

FEATURES OF LEGAL DIFFERENTIATION OF THE BORDER SPHERE IN UKRAINE

Viktor Volodymyrovych Tyshchuk

Bohdan Khmelnytskyi National Academy of the State Border Guard Service of Ukraine

Abstract English: This scientific article is dedicated to the peculiarities of legal differentiation in the border sphere in Ukraine. The article examines legislative and regulatory acts that have regulated the functioning of the border service during different periods of its existence. It also analyzes the process of its formation and development as an important component of Ukraine's national and state security system. The article discusses its role in ensuring the protection of Ukraine's state border. Additionally, an analysis of international experience in the field of protecting state borders of European countries has been conducted, which demonstrates the need for clearly defined priorities and appropriate strategies for the development of mechanisms for the protection and defense of shared state borders. The obtained results allowed us to establish that in the majority of European Union (EU) countries, the functions of border control are carried out by law enforcement agencies within the police force. In some countries, such as Malta (and partially in Spain), the control of maritime borders is entrusted to the armed forces. Several EU countries have specialized bodies or agencies (border services) that specifically deal with border-related issues outside the competence of the police. This applies to Finland, Latvia, Lithuania, the Netherlands, Poland, and Switzerland, where border guards have law enforcement powers in certain cases. Additionally, the national services responsible for external border control are often subordinate to various ministries, most of which are ministries of internal affairs, while in other countries, they also include the Ministry of Defense (France, Italy, Norway, Portugal, Spain, Sweden, and the Netherlands).

International experience in safeguarding national borders in European countries emphasizes the importance of establishing clear priorities and development strategies for border protection and defense mechanisms. Over a significant period of time, international cooperation in this field has been evolving and actively implemented. Alongside the governing bodies of the European Union, key participants in this process are the border agencies of EU member states that share common borders. They operate based on bilateral and multilateral agreements on cooperation and mutual assistance in border-related matters, as well as international documents pertaining to border security. The article draws conclusions about positive changes in the legal status of the State Border Guard Service of Ukraine that have taken place over the past decade and examines the problems of legal differentiation in the border sphere in Ukraine due to Russian aggression. In particular, due to fundamental differences between functions and tasks performed by the State Border Guard Service of Ukraine along different sections of Ukraine's state border, as well as in connection with Russian aggression, the idea of

- ❖ Italian Review of Legal History, 9 (2023), n. 8, pagg. 295-329
- ❖ <https://riviste.unimi.it/index.php/irlh/index>
- ❖ ISSN 2464-8914 – DOI 10.54103/2464-8914/21918. Articolo pubblicato sotto Licenza CC-BY-SA.

legal differentiation in the border sphere has been proposed. This would involve the creation of a separate military formation called the «Border Defense Forces» in the east and south of Ukraine, which would be integrated into the Armed Forces of Ukraine. In the western part of the country, the State Border Guard Service of Ukraine would remain under the Ministry of Internal Affairs of Ukraine, taking into account global experience in the protection, defense, and security of state borders by other countries.

Keywords: State Border Guard Service of Ukraine, retrospective, legal status, national and state security, state border of Ukraine, international experience in the protection of state borders.

Table of contents: 1- Introduction. – 2. Teoretical basics. – 3. Analysis of latest research. – 4. Results and their discussion. – 4.1. Retrospective of the legal status of the State Guard Border Service of Ukraine. – 4.2. International experience of determination of functions of border security bodies. – 5. Conclusions.

1. Introduction

Ukraine, as a sovereign state, has its borders, the control of which is a crucial element of sovereignty, national, and state security. Protection, defense, and control of border crossings are tasks that every state constantly faces. Ukraine is no exception, and to fulfill these tasks, the State Border Guard Service of Ukraine (hereinafter referred to as SBGSU) was established.

From its establishment to the present day, the SBGSU has had a complex and ambiguous legal status, which has not always been clearly defined. This can lead to a number of problems that may arise in the functioning of this state institution. Therefore, studying the legal status of the SBGSU is important for understanding its role and functions within the overall system of government bodies.

The legal status of the SBGSU in Ukraine is regulated by the Constitution of Ukraine (1996)¹, the Law of Ukraine «On the State Border Guard Service of Ukraine» (2003), and other laws related to law enforcement, national and state security, and counterterrorism. Additionally, Ukraine is a participant in numerous international treaties on cooperation in the field of border security, including with EU countries (Frontex. European Border and Coast Guard Agency, 2023)²

¹ The Constitution of Ukraine stipulates that the territory of Ukraine within the existing borders is integral and inviolable. The protection of the state border of Ukraine is entrusted to the respective military formations and law enforcement agencies of the state, the organization and procedures of which are defined by law. Additionally, the legal regime of the state border is determined by laws.

² The cooperation is based on the Working Arrangement between the FRONTEX Agency and the SBGSU for establishing operational cooperation, signed on June 11, 2007, and Operational Cooperation Plans, which are signed every 3 years.

and the USA (U.S. Security Cooperation with Ukraine, 2023)³, which enables the exchange of experiences and the utilization of advanced practices to ensure the security of the state border and protect national interests.

In this scientific article, conducting a retrospective analysis of the legal status of the SBGSU from its establishment to the present day, legislative and regulatory acts that have defined and continue to define its legal status were examined, and international experience in the field of border security was analyzed. During the research, attention was paid to the significant importance of the legal status of the SBGSU for protecting sovereignty and ensuring national and state security, taking into account the challenges and problems that arise in the contemporary period and their impact on the development of this state institution.

2. Theoretical basics

The method of analysis of scientific sources helped to formulate the purpose of the study, which involves researching the field of border security from a legal perspective based on the Ukrainian legal system and international experience, taking into account the development of legislation and the powers of relevant state authorities. The analysis of historical sources revealed the retrospective development of the SBGSU's powers regarding the protection of state borders. The comparative method formed an understanding of the main differences between the powers of the SBGSU and similar state institutions in other countries. The method of abstraction was applied to isolate the powers of state authorities in different countries in the field of border security. This allowed focusing on the classification and systematization of defense and law enforcement functions (Table 1) related to the protection of state borders, both on land and at sea (Table 3), and other characteristics that were generalized (Table 2, 4). The method of abstraction allowed understanding that in the vast majority of cases, the powers of state authorities in European Union countries in the field of border security have law enforcement characteristics and are implemented by relevant police units. Only in the aspect related to the protection of external maritime borders do the powers of relevant state authorities acquire defensive features and only through more substantial armament, rather than direct duties to repel armed aggression.

3. Analysis of latest research

In the work, the main goal was identified, which involves analyzing the field of border security from a legal perspective based on the Ukrainian legal system and international experience, using the methodology of analyzing the development

³ Ukraine is a key regional strategic partner that has undertaken significant efforts to modernize its military and increase its interoperability with NATO.

of legislation and the powers of relevant state authorities. As a result of this goal, the expectation was to conclude the necessity of dividing functions in the field of border security into two main directions: defensive and law enforcement. Seeking to justify the subsequent proposals for the creation of separate Border Defense Forces within the Armed Forces of Ukraine, the legislative base was examined, covering the Constitution of Ukraine (1996) as the fundamental, initial regulatory act that establishes the people's will regarding the normative regulation of any areas of social life in the country. Laws of Ukraine related to the State Border Guard Service of Ukraine (2003), the Border Troops of Ukraine (1991), the State Border of Ukraine (1991), and military duty and military service (1992) were also explored. These and other laws of Ukraine, as well as departmental regulatory acts, reveal the features of legal regulation of the SBGSU's activities in both defense and law enforcement spheres. Additionally, works by scholars such as Baranov and Rybachenko (2020), dedicated to studying the peculiarities of implementing the law enforcement function of the SBGSU and combining the main directions of law enforcement activities: ensuring national security and maintaining public order. Additionally, Prytula (2018) has also worked in this direction, considering that the challenges of the time and the provisions of the Law of Ukraine «On National Security of Ukraine» (2018) indicate the need to reconsider the status of the SBGSU as a special-purpose armed formation with law enforcement functions rather than a special-purpose law enforcement agency. This is because today, countering armed aggression, together with other bodies and agencies within the security and defense sector, should be a priority. An interesting study by Balendr (2018), classified the border agencies of European Union (EU) countries and concluded that in EU countries that do not guard the external EU border, the responsible agencies for border protection are the police or border police, as well as the relevant airport authorities. In some EU countries, they are supported by other government bodies, which can be grouped into four categories: the first group consists of border agencies based on the police service (Border Police) - 64% (21 agencies); the second group is border services (similar to SBGSU) - 12% (4 agencies); the third group is coast guards - 15% (5 agencies); and the fourth group is militarized structures - 9% (3 agencies) (Balendr 2018). Scholars such as Levadnyi, Borovyk, Khalymon and Soroka (2022), highlighting the relevance of ensuring professional performance of military tasks within the SBGSU in coordination with units of the Armed Forces of Ukraine, suggest the possibility of creating specialized units within the SBGSU for this purpose.

