

Oversight of Russia's Intelligence and Security Agencies The Need for and Prospects of Democratic Control

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For a brief while after the collapse of the August 1991 coup in Moscow, speculation abounded that the Soviet state security apparatus, known since 1954 as the KGB, would be dissolved. This speculation proved unfounded. Although the KGB in late 1991 was divided into a number of separate agencies—one for internal security, one for foreign intelligence, and one for border control, along with a few specialized units (e.g., a bodyguard service and a communications/information agency)—the equipment, facilities, and personnel of the security apparatus were left intact. When the former components of the Soviet KGB came under the Russian government's control at the end of 1991, the key organizations were renamed and then gradually strengthened. Russia's security and intelligence complex now consists of the KGB's main successor agencies, currently known as the Federal Security Service (FSB), previously known as the Federal Counterintelligence Service and before that as the Ministry of Security; the Foreign Intelligence Service (SVR); and the Federal Border Service (FPS). These organizations are supplemented by armed personnel from at least eight other agencies, including a large number of internal forces and special-operations units (OMON) from the Internal Affairs Ministry (MVD).

This vast apparatus, numbering hundreds of thousands of employees in total, is only partly accountable to elected authorities. Most observers inside and outside Russia agree that democratic control of the intelligence/security complex is tenuous at best and, in some cases, nonexistent. Russia's intelligence and security forces enjoy extraordinary powers—both formal and informal—to act on their own. Although greater democratic oversight will not necessarily ensure that Russia's intelligence and security agencies are used for purposes conducive to democracy, the *lack* of democratic control all but guarantees that grave abuses will occur.

Importance of the Issue

Intelligence and security forces have existed for centuries, but the notion of democratic oversight of these bodies, especially oversight of intelligence agencies, came only recently. Not until 1947, when the United States adopted legislation to set up the Central Intelligence Agency, was the first public law enacted for an intelligence service. The United States was also the first country to establish regular legislative oversight of intelligence agencies, a step taken in the 1970s when permanent intelligence committees were formed in each house of Congress. Since then, most (though not all) of the other Western democracies have emulated these practices.

The establishment of democratic control over Russia's intelligence and security forces is important for seven main reasons.

First, foreign intelligence and internal security are crucial functions for any state, whether democratic or non-democratic. Intelligence and security/police agencies are needed to help the political leaders of democratic countries protect their citizens.

Second, intelligence and security forces can be abused for partisan political ends if democratic oversight is absent or is not firmly established. This has been evident over the past few years in Ukraine, Belarus, Georgia, Armenia, Azerbaijan, Central Asia, Moldova, and Romania. Such abuses pose a formidable obstacle to democratization.

Third, intelligence and security agencies, by nature, must operate with a good deal of secrecy. Unless democratic oversight of these bodies is firmly established on a regular basis, the citizens of democratic (or democratizing) countries will be inclined to suspect that the agencies are being used for inappropriate or illegal functions and are failing to perform their legitimate tasks.

Fourth, in former Soviet-bloc countries, where the state security apparatus during the Communist era was a repressive instrument of the Communist party, the establishment of firm democratic control over post-Communist intelligence and security bodies is especially important. Ideally, the Communist-era state security organizations would be permanently disbanded, as they were in the Baltic states, in former East Germany, and in most of the Central European countries. Failing that, the entrenchment of democratic oversight is crucial to preclude abuses and to ensure that the security and intelligence agencies are compatible with democracy.

Fifth, over the past few years in Russia, the FSB and other security and intelligence agencies have become increasingly assertive and prominent. Russian president Vladimir Putin served for sixteen years as a KGB foreign intelligence officer and also formerly served as the head of the FSB. Putin has appointed many former high-ranking KGB officials to senior political and advisory posts, including the post overseeing state television and radio. He has placed the Ministry of Defense under the control of Sergei Ivanov, who, like Putin, is a former KGB foreign intelligence official and a former secretary of the Security Council. The appointments of former KGB officials have been accompanied by a vigorous effort to laud the exploits of the intelligence and security forces during the Soviet era as well as in recent years.

