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## FOREIGN EXPERIENCE IN PROTECTING STATE SOVEREIGNTY AND TERRITORIAL INTEGRITY AND POTENTIALS OF ITS APPLICATION IN UKRAINE

**Abstract. Purpose.** The purpose of the article is to analyse the foreign experience in protecting State sovereignty and territorial integrity and feasibility of its application in Ukraine. **Results.** The author proves the need for scientific research on the foreign experience in protecting State sovereignty and territorial integrity. It is noted that each State has formulated its own special approach to protecting State sovereignty and territorial integrity due to: first, the specifics of historical and legal development of each individual State; second, its social, economic and political development; and third, the geographical location of the State. The author summarises the experience in protecting the State sovereignty and territorial integrity of the leading European countries, in particular, Great Britain, Germany and France. The author argues that these countries' membership in the European Union and the United Nations has a significant impact on the development of their legislation. The author offers his own vision of possible trends in implementing the most positive foreign experience in protecting State sovereignty and territorial integrity in the national realities. **Conclusions.** To sum up, the following foreign experience in protecting State sovereignty and territorial integrity in the Ukrainian state is most appropriate: 1) Ukraine should bring its domestic legislation in line with the requirements of the European Union in the field of protection of State sovereignty and territorial integrity as soon as possible, as the experience of a number of European countries shows that their legislation is based on the principles of sovereignty enshrined in the EU's regulatory sources; 2) The Ukrainian legislator should review the organisational structure of the system of entities whose activities are aimed at protecting the State sovereignty and territorial integrity of Ukraine; 3) It is advisable to create an effective mechanism of interaction between the relevant actors; 4) It is necessary to adopt the experience of states in terms of full financial and logistical support of the relevant agencies; 5) It is essential to develop an effective Strategy for the protection of State sovereignty and territorial integrity, which has been effectively implemented in leading countries, for example, the UK.

**Key words:** state sovereignty, territorial integrity, protection, administrative and regulatory framework, tasks, functions, powers, foreign experience, improvement, administrative legislation.

### 1. Introduction

Nowadays, it is undisputed that the modern Ukrainian State is characterised by numerous destabilising processes, including economic, social and political ones. The fact that part of our country's territory was annexed in 2014 and Russia's large-scale invasion began in February 2022 significantly worsens the situation, as a result of which Ukraine lost not only territory but also an invaluable resource – its citizens, who were also taxpayers. In this regard, in the current realities, the legislator faces a number of problems that require immediate resolution, the most important thereof is the protec-

tion of Ukraine's State sovereignty. However, it is impossible to fully address the issue without improving the activities of the Security Service of Ukraine (hereinafter referred to as the SSU) as a key entity for the protection of State sovereignty and territorial integrity. But, in the context of the ongoing European integration processes in Ukraine, the improvement of virtually all state institutions cannot be complete without studying foreign experience. The SSU's activities in this context cannot be an exception.

Before considering the experience of individual states, the activities of the United Nations (hereinafter – the UN), established

at the end of World War II, should be under focus. In June 1945, at a conference in San Francisco, the UN Charter was signed as a political universal organisation for the maintenance of international peace and collective security. 75 years have passed since then, so we can confidently state that today's realities are largely different from those of the UN's founding. New trends and processes in the system of international relations have been initiated, the configuration of forces has changed, and new threats and challenges have appeared on the agenda. All of this has put forward new demands on the UN, to which it responds within an outdated functional and structural system that does not produce the expected results and leads to the loss of its members' trust. The only way to restore the role of the UN, as the Member States have already realised, is to reform it profoundly (Korniichuk, 2011, p. 148).

## **2. The role of the United Nations in the protection of State sovereignty and territorial integrity**

Today, the overwhelming majority of states demand that the UN find a balance between the basic principle of State sovereignty and the need to protect human rights, as the Security Council held a one-day debate on the principles of the UN Charter. However, at the last meeting of the Member States, most speakers differed in their interpretations of this fundamental document: some emphasised the principle of non-interference in internal affairs, while others stated that measures should be taken when states fail to protect their people or are themselves guilty of human rights violations. "For millions of people living in war and extreme poverty, and for countless others whose rights are violated or otherwise ignored, the ideals and values of the [United Nations] Charter remain elusive," said Secretary-General Ban Ki-moon, addressing the 15-member panel.