Without diminishing the scientific contribution of the aforementioned scholars, it is necessary to acknowledge that the issue of compliance with the legal status of the SBGSU within the current legislation (Law of Ukraine, 2003) remains unresolved. Now, considering the war of Russia against Ukraine, the choice between adhering to EU legislation regarding the inadmissibility of using special-purpose armed formations for law enforcement functions or creating

specialized services within the structure of a special-purpose law enforcement agency, on the one hand, and ensuring reliable protection, defense, and security of the state border of Ukraine, on the other hand, is of significant importance for the implementation of a rapid, comprehensive, and effective reform of the border sphere.

The aim of this work is not only to study the history and current state of the legal status of the SBGSU but also to identify the trends of its development.

4. Results and their discussion

4.1. Retrospective of the legal status of the State Guard Border Service of Ukraine

This section of the scientific article directly presents a retrospective analysis and establishes that the affirmation of Ukrainian statehood occurred simultaneously with the establishment of the national border agency, and its formation and development are related to democratic processes, the defense of sovereignty, territorial integrity, democratic constitutional order, and other important national interests against real and potential threats. Therefore, since 1991, the Ukrainian border agency has been an actively functioning entity within the system of ensuring national security and has implemented a significant volume of measures within its mandate as provided by the current legislation.

In the historical retrospective of SBGSU, the following five distinct time periods can be identified: 1991-1993: the revival of the border service in the Ukrainian independent state; 1994-1999: a period of development; 2000-2003: a time of reforms; 2003-2014: further establishment and development; from 2014: strengthening of the military component within the agency's system, adaptation of the existing system to the conditions of a special period, martial law, and active combat operations.

The first period: the revival of the border service in the Ukrainian independent state (1991-1993). During this period, the formation and establishment of the Border Troops of Ukraine (BTU) took place. Urgent issues related to the creation of Ukrainian borders, the development of the legal framework for their functioning (Law of Ukraine, 1991)⁴, staffing, the formation of the organizational structure, the deployment of units throughout the perimeter of the Ukrainian territory, the establishment of new formations, units, and detachments, and the

⁴ The Border Troops of Ukraine (BTU) was a military-operational formation that existed from 1991 to 2003. The main task of the Border Troops was to ensure the inviolability of the state border of Ukraine along the entire perimeter of the country on land, sea, rivers, lakes, and other water bodies, as well as the protection of the exclusive (maritime) economic zone of Ukraine. In its activities, the BTU was governed by the Law of Ukraine 'On the Border Troops of Ukraine' dated November 4, 1991, which became invalid on April 3, 2003.

organization of border control along the borders with Moldova, Belarus, and the Russian Federation were addressed. Efforts to protect the maritime sector and the development of aviation were also undertaken.

In 1991, the operational situation on the state border was influenced by the dissolution of the former Soviet Union, the struggle for political power in the newly created states, economic crisis, and the preservation of the territorial integrity of post-Soviet countries.

In order to protect itself from illegal activities and ensure the effective functioning of the state border security system, the Ukrainian government initiated work on defining borders at the interstate level and creating a border agency, whose work was based on the appropriate legal framework (Law of Ukraine, 1991, 2003)⁵⁶.

Taking into account the new tasks and the need to enhance the operational management of units and formations based on the resolution of the Cabinet of Ministers of Ukraine dated May 4, 1992, No. 221-03 (Kabachynskyi, 2006) and the order of the Chairman of the State Committee for the Protection of the State Border Guard of Ukraine dated May 8, 1992, No. 042 (Romanukha, 2019), regional structural units were established within the BTU – the Northwest (based in Lviv), Southern (based in Odessa), and Southeastern (based in Kharkiv) directorates (in December 1995, they were renamed as directions).

By means of additional personnel, in the same year of 1992, 10 border control detachments (based in Izmail, Berezhne, Mohyliv-Podilskyi, Kotovsk, Lutsk, Sumy, Chernihiv, Kharkiv, Luhansk, Mariupol) were formed and deployed to guard the border. They consisted of 120 border control posts and 119 border crossing points.

Active work on the creation of checkpoints also began in 1992 when the President of Ukraine issued an order «On the State Program for the Development of the Border Crossing Points Network of Ukraine and the corresponding service infrastructure» (1992), which obliged the Cabinet of Ministers of Ukraine to inspect existing border crossing points and develop and approve a corresponding program within three months. The state approach allowed for a significant acceleration in the pace of opening of the checkpoints.

In order to train its own personnel, on December 14, 1992, the BTU Institute was established (Law of Ukraine, 1992)⁷ in Khmelnytskyi, which already in 1993

⁵ The determination of Ukraine's borders at the international level began with the adoption of the Law of Ukraine 'On the State Border of Ukraine' on November 4, 1991.

⁶ The establishment of a border agency, whose operation was based on the relevant legal framework, envisaged a transition from a military structure to a law enforcement one. Therefore, the mentioned Law of Ukraine 'On the Border Troops of Ukraine' became invalid, and instead, the Law of Ukraine 'On the State Border Guard Service of Ukraine' was adopted on April 3, 2003, initiating the trend of transforming the state border agency of Ukraine into a police-type structure.

⁷ The border educational institution began its history on December 14, 1992, when, in

conducted its first graduation of officers. Currently, it is the National Academy of the State Border Guard Service of Ukraine named after Bohdan Khmelnytskyi, the highest military educational institution that provides training, according to state orders, for military specialists of the State Border Guard Service of Ukraine (National Academy of the State Border Guard Service of Ukraine named after Bohdan Khmelnytskyi, 2023).

To train young recruits, section commanders, and junior specialists, three training units were formed, which later changed their status and are located in the following cities of Ukraine:

Velyki Mosty: The State Educational Institution «Canine Training Center of SBGSU» is a state vocational and technical educational institution of the third accreditation level, which provides training, retraining, and professional development related to the implementation of advanced technologies in production or service sectors and the formation of necessary economic and organizational management knowledge. The Training Center provides retraining and professional development programs (State Border Guard Service of Ukraine. Kennel training center (city of Velyki Mosty), 2023);

Cherkasy: The Main Training Center of SBGSU named after Major General Igor Momot is a state vocational and technical educational institution that provides training, retraining, and professional development for the personnel of SBGSU at the educational qualification level of «skilled worker» in various professions (specialties) (State Border Guard Service of Ukraine. The main training center for personnel of the State Border Guard Service of Ukraine named after Major General Ihor Momot (Cherkasy city), 2023);

Sumy: The State Boarding School with Enhanced Military-Physical Training «Cadet Corps» named after Ivan Kharitonenko of SBGSU was created with the aim of providing high-quality preparation of young boys for admission to higher military educational institutions of military formations and law enforcement agencies of Ukraine, as well as providing state assistance in the upbringing of orphaned children, children from large families, and participants in the liquidation of the consequences of the Chernobyl disaster (The State Boarding School with Enhanced Military-Physical Training «Cadet Corps» named after Ivan

accordance with the Cabinet of Ministers of Ukraine Resolution № 700, the Institute of Border Troops of Ukraine was established. On April 15, 1994, the first graduation of border officers took place. On April 12, 1995, the Border Troops Institute of Ukraine was transformed into the Academy of Border Troops of Ukraine, according to the Cabinet of Ministers of Ukraine Resolution № 268. On August 4 of the same year, by the Cabinet of Ministers of Ukraine Resolution № 602, the Academy was named after Bohdan Khmelnytskyi. On April 30, 1999, according to the Decree of the President of Ukraine № 458/99, the academy was granted the status of National. In September 1999, the academy became a collective member of the International Personnel Academy of the European Network of National Information Centers for Academic Recognition and Mobility of the Council of Europe, according to the collective decision.

Kharitonenko of the State Border Guard Service of Ukraine, 2023).

The second period, the period of development (1994-1999), was characterized by the implementation of tasks outlined in the long-term Comprehensive Program for the Development of the State Border of Ukraine (1993) During this period, interstate legal norms (Agreements of the Government of Ukraine, 1996, 1997, 1998)⁸ regarding the state border were improved, the contractual and legal formalization of the state border was carried out, the ideology of border protection was formed and approved. The network of border crossing points was developed, and the management system, the structure of the troops, and their operational and service activities were improved, along with material and technical support.

In the mid-1990s, the overall situation was greatly influenced by the lack of regulated contractual and legal arrangements regarding the crossing of the state border line and its regime with neighboring countries. Therefore, to address these regulatory and legal gaps, the government and border control authorities of Ukraine were actively engaged in intergovernmental activities during this period to conclude relevant agreements (Agreements of the Government of Ukraine, 1996, 1997, 1998).

The existing system of border crossing points did not meet Ukraine's needs for the development of international relations and its integration into the community of European states. Due to their low capacity and underdeveloped service infrastructure, the passage of individuals and vehicles was slowed down, causing inconvenience for those crossing the border.

