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Ukraine's constitutional doctrine of national security

Doctrina constitucional de la seguridad nacional de Ucrania

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ABSTRACT. This article aims to set the foundations for a comprehensive legal system ensuring national security through establishing the scientific principles and framework legislation and developing a constitutional Ukrainian national security doctrine. The empirical basis for this research consists of published documents and materials concerning national security in the USA, particularly the US National Security Strategy. The drafting of the mentioned doctrine as a main scientific result is of national significance for Ukraine. Furthermore, the scientific results presented in the article, including principles, general scientific, system-structural, and legislative models, can be used for the democratic development of constitutional models in Eastern European countries to ensure national and collective security in the world.

KEYWORDS: constitutional doctrine; national interests; national security; public administration; threats; Ukraine

RESUMEN. El artículo tiene como objetivo sentar las bases de un sistema jurídico integral que garantice la seguridad nacional mediante el establecimiento de los principios científicos y la legislación marco y la elaboración de una doctrina constitucional de seguridad nacional de Ucrania. La base empírica de esta investigación consiste en documentos y materiales publicados sobre la seguridad nacional de los Estados Unidos, en particular, su Estrategia de Seguridad Nacional. El diseño de dicha doctrina, como principal resultado científico, tiene una importancia nacional para Ucrania. Junto con los demás resultados científicos presentados en este artículo, los principios, los modelos científicos generales, sistémico-estructurales y legislativos, pueden utilizarse para el desarrollo democrático de los modelos constitucionales de los países de Europa del Este, garantizando la seguridad nacional y colectiva en el mundo.

PALABRAS CLAVE: administración pública; amenazas; doctrina constitucional; intereses nacionales; seguridad nacional; Ucrania

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Introduction

The development of Ukrainian statehood, globalization processes, geopolitical changes, and radical reforms in all spheres of public life have caused diverse, large-scale issues in the field of national security. Their solution required nontraditional measures and reconsideration of many established approaches and stereotypes. Unfortunately, Ukraine was unprepared to face the challenges and threats to national security effectively. These potential threats were easily activated in Ukraine due to typecast-thinking, misinterpretation of the core of problems and mechanisms to resolve them, an attitude towards national security as a secondary issue, and an unclear understanding of the legal regulation system in this area (Novytskyi, 2004). As a result, we have lost a significant part of the territory, population, and national wealth. Moreover, there is a war happening in Ukraine.

Even under such conditions, the Ukrainian State still disregards the problems of national security legal regulation. Chaotic, random legislative initiatives do not contribute to the proper solution of national security problems; they significantly complicate them and block the activities of state institutions (Alguliyev et al., 2020; Mykola et al., 2019).

The development of the latest legislation in national security seems particularly relevant in this context. However, it should be noted that the search for a scientific solution to the problems of this study and the development of an appropriate legal framework is only at its initial stage (Mukhammadsidiqov & Turaev, 2020). All research in this area addresses mainly national security as a public phenomenon and excludes studies on domestic legislation or the experience of foreign countries.

Analysis of regulatory legal acts related to national security issues shows their fragmentary character. The matter is that many legislative acts are separate from each other, regulate different aspects of this issue, and even belong to different branches of law. Nevertheless, because national security is one of the most important objects of state and legal protection, it is enshrined in almost all branches of domestic law (Kopeychikov, 1995).

The current state of affairs can be explained by the fact that Ukraine has no generally accepted notion of national security in jurisprudence and legal science. Therefore, when developing a legal framework and a national security law itself, the issue of systematization is challenging due to the disorder in this field. The lack of system character and methodological basis for national security generates problematic aspects in developing a legal framework in this field.

The establishment of the social, legal, and democratic state governed by the rule of law has led to a change in the legal space in Ukraine (Isakovich, 1993; Gnatenko et al., 2020). Along with the reforms in the state system and geopolitical situation, this leads to the domination of national security as a democratic, social, and legal state (Mykiyevych, 1993).

The State has no common principles and values; this hinders its activities aimed at establishing and ensuring security and integrity and developing a systematic legal framework in this field. Ensuring the State's integrity and security is a set of public relations. Thus, national security legal regulation is subject to the same principles as all public relations in general. Therefore, this study aims to set the foundations for a comprehensive legal system in the field of ensuring national security by determining the scientific principles and framework legislation and developing the constitutional doctrine of the national security of Ukraine.

