

Ukraine's Updated Security Sector Laws: What promise do these laws hold?

By Joseph L. Derdzinski

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This blog post by Joseph L. Derdzinski was originally published on the SSR Resource Centre in November 2015. This article analyzes recent updates and changes to Ukraine's security sector laws. The blog post provides a useful overview and assessment of the challenges to security sector reform in Ukraine and has therefore been republished here as a CSG Insight.

Multiple potholes dot Ukraine's road to a more accountable and liberal political regime: its 12% decline in GDP this year; the military stalemate in the east and the de facto loss of Crimea; and, of course, entrenched political malaise and corruption. It is within this challenging environment that crucial political and security reforms are taking place, which rely to a large degree on internal reformers and external assistance. This article seeks to 1) introduce more widely that the English-language versions of

Ukraine's security sector laws were recently published, with a brief commentary and assessment; and, 2) to discuss the environmental challenges facing their implementation, including corruption, fiscal concerns, and developing professionalism within the security sector.

Updating Ukraine's security sector & security sector governance laws

Chief among the ways to nudge Ukraine towards a more open, democratic political system is the body of laws (understood as institutions that structure and provide the framework and direction for political discourse and actions). With an eyes-wide-open assessment of the inherent limitations in the mere drafting of new laws, it is clear that even in the most embryonic country well-crafted laws help provide a direction for developing capable, professional

and transparent governance. More specifically, developing laws on security sector governance and security sector reform (SSR) is a necessary condition for liberal political regime development. However, there is a wide variety of external factors, obstacles and challenges that need to be addressed to make sure security sector institutions have a significant, positive impact on a country's liberal trajectory. In their latest iteration, Ukraine's legal foundations for security sector governance and reform are poised to provide this foundation.

Earlier this year, I had the opportunity to review and edit the English translation of the Updates to Ukraine's security sector and security sector governance laws. Revised principally in 2014 (with the 287-page English language translation published recently, in 2015), during the most heated fighting in the eastern regions

of Donetsk and Luhansk, the updates focused mainly on amending multiple laws, including: 1) laws on using Ukraine's militia (including the use of force, and special operations equipment and weapons allowed in the breakaway east); 2) combating organized crime; 3) law on the Procuracy (i.e., a representative of the state with investigative and prosecutorial responsibilities) that establishes military procuracies; and, 4) updates to the law on the "Foundations for Prevention and Combating of Corruption."

Moreover, laws that help foster and cement social care for persons (and their families) in the security sector, as well as on state-owned defense industries, were revised and enacted. These updates were fostered with international assistance, notably NATO and Switzerland's Geneva Centre for the Democratic Control of Armed Forces (DCAF). The updates span a range of issues, from the broad, such as when and how to mobilize the armed forces, or the development of the National Guard, to the more specific, such as debt settlements for national defense industries. The laws overall present Ukrainians with the framework and authority for oversight of the armed

forces, as well as their overall objective of SSR.

The key question is, what promise do these laws hold? As a multi-volume work, providing a workmanlike summary of all the laws is likely not possible for a blog post, but an analysis of the more emblematic pieces certainly provides insight into the laws' aggregate direction and content. In the next section, I focus on three core issues of security governance in Ukraine: corruption, professionalism and defense budgeting and provide an analysis of the updated laws as well as the environment in which these laws are being enacted, which will likely be the more decisive factor in their ultimate success or failure in improving Ukraine's security sector.