The third period, the time of reforms (2000-2003), is primarily associated with the preparation for the transformation of BTU into a special law enforcement agency. During this period, further development of the state border of Ukraine and improvement of the operational activities of border units took place. Approaches to organizing the system of border security in Ukraine were reconsidered, and efforts were made to find an optimal structure for border management and protection agencies (Law of Ukraine, 2003)^{9,10}.

⁸ During this period, the legislative process was focused on the formation of intergovernmental agreements containing specific provisions aimed at the development of border regions in certain areas. This primarily includes the transportation of passengers and goods, trade, industrial cooperation, agriculture, environmental protection, education, culture, healthcare, extensive information exchange, and other matters of mutual interest.

⁹ In general, the reform of the Ukrainian border agency from a military structure to a law enforcement body, along with the change in approaches to organizing the entire border protection system, was aimed at aligning with the standards of European Union countries and fully corresponds to Ukraine's strategic course toward integration into the European Union.

¹⁰ During this period, the idea of integrated border management emerges, the essence of which lies in the coordinated efforts of competent state authorities of Ukraine and

After Ukraine gained independence, BTU remained a military structure for a considerable period of time. The existing legislation and organizational structure significantly limited their capabilities to widely apply modern forms and methods of preventing unlawful activities at the state border. It became increasingly challenging to enhance the effectiveness of the service and combat activities of the troops solely through organizational and staffing changes, increased workload on personnel, and conducting military operations. Therefore, considering the situation at hand, the most effective solution to address many issues was seen in the transformation of BTU into a law enforcement agency with appropriate powers.

The normative and legal framework for replacing the military component in the protection of the state border of Ukraine with a law enforcement one was established in the Decree of the President of Ukraine «On the Program of Actions Aimed at Maintaining the Regime of the State Border of Ukraine and the Border Regime, Development of the Border Troops and Customs Authorities of Ukraine for the Period until 2005» (2000).

With the aim of improving the system of protecting national interests at the state border of Ukraine by refining the functions and tasks of the Border Troops of Ukraine (BTU), their development and reform into the State Border Guard Service of Ukraine (SBGSU), the Plan of Key Measures for the Implementation of the Action Program is approved.

The main objectives during the reform of the Border Troops of Ukraine (BTU) included finalizing the contractual and legal framework (Agreements of the Government of Ukraine, 1996, 1997, 1998) of the state border of Ukraine, determining the prospects for the development of BTU, creating conditions for their phased reform, addressing contradictions and deficiencies in the system of protecting national interests at the state border of Ukraine, bringing it up to the level of developed countries, increasing the effectiveness of countering modern threats at the state border in the context of democratic development of the state and its integration into European structures.

The main directions of the reform of the Border Troops of Ukraine (BTU) included: improving the regulatory and legal framework; creating a structure capable of effectively fulfilling tasks related to the protection of national interests at the state border in accordance with the current situation; transitioning to fundamentally new forms of organizing and implementing border security; establishing an effective system of force and resource management through the reorganization of management bodies, units, and divisions of BTU, and the

military formations aimed at creating and maintaining a balance between ensuring an adequate level of border security and preserving the openness of the state border of Ukraine for legitimate cross-border cooperation and the movement of individuals. This idea was later implemented in 2019 through the approval of the Integrated Border Management Strategy for the period up to 2025.

implementation of automated management systems; equipping border units with modern weapons, military equipment, and special tools; developing the system of material and technical support for operational and service activities; improving the system of professional and moral-psychological training of personnel; adjusting and improving the personnel selection and recruitment system.

Significant work was carried out during the period of 2001-2003: a comprehensive set of organizational and practical measures was implemented to transition units and divisions of the Border Troops of Ukraine (BTU) (Legal Framework, 2023) to a new organizational and staffing structure; departmental regulatory acts on the organization of operational and service activities of border units were approved; new training programs for border guards were introduced in educational institutions and training centers for personnel training and retraining. As a result of these intensive efforts, the State Border Guard Service of Ukraine (SBGSU), a law enforcement agency with special designation, was established on August 1, 2003.

The fourth period: further establishment and development (2003-2014). In the early 2000s, the State Border Guard Service of Ukraine (SBGSU) became one of the most reformed military structures in Ukraine (Decree of the President of Ukraine, 2006)¹¹ The reforms were aimed at ensuring proper protection of the state border and aligning with international standards. Therefore, the transformation of the post-Soviet structure, the Border Troops of Ukraine (BTU) (1991) into the SBGSU was one of the most significant reforms. This reform aimed to create an authorized and efficient body capable of ensuring the protection of Ukraine's state border. Additionally, it is important to note the creation of a certain duality in the structure of the border agency: while the SBGSU succeeded the BTU, the Administration of the SBGSU, as the central executive authority implementing state policy in the field of border protection, succeeded the State Committee for the Protection of the State Border of Ukraine and was formed as a result of its reorganization (2003). Taking into account the mentioned features of the structure of the border agency, it is positive that the legislator distinguished between the powers of management and one of its main functions - leadership. Specifically, Article 7 of the Law of Ukraine «On the State Border Guard Service of Ukraine» (2003) states that the central executive authority implementing state

¹¹ In June 2006, the President of Ukraine signed a Decree "On the Development Concept of the State Border Guard Service of Ukraine for the period until 2015," which served as the basis for the implementation of the State Targeted Law Enforcement Program "Arrangement and Reconstruction of the State Border" for the period until 2015. This decree laid the foundations for the establishment of a modern border agency as a law enforcement body, whose subsequent activities were based on the basic standards of the EU in the field of border management. During this period, the SBGSU definitively came under the influence of the Ministry of Internal Affairs of Ukraine and became a part of it.

policy in the field of border protection manages the State Border Guard Service of Ukraine (SBGSU), participates in the development and implementation of general principles of legal regulation and ensuring the inviolability of the state border and the protection of Ukraine's sovereign rights in its exclusive (maritime) economic zone. Furthermore, according to Article 8 of the Law of Ukraine «On the State Border Service of Ukraine» (2003) the leadership of the SBGSU and the activities of the central executive authority implementing state policy in the field of border protection are carried out by the Head of the SBGSU. The Head of the SBGSU bears personal responsibility for the implementation of the tasks entrusted to the SBGSU.

The main tasks of the development of the SBGSU during the fourth period were: improvement of measures for the establishment of the state border; continuation of reform processes in the SBGSU; implementation of tasks outlined in the «Concept for the Development of the State Border Guard Service of Ukraine for the Period until 2015» (2006) and implementation of the State Target Law Enforcement Program «Arrangement and Reconstruction of the State Border» for the period until 2015 (2007).

During this time, a new organizational structure was introduced in the SBGSU, which facilitated the transition to a four-level management system (SBGSU Administration - Regional Management - Border Guard Unit - Border Guard Unit Subdivision). Measures to improve the structure of management bodies and border protection and ensure their alignment with European standards have been implemented (State Border Guard Service of Ukraine. History, 2023).

The fifth period involves strengthening the military component within the agency's system, adapting the existing system to the conditions of a special period, including a state of war and combat operations (from 2014 to the present).

After the Revolution of Dignity (Draft Law of Ukraine, 2020)¹², both the state and all law enforcement agencies, including the border agency in particular, required fundamental changes. The war initiated by Russia against Ukraine, along with other threats to its territorial integrity, independence, and existence, such as the danger of separatism, international terrorism, the intensification of arms and terror smuggling, drug trafficking, illegal migration, as well as the threat of illegal proliferation of weapons of mass destruction and environmentally hazardous substances, necessitated the enhancement of the state border security system.

The situation that unfolded revealed a weak military component, insufficient technical equipment, and inadequate material support for the entities of integrated border management, which hindered their ability to fully respond to

¹² The Revolution of Dignity is a period of political and social upheaval in Ukraine, occurring from November 21, 2013, to February 21, 2014. It was sparked by a mass public protest movement against attempts by the political leadership of Ukraine to abandon the legislatively established course towards European integration and the defense of constitutional principles of democracy, human rights, and freedoms.

emerging threats.

Therefore, during this extremely challenging and crucial period, there is an optimization of the organizational structure of SBGSU and transformation of the border agency. For the first time in years of independence, the authorized strength of SBGSU is increased by 3,000 military personnel.

Accordingly, an active search for new forms of operational and service activities is being conducted, leading to the establishment of specialized units tasked with carrying out special assignments. These units have assumed a prestigious position within the overall structure of the border agency and have become one of the main elements of the new model of border security and defense. With the assistance of foreign partners, a special-purpose unit called «DOZOR» (Tenth Separate Operational Response Unit) is being created (State Border Guard Service of Ukraine. 10 mobile border detachment (Kyiv city), 2023), which is on par with similar units of advanced countries in terms of training level. The border operational and combat units are being supplemented with entirely new military specialties for the border agency (specialists in assault groups, crews of armored vehicles, artillery and anti-tank weapon teams, anti-aircraft units, sappers, operators of anti-aircraft missile systems), and training and equipping these military personnel with appropriate weaponry are being organized.