Methodological Framework

A complex of philosophical (particularly dialectical), general scientific (synthesis, analysis, induction, deduction, and generalization), and specific scientific methods formed the basis for methodological analysis. Given the aim of the research, specific methods of legal science were used. The logical and semantic method allowed explaining the content of concepts and legal notions of national security. The formal and legal (dogmatic) method provided a formal and logical interpretation of relevant legislative acts and revealed common trends in legislative processes and legal principles used by the legislator.

We used historical and legal comparative methods to comprehensively analyze the statutory regulations of different hierarchies and periods to reveal the features of the Ukrainian legislation on ensuring national security from the XX to the XXI century. These methods allowed us to observe and scientifically describe the development patterns of the National Security Institute of Ukraine's legal framework.

We used the system-structural method to study the relationship between the systematization of legislation and the achievements in ensuring national security in the XXI century. Furthermore, the same method allowed the formulation of the scientific conceptual foundations of legislation, notions, and the role of framework legislation to develop the draft of the constitutional doctrine of the national security of Ukraine.

The theoretical basis of the article consists of the works of the Ukrainian and foreign researchers in the fields of constitutional, administrative, and international law, the norms of Ukraine's international treaties, and domestic legislation on issues of national security, as well as other authors' research materials. The empirical basis for the research consisted of published documents and materials related to US national security issues, particularly the US National Security Strategy. Moreover, this article analyzes the regulatory legal acts of Japan, Britain, and the Russian Federation. Finally, the article also includes the results of individual authors' unpublished research, conducted in general accordance with the above methods.

Results

Features of public relations in the field of ensuring national security

Legislation is a set of laws and other regulatory legal acts that regulate one sphere or another of public relations and are the source of a particular branch of law (Korelskiy & Perevalov, 1997). In turn, the legislative system is an ordered and approved complex of legislative mandates, enshrined in laws and divided by a subject and method of legal regulation into institutes and branches of the legislation. These two concepts can be linked through the coordination of various factors, such as the desire of the legislature to develop a systematic and integrated legal system and the subject of legal regulation.

The development of a comprehensive legal framework influences the emergence of independent branches of law, which constitute part of the entirety of national law and the independent branches of law. The separation of branches of law is due to the features of content and essence of legal regulation in a particular sphere of public relations. The state's government system creates the difference between the system of law and the system of legislation in this sphere of public relations. After all, the system of regulatory legal acts depends not only on the principles and logic of the system of law but on various subjective and objective reasons.

In turn, the method and subject of legal regulation affect the division of the legal system's structure into branches and, subsequently, institutions. Therefore, legal rules are characterized by the high homogeneity of the content and structure. The legislative branch is less homogeneous; it influences public relations and differs according to the subject of legal regulation, sharing no common methods. The previous can be explained because the concept of branches of law does not include social reality as a category, unlike the complex branches of legislation. It should be noted that the same rule of law cannot regulate public relations of contrary legal nature. Therefore, it is impossible to say that such a set of legal rules forms a single branch of law. The matter is that the presence of other branches in the branch of rules excludes such a possibility.

We should highlight that the branches of law and legislation, even sub-branches, sometimes coincide, for example, legislation and copyright. Their structure can be divided into horizontal (branches of legislation) and vertical (a set of current regulatory legal acts and the hierarchy among the public authorities of the body that adopted this legal act). For the legislative body, the system of regulatory legal acts should represent the objective law. When developing new legislative acts, the legislator should analyze whether new independent branches, sub-branches, and institutions are required. Moreover, the characteristic aspects of special branches of legislation, the correlation, and uniqueness between them must be regarded. Namely, legal science must provide for the improvement of a legal framework. Therefore, new scientific proposals must be developed.

Legislative and law enforcement bodies must approach public relations that arise in ensuring the state's national security in a systematic, careful, and responsible way (Ibrayeva et al., 2018). The allocation of the necessary system of legislation, which will coordinate the various branches of legislation and the legislative system of national security, is due to the importance of ensuring the legal regulation of national security.

The given system forms the legal framework for regulating the protection of Ukraine's national security, which is combined into an inter-branch complex with its branches, sub-branches, and institutions. Examples of such legislation can be financial, civil and criminal. The high number of branches, sub-branches, and institutions in this field is due to the variety of public relations that arise in connection with ensuring national security. However, we should not overlook the systematization of legislation in the field of national security, which requires a single configuration and system when coordinating different branches of legislation. This is essential to eliminate the difference in rule-making subjects, their time of adoption, and the availability of legislation during its enforcement.