While the primary responsibility for conflict prevention and human rights protection lies with Member States, the United Nations can help countries address their national challenges and fulfil their responsibility to protect. According to him, among other things, the Organisation offered assistance in building national capacity to identify and eliminate the precursors of genocide and other serious crimes. Therefore, it is each state that is responsible for ensuring the protection of State sovereignty and territorial integrity.

## **3. Protection of State sovereignty and territorial integrity in the UK**

In view of this, we consider it appropriate to focus on the experience of the leading European countries, among which the United Kingdom should be singled out. In this country, the con-

cept of sovereignty was often mentioned during the EU referendum debate by people from all strata of society. Scepticism towards globalisation and the erosion of sovereignty was evident in the campaign's calls to restrict migration and return power from Brussels to Westminster. Indeed, sovereignty also seems to have been important to the referendum outcome. Almost half of those who voted for Brexit said it was because "decisions about the UK should be made in the UK", showing that the idea of parliamentary sovereignty, linked to the legislative powers of parliament, was very relevant to the vote. This is the type of sovereignty that former British Prime Minister Theresa May also spoke about. In her first Brexit speech, she pledged to pursue a Brexit that would allow the country to do "what independent, sovereign countries do... decide for ourselves how we control immigration... be free to pass our own laws for ourselves".

Sovereignty is particularly specific in the UK – the protection of its national interests and security after the Second World War are closely linked to its special relationship with the United States. As part of this concept, the British State allows for broad American participation in its defence policy. In this field, the process of withdrawal from the EU political union has become particularly relevant. London seeks to organise it in such a way as to remain a key player in the Euro-Atlantic region, to increase its influence in international affairs and military power. In connection with Brexit, a debate has been launched on the correlation between State sovereignty and national interests. Scepticism about globalisation and problems related to the erosion of State sovereignty before the June 2016 referendum was reflected in Brexiteers' calls for restrictions on immigration and the "repatriation" to Westminster of powers it had previously transferred to Brussels. This largely determined their success in the vote, while the tension between national interests and State sovereignty was highlighted, but never resolved (Nosach, 2019).

A key actor in the protection of State sovereignty and territorial integrity is the UK Secret Intelligence Service (or MI6, as it is commonly known), which was founded in 1909. SIS (or MI6) exists to protect the UK's people, economy and interests of the from external threats. In addition, it helps other countries with whom the UK shares values of democracy, international law and universal human rights. MI6 is governed by British law and has independent oversight to balance the fundamental freedoms of citizens with their right to be secure and prosperous. The checks and balances that SIS operates are among the most comprehensive

and stringent in the world. SIS is accountable to the government, and the Prime Minister has overall responsibility for intelligence and security matters, however day-to-day ministerial responsibility for SIS lies with the Foreign and Commonwealth Development Secretary. Along with GCHQ and MI6, SIS is responsible for the majority of the UK's operational intelligence and security work. The Joint Intelligence Committee (JIC) assesses intelligence gathered by the agencies and presents it to ministers to enable informed policy-making (Secret Intelligence Service, 2020). (Secret Intelligence Service, 2020).

The activities of the UK Secret Intelligence Service are governed by several pieces of legislation:

- The Intelligence Services Act 1994 sets out SIS function as a foreign-focused intelligence agency;
- The Investigatory Powers Act 2016 provides a modernised framework for the use and oversight of investigatory powers by law enforcement and the security and intelligence agencies;
- The Human Rights Act 1998 protects citizens' rights under the European Convention on Human Rights.