Alongside the strengthening of the military component, a reform is initiated aimed at achieving a European level of public service, transitioning to a new system of law enforcement agencies that ensure the unconditional respect for human rights, the rule of law, and the effective functioning of state institutions. This reform also entails the establishment of reliable internal anti-corruption mechanisms.

During the fifth period, cooperation with neighboring law enforcement agencies and international institutions was effectively developed. A number of international technical assistance projects were successfully implemented. Participation in international operations and training was undertaken. Joint border patrolling and control at border crossings, risk analysis, and operational coordination were improved. As a result, criminal networks were exposed, smuggling channels, illegal migration, drug trafficking, and human trafficking were disrupted.

The enhancement of border security was facilitated by amendments to border-related laws, particularly regarding granting border security agencies powers to conduct operational and investigative activities (1992) as well as allocating permanent land plots to SBGSU for engineering arrangements and maintenance of the state border.

An extremely important step in implementing the state policy on border security was the adoption of the Integrated Border Management Strategy for the period up to 2025 (2019) and its Implementation Plan for 2022 (2019). The purpose of the Strategy is to ensure the development of external economic

relations and international trade, facilitate the movement of individuals and goods across the state border, and ensure its proper protection. The Strategy aims to introduce effective cooperation and coordination mechanisms at the intra-agency, inter-agency, international, and private sector levels. Among the border management issues identified are those related to material and technical support, border control, personnel work, and procedural matters concerning the return of detained individuals (illegal migrants) to the neighboring side. However, the Strategy does not explicitly mention the need to address the defense of the state border by the efforts and means of SBGSU.

Thus, we can conclude that the retrospective development of SBGSU's powers occurred simultaneously in two directions: law enforcement and defense. This is also indicated by a number of legislative provisions in the field of law enforcement and military service, namely Article 6 of the Law of Ukraine «On the State Border Guard Service of Ukraine» (2003), which designates SBGSU as a law enforcement agency of special purpose; Article 14 of the Law of Ukraine «On the State Border Guard Service of Ukraine» (2003), which provides for the inclusion of military personnel and employees in the personnel of SBGSU. For example, the recruitment and military service are carried out based on the Law of Ukraine «On Military Duty and Military Service» (1992). In addition, SBGSU has authority in the field of intelligence (2020) and counterintelligence activities (2002), which do not have a law enforcement component.

4.2. International experience of determination of functions of border security bodies

While studying the international experience in defining the functions of border security agencies, it is difficult to cover all countries worldwide. Therefore, during the research, the focus was placed on the peculiarities of border protection by countries whose border agencies have typical authorities for such structures. Agencies from a number of countries were classified based on their fundamental functions, scale, autonomy of operations, geographic features of protection (land or maritime sector), and additional powers.

Considering that excessive differentiation can lead to confusion, an attempt was made to create a concise questionnaire based on the four main criteria mentioned above. These criteria are adapted to the majority of countries worldwide (in this study, we explored a specific subset: 22 countries):

1. According to fundamental functions, in the areas and quantity (Table 1): defense; law enforcement. This aligns with the theoretical and legal foundations for ensuring fundamental human rights and freedoms, taking into account the requirements of international law regarding the inadmissibility of combining defense (military) functions with law enforcement characteristics.

№ i/o	Countries	State bodies in the field of border security		
		Spheres		Number
		Defense	Law Enforcement	
1	Federal government of Brazil	Brazilian Navy	Department of Federal Police	2
2	Canada		Ministry of Transportation	4
			Royal Canadian Mounted Police	
			Border Services Agency	
			Ministry of National Security	
3	Commonwealth Australia	Maritime Border Command	Australian Border Force	3
		Australian Defense Force		
		Australian Border Force		
4	Italian Republic		Financial Guard of Italy	1
5	Federal Republic of Germany		Federal Border Guard	1
6	France Republic		Central Directorate of the Republican Security Companies	2
			Coastguard Service of the French Customs	
7	Kingdom of Netherlands		Royal Netherlands Marechaussee	2
			Netherlands Coastguard	
8	Kingdom of Norway	Norwegian Coast Guard	Norwegian Border Commissioner	2
9	Kingdom of Spain	Civil Guard	Civil Guard	1
10	Kingdom of Sweden		Swedish Customs Service	2
			Swedish Coast Guard	
11	Portuguese Republic	Portuguese Navy	National Republican Guard	2

12	Republic of Finland	Finnish Border Guard	Finnish Border Guard	2
		Finnish Coast Guard		
13	Republic of Poland		Polish Border Guard	1
14	Republic of Latvia		State Border Guard	1
15	Republic of Lithuania		State Border Guard Service	1
16	Republic of Turkey	Coast Guard Command	Coast Guard Command	2
			Gendarmerie General Command	
17	Romania		Romanian Border Police	1
18	Slovak Republic		Border and Foreign Police	1
19	State of Japan		Japan Coast Guard	1
20	Swiss Confederation		Swiss Border Guard	1
21	Ukraine	State Border Guard Service of Ukraine		1
22	United States	United States Coast Guard	United States Customs and Border Protection	2

TABLE 1

2. By the degree of autonomy in activities (Table 2): separate state body responsible for ensuring border security; state body that is part of a system of bodies (agencies) related by fundamental functions; state body that, among other things, performs functions to ensure border security.

№ i/o	Countries	State bodies in the field of border security		
		Autonomy		
		Separate	Part of the system	Additional functions
1	Federal government of Brazil			Brazilian Navy
				Department of Federal Police

2	Canada	Ministry of Transportation		Ministry of Transportation
		Royal Canadian Mounted Police		Royal Canadian Mounted Police
		Border Services Agency		
		Ministry of National Security		Ministry of National Security
3	Commonwealth Australia	Maritime Border Command		Australian Defense Force
		Australian Defense Force		
		Australian Border Force		
4	Italian Republic			Financial Guard of Italy
5	Federal Republic of Germany		Federal Border Guard	
6	France Republic		Central Directorate of the Republican Security Companies	
			Coastguard Service of the French Customs	
7	Kingdom of Netherlands		Royal Netherlands Marechaussee	
			Netherlands Coastguard	
8	Kingdom of Norway		Norwegian Border Commissioner	
			Norwegian Coast Guard	
9	Kingdom of Spain		Civil Guard	

10	Kingdom of Sweden		Swedish Customs Service	
			Swedish Coast Guard	
11	Portuguese Republic			Portuguese Navy
				National Republican Guard
12	Republic of Finland		Finnish Border Guard	
			Finnish Coast Guard	
13	Republic of Poland		Polish Border Guard	
14	Republic of Latvia		State Border Guard	
15	Republic of Lithuania		State Border Guard Service	
16	Republic of Turkey		Coast Guard Command	
			Gendarmerie General Command	
17	Romania		Romanian Border Police	
18	Slovak Republic		Border and Foreign Police	
19	State of Japan	Japan Coast Guard		
20	Swiss Confederation		Swiss Border Guard	
21	Ukraine		State Border Guard Service of Ukraine	
22	United States		United States Coast Guard	
			United States Customs and Border Protection	

TABLE 2

3. By geographical protection features (Table 3): land section of the state border (border service); sea section of the state border (coast guard).

№ i/o	Countries	State bodies in the field of border security	
		Geography	
		Land	Sea
1	Federal government of Brazil	Department of Federal Police	Brazilian Navy
			Department of Federal Police
2	Canada	Border Services Agency	Ministry of Transportation
		Royal Canadian Mounted Police	
		Ministry of National Security	
3	Commonwealth Australia		Maritime Border Command
			Australian Defense Force
			Australian Border Force
4	Italian Republic	Financial Guard of Italy	
5	Federal Republic of Germany	Federal Border Guard	
6	France Republic	Central Directorate of the Republican Security Companies	Coastguard Service of the French Customs
7	Kingdom of Netherlands	Royal Netherlands Marechaussee	Netherlands Coastguard
8	Kingdom of Norway	Norwegian Border Commissioner	Norwegian Coast Guard
9	Kingdom of Spain	Civil Guard	
10	Kingdom of Sweden	Swedish Customs Service	Swedish Coast Guard
11	Portuguese Republic	Portuguese Navy	National Republican Guard
12	Republic of Finland	Finnish Border Guard	Finnish Coast Guard
13	Republic of Poland	Polish Border Guard	
14	Republic of Latvia	State Border Guard	

15	Republic of Lithuania	State Border Guard Service	
16	Republic of Turkey	Gendarmerie General Command	Coast Guard Command
17	Romania	Romanian Border Police	
18	Slovak Republic	Border and Foreign Police	
19	State of Japan		Japan Coast Guard
20	Swiss Confederation	Swiss Border Guard	
21	Ukraine	State Border Guard Service of Ukraine	
22	United States	United States Customs and Border Protection	United States Coast Guard

TABLE 3

4. By additional powers in areas (Table 4): pre-trial investigation; intelligence activities; counterintelligence activities.

