known for certain where and what kinds of threats to Ukraine’s national security may be coming from the EU countries or individuals maintaining some sort of contact with members of those countries’ diplomatic missions in Ukraine, or whether a threat of this kind is coming from the Russian Federation. However, following the recent change of the national leadership and that of the secret service, there are clear signs that the SBU has got more inclined towards Ukraine’s eastern neighbour and less inclined towards the EU countries. Changes of this kind became particularly visible after Valeriy Khoroshkovsky – who, according to German publication *Die Welt*, is affiliated with interests of the Russian Federation³¹ – came to lead the SBU. There is no doubt that a national

³¹ See: Lesya Dubenko. “Khoroshkovsky lobbying for Ukraine-Russia cooperation to move forward—German media”. The Voice of UA, March 3, 2011, http://www.golosua.com/ua/main/article/politika/20110302_sotrudnichestvo-ukrainyi-i-rossii-prodvigaev-horoshkovskiy-nemetskie-smi

counterintelligence – which allows its priorities to be reversed in line with the likes and dislikes of each new leadership team – can contribute nothing to the cause of a state’s European integration, because such state, with counterintelligence support of this kind, itself becomes a source of threat.

One of the first steps following the change of the national leadership and that of the national secret service was the transfer of Russian national Vladimir Noskov to the Russian side. Noskov, an FSB colonel, was detained by Ukrainian law enforcement officers while on the territory of Ukraine in 2009 and was charged with grave crimes.³²

The head of the Kiev Bureau of Konrad Adenauer Foundation, Nico Lange, was detained for ten hours at Ukraine’s border in 2010. This SBU-assisted detention looked fairly provocative ahead of Ukrainian President’s visit to Germany. In the same period of time another German journalist, Konrad Shuller of *Frankfurter Allgemeine Zeitung*, was complaining about the counterintelligence shadowing him in a provocative way and questioning his Ukrainian contactors. Analysts specializing on spec-services associate such events with only one aim which is to discredit the current Ukrainian administration in the eyes of a European Union leader, Germany, and by so doing to let Ukraine’s approach with the EU not happen.

It looks fairly probable that the reason why the SBU has closed down KGB’s Ukrainian archives was Russia’s discontent with the disclosure of true facts about the Great Famine (otherwise known in Ukraine as Holodomor) and the Ukrainian Genocide 1932-33. In the same vein, the SBU detained Roman Zabilyy, the director of the Lviv National Memorial Museum ‘Lonskyi Prison’, who was about to disclose new facts of the Bolshevik atrocities in Ukraine.

Obviously enough, the SBU, if it is to integrate itself with the EU, should abandon altogether the legacy of KGB. That it is to stop acting in the same manner as that of the Soviet secret service and to make it a priority to protect the interests of its citizens and the state of Ukraine rather than those of a situational partner.

The SBU is directly responsible for the control of the “foreign mechanisms of interference in internal affairs and exerting influence on domestic political situation in Ukraine”. But sometimes it looks as if it’s easier and more *habitually*, as well, for the spec-service to wage war on ‘Ukrainian nationalism’ than it is to counteract a foreign involvement. The Ukrainian counterintelligence declares itself willing to become an integral part of the European security space and yet simultaneously allows a foreign national, who was eligible for all the rights and freedoms while on the territory of Ukraine, to be easily kidnapped and transferred to another state (as was the case involving Dirar Abusisi of Palestine).

Regarding the SBU’s manpower policy, since manpower is the services’ main resource and the quality which determines the degree of the law enforcement agency’s readiness for integration with the European Union, unfortunately, it looks as though the agency’s recruitment policy – which fundamentally remained the same as it was under the KGB rule – is aimed to bar individuals who are loyal to the law and public interests in the first place rather than to superior’s orders or political changes. Obviously with the KGB’s legacy remaining in place, the Security Service is more likely to be a constraining rather than a facilitating factor of Ukraine’s integration with the European Union.

In conclusion, it should be noted that across the law enforcement sector the so called ‘fully fledged law enforcement agencies’ – the MIA and SBU – are the ones that require the most drastic reforms in terms of the ability to function effectively if Ukraine’s EU integration dream becomes a reality. There should be a change of the paradigm that Ukraine’s law enforcement agencies are primarily intended for punitive purposes today. This may well be one of the key reasons why Ukraine is lacking an effective system for the protection of fundamental human rights and freedoms, and why there is so little progress on the fight against crime and corruption.