Corruption, professionalism and defense budgeting

Corruption. Overall, the laws provide a solid foundation for security sector governance consistent with the standards set by other Western states. For example, the 2014 updates to the original 2006 laws are admittedly more tedious and mundane, but demonstrate Ukraine's attempt to develop a more holistic interpretation of who should be covered by the

law (such as time-limited personnel and reservists), and consideration of "special periods" (i.e., the current occupation in the east). Reservists cannot supervise family members, and service members could lose pension and other benefits if convicted of corruption. However, it is not risking over-exaggeration to say that corruption in Ukraine still dominates much of governance. Ukraine is perceived as among the most corrupt countries, ranking 142 out of 175 countries in Transparency International's 2014 Corruption Perceptions Index. Institutionalized, politically-connected corruption is at the pinnacle of the system, but security actors are connected as well, shaping public perceptions of mistrust of all security actors, including the police and military, creating a brew where corruption 1) siphons money for institutional change, and 2) foments mistrust to further alienate the state from society. These laws then, are the teeth needed to bite into corruption, but systemic corruption is clearly a –maybe the – challenge.

Professionalism. Based on domestic comments, the constellation of Ukrainian security entities historically suffered from a lack of com-

mitment to developing professional forces. (This is, of course, not limited to Ukraine, nor to the whole class of transitional countries.) Admittedly, the laws are mainly silent on the specifics of developing professional security institutions, but this is a common trait for macro-level legal guidelines. That said, there are clear references to integration and promotion based on education and merit, implying incremental development of a more professional force. (With wording regarding accession and promotion: ‘...is awarded to reservists who, during their service in the military reserve, completed a higher education degree in a specialty related to the appropriate military specialty; the rank is awarded based on the results of attestation...’) There are tangible policy changes that underscore both the depth of the problem in developing professional forces, as well as its commitment to do so. For example, Ukraine’s recognition of the prompted changes to its self-described “hated” traffic police, which the population feared for its extortionate tactics vis-à-vis its public service mission. The new force’s relatively high pay, institutional checks, and a well-defined career path sparked over 34,000 applications for 2,500 spots. Time will tell,

of course, whether this approach pays off, but this initiative clearly has its head in the right place.

Money Woes. Budgets shape all manner of security and defense initiatives and actions, Ukraine being no exception. That said, few states recently have had the external security challenges that Ukraine faced, which should prompt significant rises in budgeted expenses. Among the laws, multiple budgetary-related provisions are mandates:

[for] provisions to ensure first priority funding for programs included in State Budget items dealing with national security and homeland defense;

[to] take actions to relieve, pursuant to prescribed procedures, the Ministry of Defense of functions that it is not supposed to perform, which are management of state-owned property assets and the sale of surplus military property and property that has become unfit for use for the purposes pursued by the Ukrainian Armed Forces;

[to] establish rewards for members of the Armed Forces, other legally established military services and

law enforcement agencies who were involved as direct participants in the Anti-Terrorist Operation, which will be awarded based on the complexity of combat missions performed.

All good, of course. However, Ukraine’s most recent defense budget is perhaps the fairest lens through which to view the entire security sector funding. Though the proposed 2016 defense budget of US\$4 billion is about \$1.6 billion higher than in 2015, with emphases on combat-related materiel and troop support, such as housing, almost half of the budget will go to pensions. Relatedly, as early as January of this year, some estimates mention that 20-25% of the security budget is stolen. With personnel required to buy some of their own military kit, coupled with corruption and legacy costs, Ukraine continues to face challenges in fully funding its security needs.

Moving Forward

Today seems like an opportune time (isn’t almost always?) to transition towards a more transparent and accountable security sector. In addition to the possible inflection point spurred by the Russian-supported

violence in the east, which helps, at least for the moment, the current regime's movement toward the West. The US Department of State's funding of Ukrainian police training, in Odessa, by members of the California Highway Patrol certainly promises to bring best practices from one of the US's largest and most well-respected law enforcement agencies. This is a good start to addressing professionalism and security sector reform. However, more can and should be done to address actors across all security institutions.

The US, Canada and other NATO members, as well other international actors (such as Switzerland's efforts in promoting good governance) should continue to support these foundational efforts to promote the rule of law in Ukraine, especially as these laws relate to security sector governance. I believe these updated laws appropriately refine Ukraine's legal efforts to promote an effective, accountable and democratically-con-

sistent security sector, but Ukraine's dire domestic and international environment is likely only able to succeed with a helping hand from the West.

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