№ i/o	Countries	State bodies in the field of border security		
		Functions		
		Pre-trial investigation	Intelligence	Counterintelligence
1	Federal government of Brazil	Department of Federal Police	Brazilian Navy	
2	Canada	Royal Canadian Mounted Police	Ministry of National Security	
		Border Services Agency		
3	Commonwealth Australia	Australian Border Force	Maritime Border Command	
			Australian Defense Force	
4	Italian Republic	Financial Guard of Italy		
5	Federal Republic of Germany	Federal Border Guard		

6	France Republic	Central Directorate of the Republican Security Companies		
		Coastguard Service of the French Customs		
7	Kingdom of Netherlands	Royal Netherlands Marechaussee		
		Netherlands Coastguard		
8	Kingdom of Norway	Norwegian Border Commissioner	Norwegian Coast Guard	
9	Kingdom of Spain	Civil Guard		
10	Kingdom of Sweden	Swedish Coast Guard		
		Swedish Coast Guard		
11	Portuguese Republic	National Republican Guard	Portuguese Navy	
12	Republic of Finland	Finnish Border Guard		
		Finnish Coast Guard		
13	Republic of Poland	Polish Border Guard		
14	Republic of Latvia	State Border Guard		
15	Republic of Lithuania	State Border Guard Service		
16	Republic of Turkey	Coast Guard Command		
		Gendarmerie General Command		
17	Romania	Romanian Border Police		
18	Slovak Republic	Border and Foreign Police		
19	State of Japan	Japan Coast Guard		
20	Swiss Confederation	Swiss Border Guard		
21	Ukraine		State Border Guard Service of Ukraine	

22	United States	United States Customs and Border Protection	United States Coast Guard	
----	---------------	---	------------------------------	--

TABLE 4

The legal status of border services in different countries may vary depending on specific laws and regulations governing their activities. However, the experience of leading democracies in the world suggests that an effective border security system can only be achieved through cooperation and collaboration among all relevant agencies. For example, in the United States, several government agencies are responsible for ensuring border security: the United States Customs and Border Protection (CBP) for land borders and the United States Coast Guard (CG) for maritime borders. Each agency has its own functions and powers, but together they create a comprehensive security system along the borders of the USA. Both of these agencies are part of the United States Department of Homeland Security (An official website of the U.S. Department of Homeland Security, 2002), and they are authorized to perform law enforcement functions at the national borders. However, they do not have heavy weaponry at their disposal to repel large-scale enemy invasions.

The United States Coast Guard operates based on The U.S. Coast Guard Strategy for Homeland Security (United States Coast Guard, 2002) and The National Security Act of 1947 (Ref book – 1947 National Security, 2002).

With more than 60,000 employees, CBP, is one of the world’s largest law enforcement organizations and is charged with keeping terrorists and their weapons out of the U.S. while facilitating lawful international travel and trade (U.S. Customs and Border Protection, 2023).

As the United States’ first unified border entity, CBP takes a comprehensive approach to border management and control, combining customs, immigration, border security, and agricultural protection into one coordinated and supportive activity (U.S. Customs and Border Protection, 2023).

United States Coast Guard is a powerful militarized structure that is tasked with the following objectives: ensuring the security of maritime borders, coastal maritime communications, and approaches to ports; preventing acts of terrorism in ports and on maritime routes; mitigating risks to infrastructure objects and facilities of bases and ports from potential attacks by international criminal groups; ensuring the functioning of the water transportation system (both international and domestic); minimizing damages during the cleanup of environmental incidents in the maritime environment. United States Coast Guard is integrated into the country’s intelligence community, therefore, relevant coastal security services are involved in the implementation of the National Foreign Intelligence Program.

In general, this attests to the significant importance of coastal security for the

military and political leadership of the United States in ensuring the country's defense and security. It involves the mobilization of its forces and resources to combat terrorism and carry out other tasks.

In Canada, the organization responsible for maritime security significantly differs from other countries. Here, it is a civilian organization tasked with a relatively limited scope of duties and lacks law enforcement functions (it is not responsible for enforcing laws at sea). Additionally, the following main authorities have been designated with border-related responsibilities: the Ministry of Transportation for maritime security, the Royal Canadian Mounted Police for counter-terrorism operations, the border services agency for customs and immigration policies, and the Ministry of National Security for counter-terrorism operations at sea (Canada. ca. News, 2023).

The Australian Border Force (ABF) plays an important role at airports and seaports in protecting Australia's borders against illegal migration, fraud and threats to national security. ABF employees work in locations where international air and sea cargo, including international mail, is processed after import or before export. They have the following law enforcement powers: to check the travel documents of persons crossing the state border and their luggage; inspect aircraft, ships and small vessels for the presence of drugs, tobacco (excise goods), other prohibited goods, as well as images; to confiscate goods that were illegally imported through the customs border; detect undeclared currency; collect duties and taxes on imported goods such as alcohol and cigarettes; process tax refund applications. In addition, the ABF has counter-terrorism units that increase the ability to counter threats to national security. These units carry out: identification of persons who pose a threat to national security and their referral to interacting units of the federal police; detention and/or entry ban, to fulfill orders of interacting state bodies; detection and removal of prohibited items or materials of an extremist nature; collection of information of intelligence importance for national efforts in the fight against terrorism (Australian Border Force, 2023).

Coastguard functions in Australia are carried out by the Maritime Border Command (MBC) supported by the ABF and the Australian Defense Force (ADF). To combat security threats to civilian shipping within Australian maritime space, the MBC uses surveillance and special capabilities including the Australian Maritime Identification System. This enables the detection, risk assessment and tracking of vessels operating in or approaching Australia's maritime zones. Also, MBC participates in the military-law enforcement operation «Sovereign Borders», during which interdepartmental measures aimed at identifying and intercepting vessels transporting illegal migrants are carried out (Australian Border Force, 2023).

The same position is taken in Japan, favoring a single agency responsible for ensuring the security of its maritime spaces and maritime security. It has a broader range of functions than the Canadian Coast Guard.

The conducted analysis confirms that countries with maritime borders pay sufficient attention to their protection and security. This is achieved through the establishment of independent structures whose competence includes ensuring maritime security. Additionally, there is comprehensive legal regulation of their activities, which is reflected in the assignment of functions related to the protection of national interests in maritime and other spaces.

To separate the experience of the European Union (EU) and countries that are not part of the EU regarding different legal systems of border protection is quite challenging due to the diversity of approaches and contexts. However, for a general understanding, this topic can be divided into two subsections:

1. The legal system for border protection in the European Union (EU) involves a common policy for the control and safeguarding of external borders, regulated by various legal acts and agreements. One key element is the Schengen Area, where certain EU countries have eliminated controls at their internal borders. The protection of EU external borders is carried out through Frontex - the European Border and Coast Guard Agency. Western EU countries, in particular, may share common approaches to migration and combating illegal movement of persons.
2. The legal system for border protection in countries that are not part of the European Union (EU) can vary depending on their geographical location, political conditions, economic factors, and historical circumstances. Each country establishes its own laws and approaches to migration and border control. For instance, countries not part of the Schengen Area may enforce stricter customs and immigration rules.

In each of the subsections, aspects such as legislation, approaches to administrative control, the use of technology for ensuring border security, and collaboration with other countries or regional blocs in the field of border protection can be considered.

The European regulatory framework for border protection encompasses a series of legal acts, among which the Treaty on the Functioning of the European Union (Title V: Area of Freedom, Security and Justice) holds particular significance (Consolidated version of the Treaty on the Functioning of the European Union, 2020). Additionally, the Regulation (EU) 2019/1896 of the European Parliament and of the Council dated November 13, 2019, regarding European Border and Coast Guard, is of paramount importance. This regulation repeals Regulations (EU) № 1052/2013 and (EU) 2016/1624 (Regulation (EU) 2019/1896 of the European Parliament, 2019). These legal acts establish important standards and provisions to ensure effective and uniform control and protection of borders within the EU.

It is essential to separately examine the provisions of the Treaty on the Functioning of the European Union (Title V: Area of Freedom, Security and

Justice), specifically those related to border control and security (Consolidated version of the Treaty on the Functioning of the European Union, 2020).

The Consolidated version of the Treaty on the Functioning of the European Union for the year 2020, among other things, contains provisions regulating specific aspects related to border control and security:

- Freedom: The treaty is aimed at ensuring the freedom of movement of individuals within the EU. It establishes the principle of free movement for EU citizens and creates a legal basis for removing restrictions at the borders between member states.
- Security: It includes provisions regulating the coordination of measures to ensure security at the borders of the EU. This encompasses cooperation in the areas of customs control, immigration policy, and combating transborder crime.
- Justice: It defines the framework for cooperation in the field of justice among member states. This includes interaction in civil and criminal law matters, as well as joint actions regarding human rights and the fight against crime.