³² For more detail, see: Yuri Butusov, “Liquidation. A story of Russian spec-services’ fail in Ukraine”, *Mirror Weekly*, February 13, 2010.

General conclusions and recommendations

CACDS experts' analysis of Ukrainian potentials for integration into the EU in the sphere of security generally confirms their controversial character. The scope and diversity of the security cooperation between Ukraine and the EU give many optimistic as well as pessimistic examples. Today one can observe almost simultaneously two contradictory tendencies – the broadening of the security dialog between Ukraine and the EU, the deepening of relations and successes in some segments of cooperation in defence and law-enforcement areas. But at the same time, the fracture is deepening between the European value standards (concerning the rule of law, protection of human rights and freedoms, observance of the key principles of market economy like freedom of business activity, protection of property and investments etc.) and the present day realities in Ukraine.

On the one hand, there is a declarative unity between the power and the people in Ukraine in support of the European integration of the country. Certain efforts to adopt European standards to Ukrainian legislation have been taken in some ministries and governmental agencies. Cooperation is underway on the issues of crisis management, peacekeeping activity, joint development of weapons and military equipment, fighting the trans-border crime and piracy.

However, on the other hand, the level of popular support for authorities responsible for the success of European integration is declining, some of important and promising programs of military-technical cooperation with EU countries are terminated, the level of security sector budgeting remains very low. The security policy of Ukraine continues in balancing between the interests of integration with the EU and the interests of cooperation with Russia. The level of foreign investors' trust is low and Ukraine's international ratings on the issues of democracy, fighting corruption and the freedom of business activity are declining.

It should also be mentioned that at the moment, the EU itself has not yet become an effective regional security organization and has its own problems with maintaining readiness to defend and support the declared European democratic values.

Summing up the above analysis and having the intention to improve the effectiveness of the utilizing of Ukraine's potentials for integration with the EU in the sphere of security, the CACDS experts suggest the following recommendations:

For the EU:

1. In the draft of the *EU-Ukraine Association Agreement* the content of the sections dealing with foreign and security policy and with protection of the background European values of democracy and market economy should be strengthened and made more specific.
2. Introduce the systemic framework for cooperation with the non EU countries similarly to the NATO 'Partnership for Peace' Program.
3. Develop more actively the programs of the EU support for potential partners in the sphere of security, particularly, on the issues of building the proficiencies in which the EU has an interest, especially in the law-enforcement area.
4. Introduce under the EU auspices, the joint defence and security exercises with partners.
5. Expand the programs of education, internship and exchange between the law-enforcement officers of Ukraine and the EU countries.
6. Diversify the approaches to military-technical cooperation with Ukraine by strengthening the emphasis on organizing the joint enterprises, creation of attractive conditions for investment and offsets, and sharing with Ukraine the technologies of spare parts' production to maintain the existing weapons systems.

For Ukraine:

1. Recognize the problem of the evident inconsistency of values between the EU and Ukraine – between the European standards of democracy, market economy, and present day realities in Ukraine – and take systemic efforts to repair the situation (providing for the rule of law, fighting corruption, the private property guarantees, overcoming the disparity between the rich and poor etc.)
2. More clearly identify the responsible governmental coordinators on the issues of Ukraine's integration with the EU in the sphere of security and their authority.
3. Terminate the practice of separation of the defence budget of Ukraine in the general and special funds (cancel the special fund).
4. Improve the legal and financial mechanisms needed to provide for the rapid reaction of the forces assigned for participation in the EU operations.
5. Substantially increase the volume of the state defence procurement order.
6. Accelerate the introduction of the normative-legal base for implementation of the offset agreements, as well as for more effective privatizing of defence enterprises.
7. More clearly identify the coordinator of the defence industrial complex, who should assume responsibility for the state defence procurement order distribution and for the import of the defence technologies.
8. Accelerate reforms in security and defence sector with more focus on achieving the European standards, particularly – to start systemic work on demilitarizing the law-enforcement bodies, increase the financing of the security and defence sector, and increase the level of social benefits for military and law-enforcement personnel etc.
9. Adopt the law on military-technical cooperation.
10. Increase the effectiveness of parliamentary and civilian control over the export of military products and services.
11. Increase the effectiveness of parliamentary and civilian control over the law-enforcement and intelligence bodies. Establish the separate Committee of the Verkhovna Rada of Ukraine on the intelligence services.

Kyiv, May 2011

ДЛЯ КОТАТОК / FOR NOTES