Systematization of legislation in the field of ensuring national security: formal and logical principles

The authors of this article believe that systematizing and reordering the legal basis in national security is essential for effective rule-making and identifying and eliminating contradictions existing in legislation. It will positively affect the increase in legal awareness and the legal culture of the population as a whole. Without improving the legislation in this field, it will be very difficult, almost impossible, to increase the role and importance of national security law. This is perhaps the most important instrument and way to achieve secure and contractual principles of functioning and development in modern society (Novikovas et al., 2017).

If we characterize national security as a legal category, it is possible to achieve coherence and order in all existing public relations in the systematization of legislation; this reflects public values and aims at their protection. Here, the question of the method of systematization arises. Today, incorporation is the only possible method to systematize the current legislation ensuring national security. It provides for the compilation of legislative acts while preserving their content in specific collections and books, where each document retains its independent meaning. Moreover, choosing a thematic principle of incorporation is suggested to allow the division of the national security legislation into specific pieces. Then, depending on the result obtained, they can be further codified. National security issues are codified within the relevant traditional branches of law in most states of both the continental and Anglo-Saxon legal systems. For example, a separate chapter (No. 15) within the US Code regards national security issues under Title 50, *War and National Defense* (Beskow & Carley, 2019).

This incorporation method is used to compile most of the generalized collections of regulatory legal acts aimed at unifying the national security issues. For example, the USA's legal system includes the following in the issues of ensuring national security: rules of international law related to the treaty obligations of the United States, arm control standards, internal laws, and bylaws on ensuring national security in its various directions. In addition, procedural issues of interdepartmental interaction, distribution of powers, and subjects of state bodies in internal and external threats, primarily military, receive considerable attention.

We must note that carrying out the comprehensive thematic incorporation of the entire legislation in national security within this research framework would have been impossible. However, it was possible to work out the foundations of such incorporation to the last detail and define the types and features of the above legislation. This compilation will provide the foundation for future work on specific (thematic) systematization of legislation to ensure national security.

The systematization of legislation or regulatory legal acts involves the organization and improvement of legislation, bringing it into an internally coherent system using primarily formal logic. As known, it belongs to methodological sciences. Therefore, its achievement will help build the system of legislation ensuring national security and avoid scholastic theories on the feasibility of particular components of the inter-branch complex (Sybirianska et al., 2018).

Let us briefly describe particular formal and logical rules of division of system-structural phenomena (authors' approach). First, the division must be sum. This approach determines that the sum (volume) of individual formations in the national security ensuring legislative structure should equal the volume of the above inter-branch complex. If we fail this rule, there will be either incomplete division or division with superfluous formations. The division should have one basis. The feature taken as the basis for division should not be replaced by another. Thus, the legislation division ensuring national security should be carried out according to one criterion, which cannot be automatically applied at the subsequent levels of system formation.

Given that the branches of legislation are divided only by the subject of legal regulation, we suggest taking it as a basis for special classification of legislation ensuring national security. This subject is homogeneous public relations in the sphere of ensuring national security. Therefore, new formations should exclude each other. Regarding the system of legislation ensuring national security, this rule can be formulated as follows: if we include a regulatory legal act in one of the types of legislation that form an inter-branch complex, then it cannot be included in another type.

The division must be continuous. The system of legislation should be divided into separate branches, from generic (general) formations to specific (special) ones. Given

that the national security ensuring legislation is a generic phenomenon in Ukraine's legal system, it should be divided into special formations. If we fail the rule, the so-called jump in the division will occur (Preston, 2021). Therefore, the criterion taken as a basis for the division of the said legislation should be clear to exclude the variety of interpretations. Otherwise, each researcher will use this criterion to substantiate a *required* type of legislation.

Namely, the violation of this rule (ambiguous interpretation of a category such as the subject of legal regulation) caused contradictions in many discussions on the legal system related to the features of Civil Law involving the presence of certain branches of law. As a result, different textbooks on the theory of law list branches of law that do not always coincide in name and number. Recently, this list has expanded rapidly. Having analyzed basic formal-logical formations of the legislation in ensuring national security briefly, we can examine the structure of the inter-branch complex –legislation in national security.

Framework legislation: theory and practice of application

In the system of national security legislation, legislation occupies a special place that establishes a system of values, goals, objectives, and measures in this field and identifies existing and potential threats. In the field of ensuring national security, this legislation is called a framework *guide*. It consists of regulatory legal acts, including the national security doctrine and national security ensuring subjects' strategy under defined conditions and periods. A single system with common principles, ideas, tasks, and goals can cover the activities of the subjects of ensuring national security. Therefore, we propose calling the above type of legislation framework one.