The changes in 2020 take into account current challenges such as mass migrations and the growing terrorist threat, and enhance mechanisms of cooperation and coordination in the field of border security. These provisions are aimed at creating a unified space where citizens can move freely, and authorities work together to ensure security and administer justice in a united European society.

Regarding Regulation (EU) 2019/1896 of the European Parliament and of the Council dated November 13, 2019, concerning European Border and Coast Guard, it is important to note that this regulation establishes fundamental rules and procedures for the organization of the EU border security functions. It came into effect on December 4, 2019, and repeals Regulations (EU) No 1052/2013 and (EU) 2016/1624 (Regulation (EU) 2019/1896 of the European Parliament, 2019).

Regulation (EU) No 1052/2013 establishing the European Border Surveillance System (EUROSUR), provides for “a common framework for the exchange of information and for the cooperation between Member States and Frontex in order to improve situational awareness and to increase reaction capability at the external borders of the Member States of the Union (‘external borders’) for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants (‘EUROSUR)”. The Eurosur Regulation has been repealed and replaced by Regulation (EU) 2019/1896, which carries revised provisions on EUROSUR (FRONTEX, 2023).

Regulation (EU) 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex also introduced changes to the mandate of the agency, namely in terms of what concerns sea operations coordinated by Frontex. This Regulation was fully

integrated and referred to in Regulation (EU) 2016/1624 and now in Regulation (EU) 2019/1896 (FRONTEX, 2023).

Other relevant instruments are Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) and Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, also referred to in Regulation (EU) 2019/1896 (FRONTEX, 2023).

While exploring the powers of border agencies in EU countries, it was established that in Germany, the functions of border control are performed by the Federal Border Guard (Hinweis zum Datenschutz, 2023) and the Federal Agency for the Recognition of Foreign Refugees (Federal Office for Migration and Refugees, 2023). The Federal Border Guard was established by the Federal Border Guard Act on March 16, 1951, under which it is a law enforcement agency of federal significance and is directly subordinate to the Federal Minister of the Interior. Its employees are considered civil servants rather than military personnel. The legal basis for its activities is provided by Article 73 of the German Basic Law, which grants the Federation exclusive legislative authority in matters of border protection, and Article 87, which allows for the creation of specialized border agencies.

The responsibilities of the Federal Border Guard (FGI) according to Sections 2-13 of the «Federal Border Guard Law» include: 1. Document checks of individuals crossing the German border, as well as suspicious persons in border areas, airports, and major train stations. 2. Preparation and review of materials necessary for identifying individuals and entering their data into the registration file. 3. Entering data on criminals (both German and foreign) into Germany's police information system for the purpose of their search and arrest, as well as conducting other police measures. 4. Control over the restriction of residency rights. 5. Arrest of foreign nationals in the event of them committing a crime. 6. Deportation of foreigners subject to expulsion from the country.

In Italy, the functions of border control are carried out by the Financial Guard of Italy (FGI). By legislative decree dated March 19, 2001 (Financial Guard of Italy, 2023) the FGI was assigned control over the country's land borders and predominant control over the maritime borders. A legislative decree dated August 19, 2016 (Gazzetta Ufficiale. Della Repubblica Italiana, 2023) expanded the FGI's activities at sea, transferring certain powers from the maritime units of the State Police and the military naval units of the Carabinieri. The resources of these structures were placed under the command of the Maritime Service of the FGI.

In addition to that, FGI currently performs functions related to tax, customs, and border authorities, carrying out law enforcement functions in the field of finance. Ensuring tax compliance and combating smuggling can be identified as the main functions of FGI.

The specialized units of FGI to some extent operate autonomously. However, in practice, the coordination with the relevant police structures in carrying out operational and investigative measures to combat economic crimes is characterized by subordination to them, as in this case, FGI officers exercise their police function. In other words, there is a dual subordination within FGI – to the Minister of Internal Affairs and the Minister of Economy and Finance.

Furthermore, the provisions of Article 11 of the Consolidated Act of Provisions concerning immigration and the condition of third-country nationals define important aspects of immigration policy management and border control. The key provisions of this article can be summarized as follows (Consolidated Act of Provisions concerning immigration and the condition of third country nationals, 1998):

1. Plan of Measures for Border Control:

The Minister of Internal Affairs and the Minister of Foreign Affairs develop a comprehensive plan of measures to strengthen and enhance border control, including the automation of procedures.

The measures must comply with international agreements and standards for the protection of personal data.

2. Coordination of Border Control:

The Minister of Internal Affairs coordinates measures for the unified coordination of control at both maritime and land borders of Italy.

Facilitating specific coordination measures between Italian and European immigration control authorities in accordance with the Schengen agreements.

3. Maritime Control:

The powers of the Minister of Internal Affairs are defined regarding the restriction or prohibition of entry of vessels into territorial waters in various situations, including violations of immigration laws and other circumstances.

4. Cooperation and Initiatives:

The Ministries of Internal Affairs and Foreign Affairs promote collaboration with other countries to combat illegal immigration, including the transfer of assets and equipment.

5. Programs of Extraordinary Measures:

A program is being prepared for the acquisition of technical and material-technical systems for border control and support of preventive policies against illegal immigration.

6. Services for Foreigners: Services for Foreigners:

Providing services at border points for foreigners who apply for asylum or intend to enter for an extended period.

This article defines important mechanisms for immigration management and border control, particularly regarding the coordination of measures at sea and on land, collaboration with other countries, and the protection of borders against illegal immigration.

Also, within the framework of the Law of September 30, 1993, Section 388, a procedure for the ratification and implementation of a series of international documents by the Government of the Italian Republic was established. In particular, Italy ratified the protocol regarding its accession to the Schengen Agreement, concluded in 1985 among the countries of the Benelux Economic Union, the Federal Republic of Germany, and the French Republic. Additionally, the Agreement on Accession to the Convention of 1990 on the application of the aforementioned Schengen Agreement was ratified. This process involved the annexation of two unilateral statements from Italy and France, as well as conventions with the corresponding final act and other related documents. All these documents were signed in Paris on November 27, 1990 (Law of September 30, 1993, item 388).

This legal act attests to Italy's strategic direction towards establishing common standards and ensuring freedom of movement within the framework of the Schengen Agreement. The ratification and accession of Italy to these international agreements in 1990 reflect not only a significant milestone in the country's history but also a substantial contribution to the creation of a unified zone of security and freedom of movement in Europe.

In Poland, the border service is an important component of the Polish national security system and functions as a fully professional police force. The Border Guard of the Republic of Poland was established in accordance with the Polish Law on the Border Guard (Wolters Kluwer. *Straz Graniczna*, 2023), with reorganization starting on May 16, 1991, through the dissolution of the Border Protection Corps. Its main tasks include the protection of the state border and border control. According to the Polish Law on the Protection of the State Border, the protection of the land and maritime borders and the control of border traffic are entrusted to the Minister of Internal Affairs, while the protection of the state border in the airspace of the Republic of Poland falls under the responsibility of the Minister of National Defense. The tasks assigned to the Minister of Internal Affairs are carried out by the Chief Commander of the Border Guard. The tasks assigned to the Minister of National Defense in the field of protecting the state border in the airspace of the Republic of Poland are executed by the Commander of the Air Force in coordination with the Commander of the Naval Forces and the Commander of the Land Forces of the Polish Armed Forces.

In Slovakia, the border service is also under the jurisdiction of the Ministry of Interior, and its activities are regulated by the Border Protection Act (Ministerstvo Vnitra Slovenskej Republiky, 2023). The responsibilities of Slovak border guards include document and luggage checks of passengers, control of vehicle movement across the state border, as well as ensuring border security.

Having examined the functions of border agencies in EU countries, Balendr (2018) notes that in most cases, the responsibility for border protection and border control in EU countries lies with law enforcement agencies operating

within the police force. In very few countries, such as Malta (and to some extent Spain), the armed forces are responsible for maritime border control. Several EU countries have specialized bodies or agencies (border services) that specifically deal with border-related issues outside the competence of the police services. This applies only to Finland, Latvia, Lithuania, the Netherlands, Poland, and Switzerland, where in some cases, border guards also have policing-related powers. Furthermore, national services responsible for external border control often fall under different ministries, which in most countries are the Ministries of Interior, while in others, they also include the Ministry of Defense (France, Italy, Norway, Portugal, Spain, Sweden, and the Netherlands).