Parliament and the judiciary provide rigorous oversight of SIS and its operations. The Investigatory Powers Commissioner's Office of the (IPCO) oversees the use of powers used by the Service to conduct operations. The Investigatory Powers Tribunal (IPT) is a judicial body that offers a route to redress for anyone who believes they have been the victim of unlawful acts of covert investigative techniques. The Intelligence and Security Committee (ISC) provides oversight of SIS operations, policy, expenditure and administration to Parliament (Secret Intelligence Service, 2020).

The UK Security Service (or MI5) should under focus when studying the UK's experience in protecting State sovereignty and territorial integrity. MI5 is formally the Security Service, an intelligence agency responsible for internal security and domestic counterintelligence activities in the United Kingdom. Although MI5 is responsible for domestic counterintelligence, it does not have powers to arrest, which are instead delegated to Scotland Yard. MI5 enjoyed great success during the Second World War. The secret organisation first publicly named its head in 1991. At the same time, it also released some previously classified information, such as the number of its employees and its organisational structure. Counter-terrorism operations make up the bulk of MI5's activities, which report to the Home Office (MI5 – British government, 2022).

The main objectives of MI5 are:

- To prevent damage to the UK from intelligence and other covert activities of other states;
- To safeguard the economic well-being of the United Kingdom from threats arising from the acts or intentions of persons residing outside the UK;
- To detect and monitor new and emerging threats to the security of the state by collecting, analysing and summarising counterintelligence information; to inform the country's leadership about the threats detected and measures taken to eliminate them;
- To take measures to terminate the activities of foreign intelligence representatives in case of a real threat to the national interests of the state through special operations;
- To protect sensitive information and assets of the government, as well as Critical National Infrastructure (CNI);
- To take measures to inform the management and staff of "closed" enterprises and organisations about the possible access by foreign intelligence;
- To conduct investigations related to the "leakage" of classified information, to support the police and other law enforcement agencies in preventing and solving serious crimes
- To assist the Secret Intelligence Service (MI6) and the UK Government Communications Headquarters (GCHQ) in the performance of their statutory functions (Petryk, 2015).

MI5 performs counter-intelligence activities in the armed forces, public and private agencies, among the population of the country and its overseas possessions, and conducts covert surveillance of foreign nationals, immigrants, etc. In addition, the security service also deals with propaganda and counter-propaganda, censorship, conducts covert surveillance of diplomatic and trade missions of foreign countries, socio-political organisations, and controls airports, seaports and important railway stations. The Security Service relies on an extensive network of informants working in virtually all-important government agencies and private companies (Petryk, 2015).

#### **4. Protection of State sovereignty and territorial integrity in Germany**

Next, we will focus on the positive experience of another leading European state – Germany. First of all, it should be noted that ensuring the national security and territorial value of Germany has a characteristic feature that not only the state itself creates security for the population, but also its individual citizens. For example, the Constitution allows the citizens of this country to resist anyone who intends to over-

throw the established state system in case other means cannot be used (Murashko, 2020; Kobko and Dauhulie, 2018). Moreover, Article 18 of the German Constitution states that citizens who engage in activities against the foundations of the constitutional order lose their rights to freedom of expression, to form associations, and to organise meetings, according to a decision of the Federal Constitutional Court. Another interesting fact is that in the event of a threat to the foundations of the constitutional order of the whole country or one of its states, an internal state of emergency is declared in the state. Germany considers the following threats to be examples of such threats: threats to public order and national security, the existence or free democratic system of the whole country or one of its states (Murashko, 2020; Kobko, Dauhulie, 2018).

A key actor in the protection of State sovereignty and territorial integrity is the Federal Intelligence Service (BND), which is Germany's foreign intelligence service. It is present all over the world and is engaged in foreign economic, political and military intelligence. In this context, it provides the federal government with information for its foreign and security policy decisions. The BND works on behalf of the federal government. It is responsible for gathering information that goes beyond publicly available facts and opinions. Intelligence services often work in secret. The BND is headquartered in Berlin. Some employees still work at the former headquarters in Pullach.