Here, we need to note the historical significance of the Law of Ukraine, *On Fundamentals of National Security of Ukraine*. It was essentially the first regulatory legal act of framework legislation to ensure national security. Part 2 of Art. 2 of this law defined the general features of framework legislation. It provided for the development of the National Security Strategy of Ukraine. Moreover, it provided for the Military Doctrine of Ukraine's doctrines, concepts, strategies, and programs for fulfilling its goals and principles in the development of military capabilities and functions of public authorities to rapidly identify and neutralize existing and potential threats to Ukrainian national interests (Verkhovna Rada of Ukraine, 2003).

This rule established that Ukraine's National Security Strategy and Military Doctrine were compulsory for forming and functioning programs and measures of public policy in national security. This situation has slightly changed since adopting the Law of Ukraine, *On National Security of Ukraine*. The legislator decided that forming a system of values, goals, objectives, and measures and identifying existing and potential threats in the field of national security requires nothing more than planning in the said field. According to

the Part 1 of Art. 25 of the Law, planning in the field of national security and defense aims at ensuring public policy in these fields through the development of strategies, concepts, programs, road maps for the security and defense sector, resource management, and efficient allocation of resources (Verkhovna Rada of Ukraine, 2018).

The given rule sets forward several questions. Where can a person view the *public policy on national security*? Is it not necessary to clearly understand the ultimate purpose before planning or managing something? First, let us consider the legal definition of the *National Security Strategy of Ukraine*. This document defines the current threats to Ukraine's national security and relevant purposes, objectives, and mechanisms to protect its national interests. It forms the basis for planning and developing public policy in national security.

What is the public policy of national security, in any case? The legislator set out to *build a national security establishment* but neglected to specify the parameters of its foundation. Meanwhile, the national security doctrine is the foundation of legal regulation of national security. Therefore, this document should include the ideas on public policy concerning national security. With this in mind, another question arises regarding the correlation between the notions of the *National Security Strategy of Ukraine*, the *Military Doctrine of Ukraine*, and their *doctrine, concept, strategy, program, purpose, and content*. First, determining these notions' content is essential to structure their hierarchy as a system of regulatory legal acts, each with its purpose and performing certain tasks.

The *doctrine* is a common term for rule-making only in International Law. In the legal systems of individual countries, this term is used cautiously. However, this does not apply to Ukraine. At present, there are ample *doctrines* in Ukraine, including the Military Doctrine of Ukraine, the National Strategy of Development of Education in Ukraine, the Maritime Doctrine of Ukraine to 2035, the Information Security Doctrine of Ukraine, and the Military Medical Doctrine of Ukraine. An analysis of the definition of the notion of doctrine in International Law, the Monroe, Toba, and Estrada doctrines allows us to conclude that a doctrine is a set of basic provisions or guidelines that influence the solution of problematic aspects and issues of states and international relations' functioning and development. These provisions are usually contained in the rules of written law or documents of a political nature, but not always. It is worth highlighting the following features of a doctrine: its constructive and regulatory role to other regulations, consistency over a relatively long period, conciseness, clarity, and, of course, social significance. For example, President James Monroe's 1823 message to Congress contained the Monroe Doctrine. Its content defined three main principles of US foreign policy in relations with Europe. They were the US non-interference in the internal affairs of European states, the non-interference of European states in the internal affairs of the United States, and the determination to thwart any attempt by European states to encroach on US independence.

In Ukraine, the *relativity* of understanding the notion of doctrine in rule-making becomes noticeable when comparing legal systems of individual countries and regulatory legal acts of international law, known and recognized by lawyers as doctrine, with Ukrainian regulatory legal acts, the content of which is of doctrinal character. This mentioned *doctrine* has little in common with the notion of doctrine in its fullest sense. The content of the Military Doctrine of Ukraine is similar to its Military Security Strategy. The above is true because the Military Doctrine of Ukraine (President of Ukraine, 2021) will be in force until the adoption of the Military Security Strategy under the Law of Ukraine, *On National Security of Ukraine*.

Thus, there is no distinction between notions of doctrine and strategy in the current Ukrainian system for ensuring national security. However, there are rules of doctrinal character that regulate the sphere of ensuring national security in the Ukrainian laws. For example, Paragraph 5 of Section IX of the Declaration of Ukrainian State Sovereignty states that the Ukrainian Soviet Socialist Republic (SSR) declares its intention to remain a permanently neutral state, rejecting its participation in military blocs and producing or purchasing nuclear weapons. The doctrinal character of this rule is incontestable. We should note that the Declaration does not use the notion of *national security*; it considers only the issues of external and internal security. Scientists believe this negatively affects the Declaration's content (Isakovich, 1993).