Sixth, the sheer size of Russia's intelligence and security forces—and the great expense to equip, train, and deploy them—necessitate choices about priorities, budgets, and appropriate tasks. Unless elected officials, including members of Parliament, are able to maintain effective oversight of the intelligence/security complex, they will not be able to make informed choices about budgets and other matters that come within their purview.

Seventh, the September 2001 terrorist attacks and their aftermath have placed special demands on intelligence and security forces in Russia as in other countries. These demands have accentuated the tradeoffs and choices that must be made. Intelligence and security agencies in Russia, as elsewhere, must contend with a host of threats relating to international terrorism, weapons proliferation, illegal narcotics trafficking, organized crime, human trafficking, smuggling, and other activities. Firm democratic oversight is the only way to ensure that budgetary priorities can be set, and that intelligence and security forces will pursue the most exigent tasks.

Principles for Democratic Oversight

Ten principles should guide the establishment of democratic oversight of Russia's intelligence and security agencies.

First, security must be balanced against liberty. Civil rights and liberties are the hallmark of a liberal democratic state. Under certain circumstances, intelligence and security forces must intrude on the civil rights and liberties of some citizens, but the leeway for such infringements must be kept to an absolute minimum. Democratic oversight is crucial to ensure a proper balance between security and liberty.

Second, effective laws and regulations must be adopted for the broad guidelines as well as the specific functions of intelligence and security agencies. To the maximum extent possible, these laws and regulations should be made public.

Third, no single agency should be responsible for both internal security and foreign intelligence as the KGB was. Those functions should be handled separately. Nor should the functions of agencies overlap with or duplicate the functions of other agencies, except when a limited degree of overlap is unavoidable. Organizations with redundant or overlapping responsibilities are too easily prone to bickering and abuse, as has been evident in Chechnya, where the FSB and MVD have been embroiled in fierce disputes over which agency should be responsible for particular functions. (Reportedly, they want jurisdiction over certain activities because of the lucrative payoffs they can extort.)

Fourth, all branches of government—executive, parliamentary, and judicial—should be involved in the oversight of intelligence and security agencies. Security forces should not have independent authority to issue warrants without approval from a judge or magistrate. Nor should the members of security forces be involved in the actual prosecution of cases. The prosecutory function must be reserved for a qualified state attorney. The greater the checks and balances on the use of intelligence and security forces, the better.

Fifth, under no circumstances should intelligence and security agencies be involved in partisan political activity, or be used for any function that might appear to favor a political party or serve the private interests of a national leader.

Sixth, direct parliamentary oversight of all intelligence and security agencies is crucial. The Committee of Security in the Russian Duma has been patently ineffective in overseeing the country's far-flung intelligence and security complex. Parliament needs to establish a truly independent committee and to require the FSB, SVR, MVD, and other agencies to turn over highly sensitive information about the tasks they are performing. The Duma itself should choose the members of the committee, without recommendations from the executive. The committee should be empowered to conduct public and closed hearings, to undertake investigations, to require the periodic submission of information—both in person and in written reports—from the heads of intelligence and security agencies, and to demand any additional information that is needed for effective oversight. The committee must be given a much larger professional staff that would enable legislators to deal with the full range of intelligence and security issues. Although only a limited number of staff members would be given access to highly sensitive information about covert operations and espionage, the independence of the staff from the relevant agencies would be paramount.

Seventh, the proposed new oversight committee must strike a balance between secrecy and transparency. On the one hand, the committee members must ensure that, to the maximum extent possible, information about the intelligence and security services is publicly available. On the other hand, they must be able to prevent the disclosure of information that would truly be detrimental to national security or would infringe on the privacy of individuals.

Eighth, individual citizens should be entitled to file a complaint with a judicial body to challenge the activities of the security services.

Ninth, individuals should be permitted to inspect their files and to seek rectification of any erroneous information. This policy was adopted in the former East Germany in the early 1990s and in Hungary in 2002. Elsewhere in the former Communist world, including Russia, the right to consult files has been far more circumscribed or has been denied altogether.

Tenth, if employees of the intelligence and security agencies violate domestic law in the pursuit of their professional duties, they must be held accountable before judicial bodies. (Espionage abroad will, of course, transgress the laws of foreign countries, so the only concern here is with violations of domestic law.)