Germany's foreign intelligence service monitors terrorist groups, provides the German government with information on cyberattacks and ensures that German diplomats have a voice in international conflicts. The federal government sets out in the job profile the objectives that the BND should address with what resources, ranging from priority 1 ("comprehensive information need") to 4 ("low information need"). The assessment of the documents available to *BR* and *Spiegel* shows the efforts made by one of Germany's most influential media outlets to filter, remove and above all assess the amount of data and report the results to the federal government. However, the assessment also shows where the filtering system reaches its limits.

In October 2016, the Bundestag passed a new BND law, which has since been criticised as providing wider access to data. The opposition unanimously voted against the amendment, fearing a violation of the constitution. Nevertheless, it came into force in January 2017. Snowden's so-called revelations became a trigger for legal reform. The German Bundestag established a commission to investigate

the NSA, which was to examine, among other things, the extent to which the Federal Intelligence Service was involved in wiretapping by the US NSA. The investigation revealed that the BND used monitoring methods that in some cases lacked legal grounds. As a result, the federal government stated that it wanted to better control the intelligence agency and review the legal basis for its work. In June 2016, the government presented a bill to this effect, which generated many critical headlines in the media.

Finally, with regards to the above-mentioned country's experience, V.S. Murashko, using the example of Germany, identifies and substantiates five main institutional principles of formation of national security mechanisms for a broader understanding of modern factors of State security management in the context of various challenges and threats, such as: the system of governmental and parliamentary control over the work of special services, which helps verify the legality of their actions and ensures that external security is provided by intelligence agencies and internal security by counterintelligence and police agencies; and the introduction of a mechanism to ensure coordination of all agencies, responsible for the security of the state and the existence of special purpose bodies with the provision of their regulatory framework; each body has functions and tasks defined by law, as well as operational tools and methods that it uses to perform its tasks; intelligence and counterintelligence activities are performed separately from operational and investigative actions; a clear division of powers between police, intelligence and counterintelligence units (Murashko, 2020, pp. 151-152).

##### **5. Protection of State sovereignty and territorial integrity in France**

The experience of the French Republic, which was one of the last Western countries without such framework, should be underlined. The current legislation in the field of territorial integrity and State sovereignty is aimed at both providing resources to intelligence services and guaranteeing the protection of civil liberties by subordinating the use of surveillance measures to the authority of the political authorities and double control – that of an independent authority. Methods used may include listening to telephone conversations, capturing images in a secluded location, or capturing computer data. A particular solution may also allow access to a private place, including a home, to install or remove a marking or recording device. The objectives that may justify the use of these methods are as follows:

- National independence, territorial integrity and national defence;

- Key foreign policy interests, the fulfilment of France's international obligations and the prevention of foreign interference in any form;

- Main economic, industrial and scientific interests of France;

- Prevention of terrorism;

- Prevention of attacks on republican institutions, actions aimed at preventing collective violence;

- Prevention of organised crime and offences;

- Prevention of the proliferation of weapons of mass destruction (*Renseignement français: quelle organisation et quel cadre légal?*, 2022).

At present, the backbone of the national security system is the intelligence services that are part of the French Ministry of Defence. They provide the country's top leadership with important information on a wide range of national foreign policy and security issues, allowing timely military and political decision-making. Today, the intelligence services of the French Armed Forces are represented by two bodies: The General Directorate for External Security (*La Direction Generale de la Securite Exterieur* – DGSE) and the Directorate of Military Intelligence (*Direction du Renseignement Militaire* – DRM) (*Conseil national du renseignement*, 2021). The specificities of these intelligence services' activities are that they are regulated by presidential decrees and departmental orders that do not require approval by the National Assembly (lower house of parliament). Parliament is hardly involved in determining the legal basis for the work of these intelligence services and has little or no influence on them. The National Assembly's control over intelligence allocations is indirect, as it is exercised as part of the review and approval of the main items of the MoD budget (*Conseil national du renseignement*, 2021).