Another example is the Resolution of the Verkhovna Rada of Ukraine No. 3360-XII, *On the Main Directions of Ukraine's Foreign Policy*, of July 7, 1993, which is no longer in effect. Nevertheless, the authors believe Section II (Principles of Ukraine's Foreign Policy) of this document contained the following doctrinal provisions on national security:

1. Ukraine seeks to pursue an open foreign policy and establish cooperation with states without the intervention of other regions or groups.
2. Ukraine declares no territorial encroachments on neighboring countries and does not allow such encroachments on its territory.
3. Ukraine has a right to use its Armed Forces in cases of armed aggression against it or other encroachments on territorial integrity and sovereignty or the implementation of international obligations.
4. Ukraine shall not allow the presence of foreign troops on the territory of its country or other countries without their consent, except for the case of the imposition of sanctions under the UN Charter.
5. Ukraine respects the principle of international security and the inviolability of peace. It agrees that a threat to the national security of one country means a threat to world security as a whole. Ukraine adheres to the principle that *security for oneself is the security of all*.

The Resolution of the Verkhovna Rada of Ukraine No. 3360-XII of July 7, 1993, was repealed by the Law of Ukraine, *On Foundations of Foreign and Domestic Policy* (Verkhovna Rada of Ukraine, 2010). In this context, we must highlight recent amendments to the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996). According to the legislator, these amendments had to enshrine the inviolability of the country's commitment to join the EU and NATO. Further analysis of Ukrainian regulatory legal acts is superfluous to argue with a high degree of probability that many other legal acts contain doctrinal rules on national security. Given this context, the need to systematize these rules using some systematization method is clear, as well as the need to create a level of legislative consolidation of the results.

Regarding the method of systematization, it should be noted that it refers to individual rules rather than all regulatory legal acts. It is problematic to place certain rules on national security, including doctrinal, in regulatory legal acts of various branches of law. At the same time, it is quite logical and fitting that the main content of these regulatory legal acts consists of the rules governing public relations in these branches of law. In turn, the rules of ensuring national security are included in these regulatory legal acts, given that the sphere of national security touches upon all aspects of society and can be enshrined in each branch of national law.

In this case, employing the incorporation method would be advantageous because it would produce a list of regulatory legal acts from various branches of law, containing rules on ensuring national security of a doctrinal nature. However, given its importance, the doctrinal level of legal regulation of ensuring national security should be in the form of an individual regulatory legal act or its part. Therefore, the next step would be to codify the relevant rules from previously incorporated regulatory legal acts and register them as a single legal act or its part. But, again, we highlight that this coding involves individual rules rather than regulatory legal acts.

We are referring to forming a regulatory legal act containing the so-called rules/principles (Kopeychikov, 1995). These rules/principles enshrine the foundations for ensuring national security. This regulatory legal act should become the basis for developing conduct standards, constituent rules, and rules/principles in the field of national security. It is well-acknowledged that the level of consolidation of a rule in the vertical structure of legislation depends on its importance for the state and society as a whole. Therefore, let us discuss rather than provide a political assessment of some of the above rules that the authors believe to be doctrinal, given the recent events in the world and Ukraine.

The mentioned Resolution of the Verkhovna Rada of Ukraine No. 3360-XII *On the Main Directions of Ukraine's Foreign Policy* of July 7, 1993, states that Ukraine is against encroachments and the presence of foreign troops on the territory of its country or other countries without their clear consent (Verkhovna Rada of Ukraine, 1993). The exception

is the imposition of sanctions under the UN Charter. Article 11 of the Law of Ukraine, *On Foundations of Foreign and Domestic Policy*, defines the principles of external policy. They include the following:

- Affirm Ukraine's security and interests in the international arena through peaceful and mutually beneficial cooperation with foreign countries under the rules and principles of international law;
- Ensure the protection of the country's territorial integrity and sovereignty, its interests in the fields of politics, economy, and energy by diplomatic means and methods according to international law;
- Use the international potential to establish and develop the country as an independent, sovereign, democratic legal, and social state and economic development;
- Establish appropriate political conditions for Ukraine's development in the international arena and Ukrainian national dignity, citizen identity, historical consciousness, economic potential, and the cultural, ethnic, religious, and linguistic identity of Ukrainians;
- Take Ukraine's necessary place in the system of international relations, strengthening its authority in the international arena;
- Achieve international peace and security in the world, participate in a comprehensive political dialogue to enhance mutual trust between states, and avoid traditional and new security threats;
- Establish cooperation with the North Atlantic Treaty Organization with the prospect of becoming a member;
- Increase the role of international law in international relations, ensuring compliance and implementation of existing ones, developing new ideas, principles, and rules of international law;
- Eliminate and prevent conflict situations in the regions bordering Ukraine and resolution of existing conflicts;
- Protect Ukrainian citizens and legal entities' rights and interests abroad;
- Search for favorable conditions to meet the national, cultural, and linguistic needs of Ukrainians living abroad, organize and maintain permanent ties with them;
- Integrate Ukraine into the European political, economic, and legal space to obtain membership in the European Union;
- Develop commercial and economic, scientific and technical, and investment cooperation between Ukraine and international organizations and countries through mutual benefit;
- Increase Ukraine's welfare and assertion in the world economic system for full economic development;

- Establish international cooperation to attract foreign investment, new technologies, and management experience to the national economy for its reformation, modernization, and innovative development;
- Assert State integration into the world information space. (Verkhovna Rada of Ukraine, 2010)

We cite the entire rule intentionally and raise the question: What is Ukraine's official position on stationing troops on foreign state territories? Analysis of the Laws mentioned above does not answer this question. Meanwhile, this is rather a matter of national security than slogans or declarations. Let us remember the events of 2008 in Abkhazia and South Ossetia. Obviously, Ukraine's official position, given the use of the Russian Black Sea Fleet forces in the conflict, was not the least to make certain decisions both in favor of resolving the war and a peaceful settlement of the conflict. The Russian Federation took all necessary measures to make this decision with the utmost loyalty. Why is it so? The events' direction was so because the discussed rule had been at the level of the legislative hierarchy, which meant its near absence. This situation created conditions for various political forces both in Ukraine and abroad to manipulate Ukraine's position.

A fundamentally different scenario would have been possible provided that the Constitution of Ukraine had enshrined this rule. In this case, the potential aggressor would have been aware of the unambiguity, specificity, and invariability of Ukraine's position despite the circumstances that the aggressor could have created. Furthermore, the complexity and duration of certain measures toward Ukraine to change its official position would be obvious. Therefore, the authors believe that the existence of the above rule in the Constitution of Ukraine can be an important factor in ensuring national security under political instability.

However, an even more realistic example of the problem is the mentioned provision of the Declaration of Ukrainian State Sovereignty on Ukraine's intention to become a permanently neutral state in the future. It is acknowledged that when adopting the current Constitution of Ukraine, the legislator was guided by the Act of Independence of Ukraine, which was confirmed by an all-Ukrainian referendum. Furthermore, the Act itself was issued to implement the Declaration of State Sovereignty. Thus, the current foundations of the constitutional legislation of Ukraine are aimed at implementing a policy of permanent neutrality, which provides for the non-alignment of Ukraine.

Here, the question arises of Ukraine's current orientation towards NATO. Does it comply with the Constitution of Ukraine? The matter is that the non-aligned status proclaimed in the Declaration of Ukrainian State Sovereignty is in clear conflict with the intentions to join the Alliance, enshrined in the Law of Ukraine, *On National Security of Ukraine*, and amendments to the Constitution. The Parliament of Ukraine approved

draft law No. 9037 on Amendments to the Law on European Integration and Accession to NATO. Approval of these changes should strengthen the course of the State to join the EU and NATO. However, the issue is that the Parliament of Ukraine has no right to amend particular articles of the Constitution. They require a special procedure for approval by referendum. This refers to Chapter I *General principles*, Chapter III *Elections. Referendum*, and Chapter XIII *Amendments to the Constitution of Ukraine*. Therefore, this question is included in Articles 85 and 116 of the Constitution of Ukraine.

Now, the powers of the Verkhovna Rada include the implementation of EU and NATO membership, and the powers of the Cabinet of Ministers include ensuring this implementation. According to Art. 102 of the Constitution of Ukraine, the President of Ukraine shall be the guarantor of the above. However, it is unclear by whom and where this course of integration is defined. The problem is that expanding the President's powers has led to additional rules of conduct for the Parliament and the Government, which are not the principles intended to consolidate the State's strategic course. Instead, they act as the basis for rules/principles and constituents.