Prospects for Democratic Control of Russia's Intelligence and Security Agencies

Judged against these ten principles, democratic control of Russia's intelligence and security agencies is woefully inadequate. The basic problem is that democratization in Russia overall has made only faltering headway. A number of factors have militated against democratic oversight of the intelligence and security apparatus:

* As noted, the Soviet state security apparatus was not dissolved when the Soviet Union collapsed; instead, it was taken over by Russia. The existence of this repressive apparatus is a hindrance to democratization and to attempts to establish democratic oversight of intelligence and security forces.

* Democratization has also been impeded by the continued presence of the Communist Party, which is a proud successor of the Soviet Communist Party. The Russian Communist Party has been willing to take part in elections, but is otherwise contemptuous of democracy. In Germany after World War II, the Nazi Party was banned, and the same should have been done with the Communist Party in Russia after 1991. Although the Russian Communist Party has never been able to earn more than about 30 percent of the vote, the existence and continued vigor of the party are indicative of how far Russia still has to go before it becomes a liberal democracy.

* Many liberal democratic principles have not yet firmly taken root in Russia. Russian citizens are still denied many fundamental rights and liberties, both formally and informally. Unfortunately, there is little pressure on the government to improve the situation. Extensive surveys undertaken in 2001 by Ted Gerber and Sarah Mendelson reveal that Russian public support for liberal democratic values is weak. In the absence of greater public demand for basic liberties, the authorities have no real incentive to supply them.

* The structure of the polity gives too much power to the executive branch, especially the president. The Russian parliament remains a weak institution (it has been particularly docile under Putin because it is no longer under Communist control, but even when it was under

Communist control, it was weak) and is therefore unable to exercise effective oversight of intelligence and security forces.

* The judiciary in Russia is notoriously weak and corrupt, and its independence is often nonexistent. The whole concept of the rule of law in Russia is still mostly fiction, and the security organizations still frequently operate with impunity. Even flagrant abuses and violations of civil liberties often go unpunished.

* There are far too many organizations with overlapping responsibilities for internal security. In particular, the functions of the FSB and some key directorates of the MVD are almost entirely duplicative. (The MVD also duplicates many of the functions of the regular army.) Unless the duplication is eliminated and the agencies are scaled back or eliminated, the potential for abuse will remain.

Given these severe constraints, what steps can be taken in the near term to promote democratic oversight of Russia's intelligence and security forces?

First, it is important to consolidate and build on some recent improvements. Under the new Code on Criminal Procedure, which took effect in July 2002, the FSB and MVD can no longer, in principle, issue their own arrest and search warrants. All such warrants must now be approved by a judge or magistrate, which will mark a monumental change if it becomes firmly entrenched. Although some FSB and MVD officials have tried to circumvent this new procedure, the Russian parliament can reinforce the change by adopting a new law forbidding any exceptions.

Second, the Duma should abolish its existing Committee on Security, which is at best a rubber stamp, and set up a new oversight committee along the lines indicated above.

Third, the new oversight committee should hold public hearings on the conflicts and infighting between the FSB and MVD. The committee staff should prepare a report on how to eliminate duplication and scale back the size of both agencies.

Fourth, the Duma should require the FSB, MVD, SVR, and other agencies to provide far more public information about the tasks they perform. Although the Russian parliament adopted a law on foreign intelligence, a law on security, and other relevant legislation in the 1990s, these laws often bear scant relation to the way the agencies actually operate. The security organizations rely on secret regulations and directives when pursuing their activities. To be sure, some aspects of these organizations' functions must be kept highly secret, but the almost complete lack of information about the agencies precludes any semblance of democratic control.

Fifth, the Russian government should grant citizens access to their files at the FSB, MVD, and other relevant agencies. Sporadic debate about this issue in the 1990s never made any headway. Although the best time to have taken such a step was in the early 1990s, opening the files now would be vastly better than keeping them closed. Putin has given no indication that he is inclined to move in this direction, but if he did lend his support, he could undoubtedly gain the Duma's approval. If such a step were eventually adopted, it would be of great benefit not only in helping Russia come to terms with its past, but also in establishing greater democratic control of Russia's security and intelligence forces.