The DGSE was formed by integrating the various French intelligence agencies of the Second World War. The Free French Forces created the Central Bureau of Information and Action (BCRA) in 1942, which moved to Algiers in November 1943 as the General Directorate of Special Services (DGSS). On 6 November 1944, the intelligence networks of the French Resistance were integrated into the DGSS, which was renamed the Directorate of Research and Studies (DGER). This merger included a limited number of communist networks, which was not entirely satisfactory in the post-war environment. Therefore, in 1946, the government of the Fourth Republic created the Service for External Documentation and Counterintelligence (SDECE), subordinated to the Prime Minister (DGSE – General Directorate for External Security *Direction Generale de la Securite Exterieur*, 2021). Fol-

lowing the abolition of the French monopoly on opium in Indochina in 1950, the SDECE introduced centralised covert drug trafficking controls that linked Hmong poppy fields in Laos to opium dens operating in Saigon. It generated profits that were used to finance France's covert operations in the Vietnam War. With the advent of the Fifth Republic and until 1962, SDECE was used by Prime Minister Michel Debray as a strategic intelligence service and was particularly effective in fighting the Algerian uprising. In 1962, after the Ben Barca affair, General de Gaulle decided to place SDECE under the authority of the Minister of Defence, and this institution adapted to the military environment (DGSE – General Directorate for External Security *Direction Generale de la Securite Exterieur*, 2021).

## 6. Conclusions

Therefore, it can be concluded that to date, different European countries have developed their own special approach to the protection of State sovereignty and territorial integrity. This was due to: first, the specifics of historical and legal development of each individual State; second, its social, economic and political development; and third, the geographical location of the State. Therefore, relying on the above analysis, we believe that the following foreign experience in protecting State sovereignty and territorial integrity may be of most interest to our country:

- Ukraine should bring its domestic legislation in line with the requirements of the European Union in the field of protection of State sovereignty and territorial integrity as soon as possible, since, as the experience of a number of European states has shown, their legislation is based on the principles of sovereignty enshrined in EU regulations;

- The Ukrainian legislator should review the organisational structure of the system of actors whose activities are aimed at protecting the State sovereignty and territorial integrity of Ukraine. In particular, it seems advisable to create a single coordination centre responsible for organising the work of the relevant institutions, which, in turn, will avoid duplication of their powers and ensure the quality of their tasks and functions in the relevant field;

- An effective mechanism for interaction between the relevant actors should be made;

- It is imperative to adopt the experience of states in terms of full financial and logistical support for the relevant agencies;

- An effective Strategy for the protection of state sovereignty and territorial integrity, which has been effectively implemented in a number of leading countries, including the UK and the USA should be developed.



## References:

- Conseil national du renseignement. (2021). Retrieved from [https://fr.wikipedia.org/wiki/Conseil\\_national\\_du\\_renseignement](https://fr.wikipedia.org/wiki/Conseil_national_du_renseignement) (in English).
- DGSE – General Directorate for External Security Direction Generale de la Securite Exterieur. (2021). Retrieved from <https://irp.fas.org/world/france/defense/dgse/> (in English).
- Kobko, Ye.V., Dauhulie, A.V. (2018). Dosvid publichno-pravovoho zabezpechennia natsionalnoi bezpeky krain Yevropy i SShA ta shliakhy yoho zapozychennia dlia Ukrainy [Naukovyi visnyk publichnoho ta pryvatnoho prava]. *Naukovyi visnyk publichnoho ta pryvatnoho prava – Scientific bulletin of public and private law*, 4(2), 186-190 (in Ukrainian).
- Korniichuk, T. (2011). Nedoskonalist instytutitsiinoi diialnosti OON ta osnovni napriamy yii reformuvannia [The imperfection of the UN's institutional activity and the main directions of its reform]. *Aktualni problemy mizhnarodnykh vidnosyn – Actual problems of international relations*, 96(2), 148-154 (in Ukrainian).
- M I5 – British government. 2022. Retrieved from <https://www.britannica.com/topic/MI5> (in English).
- Murashko, V.S. (2020). Osoblyvosti instytutsionalizatsii protsesiv formuvannia mekhanizmiv zabezpechennia natsionalnoi bezpeky u providnykh krainakh YeS [Peculiarities of the institutionalization of processes of formation of mechanisms for ensuring national security in leading EU countries]. *Investytsii: praktyka ta dosvid – Investments: practice and experience*, 5-6, 147-152 (in Ukrainian).
- Nosach, A.V. (2019). Dosvid zarubizhnykh krain u zakhysti derzhavnoho suverenitetu i terytorialnoi tsilisnosti [The experience of foreign countries in the protection of State sovereignty and territorial integrity]. *Pravo.ua – Pravo.ua*, 2, 116-122 (in Ukrainian).
- Petryk, V.M. (2015). Zabezpechennia informatsiinoi bezpeky derzhavy [Ensuring information security of the state]. Kyiv: DNU «Knyzhkova palata Ukrainy» 122 (in Ukrainian).
- Renseignement français : quelle organisation et quel cadre légal? (2022). Retrieved from <https://www.vie-publique.fr/eclairage/272339-renseignement-francais-quel-cadre-legal> (in English).
- Secret Intelligence Service. 2020. Retrieved from <https://www.sis.gov.uk/about-us.html> (in English).