Discussion

To study the issue more objectively, we offer additional analysis of the doctrinal studies, particularly concerning foreign approaches to determining their national security doctrines. Studying doctrinal approaches to the definition of US national security, M. Mukhammadsideqov and A. Turaev (2020) point out its neoconservative nature, which emphasizes the State's military power without rejecting the instruments of international legal relations. It also emphasizes the strict regulation of aspects of the State's domestic and foreign policy on national security at the legislative level. The scientists' position is confirmed by the fact that the United States also developed a US National Security Strategy in 2017, in addition to a relevant section in the US Code, which deals mainly with national security issues (Spoehr & Handy, 2018).

It reflects the versatility, multifacetedness, and comprehensiveness of this issue's regulation. This Strategy consists of the following pillars: *Protect the American People, the Homeland, and the American Way of Life, Promote American Prosperity, and The Strategy in a Regional Context* (The White House, 2017). In the US national security doctrine, the so-called *traditional* means of ensuring it plays a significant role (particularly obtaining intelligence on various related issues) (Mandel & Tetlock, 2018). The same applies to *new* ones that occur in continuous scientific and technological progress (particularly in cybersecurity) (George, 2019). Artificial intelligence is used to ensure national security and counteract artificial intelligence in occurrences using the latter to harm US national security (Congressional Research Service, 2020; Sayler, 2020; Aldrich & Moran, 2018).

The British approach is similar to the American. It has been purposefully been aligned with the American one since the beginning of the Cold War. Strict legal regulation of the British national security doctrine is expressed, among other things, in the adoption of a permanent national security strategy of the United Kingdom. In addition to this, it is characterized by institutional, systematic, and specific nature, which is expressed, particularly in the functioning of the National Security Council of the UK, organizing and conducting regular five-year Strategic Defense and Security Reviews (Thomson & Blagden, 2018; Mattsson & Saljo, 2017).

We also find the American approach to defining national security in Japan's national security system. In his work, Yamakage (1997) characterizes Asian defense policy, including Japanese, as relying firstly on the *power of the weapon*. The similarity with the American one is that this requires both a clear institutional and legal regulation of doctrinal approaches to defining national security, set in the National Security Strategy of Japan. In Japan, such institutional regulation exists, represented by the National Security Council, headed by the Prime Minister, and the National Security Secretariat within the Cabinet of Ministers (Liff, 2018).

A similar approach to defining the national security policy also takes place in India (Pant & Bommakanti, 2019). Even in the Russian Federation –in ongoing armed conflict with Ukraine– systematic approaches to defining the national security doctrine have been updated and brought into line since 2014. However, being concentrated primarily on the regulatory aspect, we should note that the following acts have been updated and re-adopted: the Military Doctrine of 2014, the National Security Strategy of 2015, the Scientific and Technical Development Strategies of 2016, the Information Security Doctrine of 2016, and the Concept of Foreign Policy of 2016 (Pynnoniemi, 2018).

As for the domestic approach to the defining national security doctrine, and given the above foreign approaches, we propose to focus primarily on the regulatory level, namely the Basic Law –the Constitution of Ukraine. It establishes key, fundamental approaches, including determining the State's national security. In the Constitution of Ukraine, the rules/principles are included in Chapter 1; therefore, it is impossible to amend it. Chapter 1 includes Article 18, which states that Ukraine's foreign political activity shall be aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community in compliance with the principles and rules of international law.

It is necessary to amend this article by chapter, indicating the need for Ukraine to adhere to the principles of collective security –*security for oneself means security for all*. Ukraine aims to enter into the EU and NATO, the organizations based on democratic principles and values. If such amendments are made to the Constitution of Ukraine,

the Ukrainian Parliament, Government, and President's rules/principles of conduct will change.

In such a case, the Verkhovna Rada of Ukraine does not adopt the Constitution; it only approves particular amendments and changes. Using the old principles and rules enshrined in the 1996 Constitution is challenging enough. There must be a new Constitution with new values, motives, and principles. However, even 300 votes of parliamentarians cannot guarantee anything. Only a referendum can bring about changes and guarantee a new stage of development, as the deputies' votes have not been convincing enough for a long time.

Thus, we support the NATO representatives who believe the referendum should be held before Ukraine can enter this organization. This is not only to clarify the will of the Ukrainian people. The referendum results should become the legal basis for bringing the current foundations of Ukraine's constitutional legislation in line with its foreign policy intentions (Sancllemente, 2021). On the other hand, in the long-term, the uncertainty enables the manipulation of the Ukrainian position by various political forces both inside the country and abroad. This factor in no way affects the end of the armed conflict and the resolution of the political situation in eastern Ukraine and may even lead to its expansion. The matter is that any uncertainty creates new opportunities for the aggressor, pushing the aggressor to take action in pursuit of its interests, contrary to the Ukrainian.