International experience in the protection of state borders in European countries demonstrates the necessity of clearly defined priorities and corresponding strategies for the development of mechanisms for border protection and defense. Over a significant period of time, international cooperation in this field has been formed and actively implemented. Key participants in this process, in addition to the governing bodies of the European Union, are the border institutions of EU member states that share a common border. In this case, they are guided by bilateral and multilateral agreements on cooperation and mutual assistance in border issues, as well as international documents related to border security.

As part of these initiatives, the European Border and Coast Guard Agency (Frontex) was established in 2004 (Frontex. Prerequisites, 2023), to assist EU member states and associated countries in the Schengen Area in protecting the external borders of the EU's free movement zone. As an EU agency, Frontex is funded through the EU budget and contributions from associated Schengen countries. By 2020, the agency had around 1,000 officials who were seconded from member states and returned to their national services upon completing their mandate at Frontex.

For Ukraine, its State Border Guard Service (SBGSU) considers the activation of cooperation with supranational structures and border institutions of neighboring countries as crucial. This applies specifically to Poland, Slovakia, Hungary, Romania, and Turkey. However, compared to these countries, Ukraine faces a much more complex situation on its borders. The ongoing war with Russia in the eastern part of the country continuously generates new threats to national security and territorial integrity. Additionally, Ukraine serves as a transit country for migrants, leading to illegal migration and other border violations.

Analysis has also shown that the border services of the mentioned countries generally do not have obligations to participate in combat operations like the regular military units. Their activities are focused on ensuring border security, controlling the movement of people, goods, and transport across the state border, combating crime, and preventing illegal border crossings. In contrast, due to the war with Russia, the SBGSU in Ukraine is attempting to perform defense functions similar to those carried out by the regular military units of the Armed Forces of

Ukraine. This is because border guards are often the first line of defense against armed infiltrations by terrorist groups and Russian forces onto Ukrainian territory. Therefore, the SBGSU has a controversial status, as it is both a law enforcement agency with a special mandate responsible for border control and protection, and it also participates in the defense of national security and territorial integrity.

5. Conclusions

This scientific article examines the peculiarities of legal differentiation in the border sphere in Ukraine, the legislative and regulatory acts that govern it, as well as the international experience in defining the functions of border security agencies.

Based on the research, it has been established that the State Border Guard Service of Ukraine (SBGSU) plays a crucial role in ensuring national security and protecting the state borders. However, due to fundamental differences in functions and tasks performed by this agency in different sections of Ukraine's state border, as well as due to Russian aggression, there is a need for legal differentiation in the border sphere. Therefore, based on historical realities of SBGSU's mandate and drawing on international experience in border security and defense in the face of unlawful and military threats, we propose to differentiate the mentioned powers in the following manner: a) On the western section of Ukraine's state border, the structure of SBGSU within the Ministry of Internal Affairs of Ukraine should remain unchanged. b) Along the front line, on the eastern and southern sections of Ukraine's state border, a military formation called the «Border Defense Forces» should be established, which would be part of the Armed Forces of Ukraine. c) It is necessary to promptly deploy the «Border Defense Forces» on the northern section of Ukraine's state border in the event of a threat of attack from the territory of the Republic of Belarus. This approach will allow for the division of respective functions and tasks between these state structures in a way that promotes the increased efficiency of border security, defense, and protection of Ukraine's state border through their distinctive specialization.

The State Border Guard Service of Ukraine has been expanding its primary functions and powers over the years, inherited from the Border Troops of Ukraine, which may negatively affect the quality of professional training and competence of its personnel. Therefore, arguments arise that shape the idea of creating two separate state structures in the border sphere. One of them is the need to enhance the effectiveness of ensuring the security of the state border of Ukraine. The other is the need to maintain military readiness. If the Border Defense Forces are established, they can be better prepared to respond to military threats at the border than a state agency with law enforcement functions.

In light of the above, the State Border Guard Service of Ukraine (SBGSU) has both law enforcement and military functions, and its personnel need to be provided with professional training in combating crime as well as military training.

However, if these functions are divided between two separate structures, each of them can focus on its core tasks and ensure a high level of professional training for its personnel.

Furthermore, the creation of separate Border Defense Forces that are part of the Armed Forces of Ukraine can have a positive impact on the development of military infrastructure in border regions. This can ensure a more effective defense of the state border and help preserve the territorial integrity of the country in times of heightened conflict with Russia.

Furthermore, the creation of Border Defense Forces would allow for an increase in the quantity of military equipment and specialized weaponry used to ensure the security of Ukraine's state border. Military formations typically have greater access to military technology and resources, as well as specialized training, enabling them to more effectively defend the border and fulfill national and state security objectives in the border regions.

Therefore, it can be concluded that dividing the State Border Guard Service into two parts, including the creation of Border Defense Forces, can help improve the effectiveness of ensuring the security of the state border and achieve a higher level of national and state security in the border regions. Additionally, it would provide greater access to military equipment and resources for border defense purposes.

Bibliography

AGREEMENT BETWEEN THE GOVERNMENT OF UKRAINE AND THE GOVERNMENT OF THE REPUBLIC OF POLAND About Mutual Visa Exemption. 1996. Available online. In: https://zakon.rada.gov.ua/laws/show/616_154#Text. Consultation date: 16/11/2023.

AGREEMENT BETWEEN THE GOVERNMENT OF UKRAINE AND THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA About Cooperation in the Border Areas of Ukraine and Administrative-Territorial Units of the Republic of Moldova. 1997. Available online. In: https://zakon.rada.gov.ua/laws/show/498_026#Text. Consultation date: 16/11/2023.

AGREEMENT About Neighborly Relations and Cooperation between Ukraine and Romania. 1997. Available online. In: https://zakon.rada.gov.ua/laws/show/642_003. Consultation date: 16/11/2023.

AGREEMENT BETWEEN THE CABINET OF MINISTERS OF UKRAINE AND THE GOVERNMENT OF THE REPUBLIC OF UZBEKISTAN About cooperation in the field of border protection. 1998. Available online. In: https://zakon.rada.gov.ua/laws/show/860_113#Text. Consultation date: 16/11/2023.

AN OFFICIAL WEBSITE OF THE U.S. DEPARTMENT OF HOMELAND SECURITY. 2023. Available online. In: <https://www.dhs.gov>. Consultation date: 28/04/2023.

- AUSTRALIAN BORDER FORCE. 2023. Available online. In: <https://www.abf.gov.au>. Consultation date: 28/04/2023.
- BALENDR, Andrii. 2018. CLASSIFICATION OF BORDER OFFICES OF COUNTRIES OF THE EUROPEAN UNION BY TYPE OF PERSONNEL TRAINING. Military education: a collection of scientific works of the National University of Defense of Ukraine named after Ivan Chernyakhovsky. Issue 2 (38). Pages 28-42. ISSN 2617-1783 (print). Kyiv, Ukraine. DOI: <https://doi.org/10.33099/2617-1783/2018-2/28-42>.
- BARANOV, Serhii and RYBACHENKO, Serhii. 2020. FEATURES OF THE IMPLEMENTATION OF THE LAW ENFORCEMENT FUNCTION STATE BORDER GUARD SERVICE OF UKRAINE IN MODERN CONDITIONS. Scientific Bulletin of the International Humanitarian University. Series : Jurisprudents. Issue 44. Pages 8-11. ISSN 2307-1745. Odesa, Ukraine. DOI: <https://doi.org/10.32841/2307-1745.2020.44.2>.
- CANADA.CA. News. 2023. Available online. In: http://www.pcobcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat_e.pdf. Consultation date: 28/04/2023.
- CONSTITUTION OF UKRAINE. 1996. June 18. Available online. In: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>. Consultation date: 16/11/2023.
- DECREE OF THE PRESIDENT OF UKRAINE. 1993. Decree of December 16, № 596/1993. About the Comprehensive Program for the Development of the State Border of Ukraine. Available online. In: <https://zakon.rada.gov.ua/laws/show/596/93#Text>. Consultation date: 28/04/2023.
- DECREE OF THE PRESIDENT OF UKRAINE. 2000. Decree of November 16, № 1241/2000. About the Program of actions aimed at maintaining the regime of the state border of Ukraine and the border regime, the development of the Border Troops of Ukraine and the customs authorities of Ukraine, for the period until 2005. Available online. In: <https://zakon.rada.gov.ua/laws/show/1241/2000#Text>. Consultation date: 28/04/2023.
- DECREE OF THE PRESIDENT OF UKRAINE. 2003. Decree of July 31, № 772/2003. On the reorganization of the State Committee for the Protection of the State Border of Ukraine. Available online. In: <https://zakon.rada.gov.ua/laws/show/772/2003#Text>. Consultation date: 28/04/2023.
- DECREE OF THE PRESIDENT OF UKRAINE. 2006. Decree of June 19, № 546/2006. About the Development Concept of the State Border Service of Ukraine for the period until 2015. Available online. In: <https://zakon.rada.gov.ua/laws/show/546/2006#Text>. Consultation date: 28/04/2023.
- DRAFT LAW OF UKRAINE. 2020. Draft Law of November 11, № 4363. About participants of the Revolution of Dignity and families of the Heroes of the Heavenly Hundred. Available online. In: <https://w1.c1.rada.gov.ua/pls/zweb2/>