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## ЗАРУБІЖНИЙ ДОСВІД ЗАХИСТУ ДЕРЖАВНОГО СУВЕРЕНІТЕТУ Й ТЕРИТОРІАЛЬНОЇ ЦІЛІСНОСТІ ТА МОЖЛИВОСТІ ЙОГО ВИКОРИСТАННЯ В УКРАЇНІ

**Анотація. Мета.** Метою статті є аналіз зарубіжного досвіду захисту державного суверенітету та територіальної цілісності та можливості його використання в Україні. **Результати.** Обґрунтовано необхідність проведення наукових досліджень, присвячених зарубіжному досвіду захисту державного суверенітету та територіальної цілісності. Відзначено, що в кожній державі було сформульовано власний особливий підхід до захисту державного суверенітету та територіальної цілісності, що було зумовлено: по-перше, специфікою історико-правового розвитку кожної окремої держави; по-друге, її соціальним, економічним та політичним розвитком; по-третє, географічним положенням держави. Узагальнено досвід захисту державного суверенітету та територіальної цілісності провідних країн Європи, зокрема Великобританії, Німеччини та Франції. Відзначено, що суттєвий вплив на розвиток законодавства цих країн має те, що вони є членами Європейського Союзу та Організації Об'єднаних Націй. Запропоновано власне бачення щодо можливих напрямів імплементації найбільш позитивного зарубіжного досвіду захисту державного суверенітету та територіальної цілісності у вітчизняних реаліях. **Висновки.** Узагальнено, що найбільш доцільним є запровадження такого зарубіжного досвіду захисту державного суверенітету та територіальної цілісності в українській державі: 1) Україні слід якомога швидше адаптувати вітчизняне законодавство до вимог Європейського Союзу у сфері захисту державного суверенітету та територіальної цілісності, адже, як свідчить досвід низки європейських держав, їхнє законодавство побудоване саме на тих принципах суверенітету, що були закріплені у нормативних джерелах ЄС; 2) українському законодавцю слід переглянути організаційну структуру системи суб'єктів, діяльність яких полягає у захисті державного суверенітету та територіальної цілісності України; 3) вбачається доцільним

створити ефективний механізм взаємодії відповідних суб'єктів; 4) обов'язково слід перейняти досвід держав у частині повноцінного фінансового та матеріально-технічного забезпечення відповідних відомств; 5) слід розробити дієву Стратегію захисту державного суверенітету та територіальної цілісності, яка була ефективно впроваджена в провідних державах, зокрема у Великобританії.

**Ключові слова:** державний суверенітет, територіальна цілісність, захист, адміністративно-правове регулювання, завдання, функції, повноваження, зарубіжний досвід, удосконалення, адміністративне законодавство.

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