Thus, in today's Ukraine, several regulatory legal acts include the rules on issues of national security that are of doctrinal nature. Some of them contradict each other, creating conditions for political manipulations. The authors agree with Mykiyevych (1993), who points out that guiding principles and rules of the State in the international arena will be enshrined without legal regulation, despite their progress. Because their role is significant, they shall be enshrined in the Basic Law –the Constitution of Ukraine.

The above gives grounds to conclude that it is necessary to amend the Constitution of Ukraine with the chapter of *National Security* or *Doctrine of National Security*. In the Constitution, this chapter shall include so-called rules/principles enshrining the foundations of national security and, therefore, perform the function of the doctrine of national security of Ukraine. Meanwhile, one draft of the Constitution of Ukraine of 1993 provided a chapter on national security. It defined the strategic directions for state security and the functions and powers of the National Security and Defense Council (Isakovich, 1993). Studying the constitutional practice of foreign countries, experts noted the expediency of the rule on establishing the National Security and Defense Council. However, they offered to enshrine the main features of the concept for ensuring national security in the special law that could be changed where needed.

Conclusion and Recommendations

In this study, we analyzed both domestic and foreign approaches to defining national security doctrine and policy. As a result, the authors propose that the constitutional doctrine of national security of Ukraine today could read as follows:

Doctrine (fundamentals) of National Security of Ukraine:

Article 1. Fundamentals of Ukraine's foreign policy.

Ukraine shall pursue an open foreign policy and seek equal cooperation with all States abiding by the fundamental rules of international law concerning peace, good neighborliness, and non-interference in the internal affairs of other States.

The principle of collective security shall be enshrined in the legislation of Ukraine. It can be characterized as "security of oneself through the security for all." Ukraine aims to become a member of the EU and NATO, which adhere to collective security and defense and democratic principles and values. Ukraine also respects the borders and sovereignty of other countries, shares no territorial encroachments on neighboring countries, and does not allow territorial encroachments on its borders.

Article 2. The Use of the Armed Forces of Ukraine and the Territorial Defense Forces of Ukraine.

Ukraine shall use its Armed Forces in cases of armed aggression against it and any other armed encroachments on its territorial integrity and inviolability of borders or the fulfillment of international obligations. The Territorial Defense Forces of Ukraine organized by the state shall be in force in Ukraine. Territorial Defense Forces shall be used exclusively on the territory of Ukraine and only in cases of acts of armed aggression of foreign states against Ukraine. In any other case, the use of the Armed Forces of Ukraine and the Territorial Defense Forces shall be prohibited and punished by law.

Article 3. Armed Forces of Other States on the Territory of Ukraine.

The presence of armed forces of other states on the territory of Ukraine shall be allowed only under Ukraine's participation in European and Euro-Atlantic structures of collective security and defense and fulfillment of its international obligations, approved by the Verkhovna Rada of Ukraine. Furthermore, Ukraine shall not support the invasion and deployment of foreign troops on the territory of other countries without their consent, except for the case of the imposition of sanctions under the UN Charter.

Article 4. Nuclear Status of Ukraine.

Until the acquisition of membership in European and Euro-Atlantic structures of collective security and defense, or until the restoration of Ukraine's sovereignty within its

borders as of January 1, 2013, Ukraine shall reserve the right to deploy and manufacture nuclear weapons.

Article 5. Objects of National Security of Ukraine.

Ukraine shall be responsible to the citizens of Ukraine for its population, the integrity of the territory, the inviolability of its borders, the preservation and increase of the national wealth of Ukraine, and the preservation and development of the national identity of the Ukrainian people.

Article 6. The Main Objectives of the State in the Field of National Security and Defense.

1. To create economic and social conditions to increase the population of Ukraine to 60 million.
2. To restore the sovereignty of Ukraine within its borders as of January 1, 2013.
3. To increase the national wealth of Ukraine to the level of 500 trillion UAH.
4. To preserve and develop the national self-consciousness of the Ukrainian people.

Article 7. Restriction of Human and Civil Rights and Freedoms in the Interests of National Security and Defense of Ukraine.

The rights and fundamental freedoms of humans shall not be restricted in the interests of the national security and defense of Ukraine. The rights and freedoms of a citizen of Ukraine may be restricted in the interests of national security and defense of Ukraine only in cases established by law and a court decision.

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