- webproc4_1?pf3511=70411. Consultation date: 16/11/2023.
- FEDERAL OFFICE FOR MIGRATION AND REFUGEES. 2023. Available online. In: https://www.bamf.de/EN/Startseite/startseite_node.html. Consultation date: 28/04/2023.
- FINANCIAL GUARD OF ITALY. 2023. Available online. In: <https://www.gdf.gov.it>. Consultation date: 28/04/2023.
- FRONTEX. European Border and Coast Guard Agency. 2023. Available online. In: <https://frontex.europa.eu>. Consultation date: 28/04/2023.
- FRONTEX. Prerequisites. 2023. Available online. In: <https://frontex.europa.eu/language/it/>. Consultation date: 28/04/2023.
- GAZZETTA UFFICIALE. Della Repubblica Italiana. 2023. Available online. In: <https://www.gazzettaufficiale.it/eli/id/2016/09/12/16G00193/sg>. Consultation date: 28/04/2023.
- HINWEIS ZUM DATENSCHUTZ. 2023. Available online. In: <https://www.bmi.bund.de/SharedDocs/behoerden/DE/bpol.html>. Consultation date: 28/04/2023.
- KABACHYNSKYI, Mykola. 2006. Formation and development of border structures on the southern part of the state border of Ukraine in 1991-2003. Scientific notes of Vinnytsia State Pedagogical University named after Mykhailo Kotsyubynskiy. Series: History. Issue 10. Pages 189-194. ISSN 2411-2143 (Print). ISSN 2709-2453 (Online). Vinnytsia, Ukraine. Available online. In: http://nbuv.gov.ua/UJRN/Nzvdpu_ist_2006_10_41. Consultation date: 28/04/2023.
- LAW OF UKRAINE. 1991. Law of November 4, № 1777–XII. About the State Border of Ukraine. Available online. In: <https://zakon.rada.gov.ua/laws/show/1777-12#Text>. Consultation date: 16/11/2023.
- LAW OF UKRAINE. 1991. Law of November 4, № 1779–XII. About the Border Troops of Ukraine. Available online. In: <https://zakon.rada.gov.ua/laws/show/1779-12#Text>. Consultation date: 28/04/2023.
- LAW OF UKRAINE. 1992. Law of February 18, № 2135–XII. About operational and investigative activities. Available online. In: <https://zakon.rada.gov.ua/laws/show/2135-12#Text>. Consultation date: 28/04/2023.
- LAW OF UKRAINE. 1992. Law of March 25, № 2232–XII. About military duty and military service. Available online. In: <https://zakon.rada.gov.ua/laws/show/2232-12#Text>. Consultation date: 28/04/2023.
- LAW OF UKRAINE. 2002. Law of December 26, № 374–IV. About counterintelligence activities. Available online. In: <https://zakon.rada.gov.ua/laws/show/374-15#Text>. Consultation date: 28/04/2023.
- LAW OF UKRAINE. 2003. Law of April 3, № 661–IV. About the State Border Guard Service of Ukraine. Available online. In: <https://zakon.rada.gov.ua/laws/show/661-15#Text>. Consultation date: 28/04/2023.

- LAW OF UKRAINE. 2018. Law of June 21, № 2469–VIII. About the national security of Ukraine. Available online. In: <https://zakon.rada.gov.ua/laws/show/2469-19#Text>. Consultation date: 28/04/2023.
- LAW OF UKRAINE. 2020. Law of September 17, № 912–IX. About intelligence. Available online. In: <https://zakon.rada.gov.ua/laws/show/912-20#Text>. Consultation date: 28/04/2023.
- LEGAL FRAMEWORK. State Border Guard Service of Ukraine. 2023. Available online. In: <https://dpsu.gov.ua/ua/Normativno-pravova-baza/>. Consultation date: 16/11/2023.
- LEVADNYI Ihor, BOROVIK Oleh, Khalymon Serhii and SOROKA Andrii. 2022. LEGAL ASPECT OF IMPLEMENTATION PROSPECTIVE MODELS OF EDUCATION STATE PERSONNEL TRAINING BORDER GUARD SERVICE OF UKRAINE. University scientific notes: scientific journal. Khmelnytskyi University of Management and Law named after Leonid Yuzkov. Issue 3 (87). Pages 47-58. ISSN 2078-9165 (print). Khmelnytskyi, Ukraine. DOI: <https://doi.org/10.37491/UNZ.87.4>.
- MINISTERSTVO VNUTRA SLOVENSKEJ REPUBLIKY. 2023. Available online. In: <https://www.minv.sk/?sprava-statnych-hranic>. Consultation date: 28/04/2023.
- NATIONAL ACADEMY OF THE STATE BORDER GUARD SERVICE OF UKRAINE NAMED AFTER BOHDAN KHMELNYTSKYI. General information. 2023. Available online. In: <https://nadpsu.edu.ua/abituriyentu/>. Consultation date: 16/11/2023.
- OFFICIAL WEBSITE OF THE EUROPEAN UNION OFFICIAL WEBSITE OF THE EUROPEAN UNION. How do you know? European Website on Integration. Legislative Decree 25.7.1998, No. 286 on “Consolidated Act of Provisions concerning immigration and the condition of third country nationals. 1998. Available online. In: https://ec.europa.eu/migrant-integration/library-document/legislative-decree-2571998-no-286-consolidated-act-provisions-concerning_en. Consultation date: 16/11/2023.
- OFFICIAL WEBSITE OF THE EUROPEAN UNION OFFICIAL WEBSITE OF THE EUROPEAN UNION. How do you know? Document 32019R1896. Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624. 2019. Available online. In: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896&qid=1700235239544> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896&qid=1700235239544>. Consultation date: 16/11/2023.
- OFFICIAL WEBSITE OF THE EUROPEAN UNION OFFICIAL WEBSITE OF THE EUROPEAN UNION. How do you know? Document 12016E/TXT. Consolidated version of the Treaty on the Functioning of the European Union. 2020. Available online. In: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016E%2FTXT-20200301>. Consultation date: 16/11/2023.

- ORDER OF THE PRESIDENT OF UKRAINE. 1992. Decree of June 22, № 112/1992. About the State program for the development of the network of checkpoints across the customs border of Ukraine and the corresponding service infrastructure. Available online. In: <https://zakon.rada.gov.ua/laws/show/112/92-%D1%80%D0%BF#Text>. Consultation date: 28/04/2023.
- PRYTULA, Anatolii. 2018. DETERMINATION OF THE STATUS OF THE STATE BORDER GUARD SERVICES OF UKRAINE. Bulletin of the National Academy of the State Border Service of Ukraine. Series : legal sciences. Issue 3. Pages 5-18. ISSN 2617-961X (Online). Khmelnytskyi, Ukraine. DOI: <https://doi.org/10.32453/2.vi3.1027>.
- PRESIDENZA DEL CONSIGLIO DEI MINISTRI. Law of September 30, 1993, item 388. Available online. In: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1993-09-30;388>. Consultation date: 16/11/2023.
- REF BOOK – 1947 NATIONAL SECURITY. Available online. In: <https://www.dni.gov/index.php/ic-legal-reference-book/national-security-act-of-1947>. Consultation date: 28/04/2023.
- RESOLUTION OF THE CABINET OF MINISTERS OF UKRAINE. 2007. Decree of June 13, № 831. On the approval of the State targeted law enforcement program «Setting up and reconstruction of the state border» for the period until 2015. Available online. In: <https://zakon.rada.gov.ua/laws/show/831-2007-%D0%BF#Text>. Consultation date: 28/04/2023.
- RESOLUTION OF THE CABINET OF MINISTERS OF UKRAINE. 2019. Decree of July 24, № 687-p. About the approval of the Integrated Border Management Strategy for the period until 2025. Available online. In: <https://zakon.rada.gov.ua/laws/show/687-2019-%D1%80#Text>. Consultation date: 28/04/2023.
- RESOLUTION OF THE CABINET OF MINISTERS OF UKRAINE. 1992. Decree of December 14, № 700. About the establishment of the Institute of Border Troops of Ukraine. Available online. In: <https://zakon.rada.gov.ua/laws/show/700-92-%D0%BF#Text>. Consultation date: 16/11/2023.
- RESOLUTION OF THE CABINET OF MINISTERS OF UKRAINE. 2019. Decree of December 27, № 1409-p. About the approval of the action plan for 2020-2022 regarding the implementation of the Integrated Border Management Strategy for the period until 2025. Available online. In: <https://zakon.rada.gov.ua/laws/show/1409-2019-%D1%80#Text>. Consultation date: 28/04/2023.
- ROMANUKHA, Oleksandr. 2019. Formalization of the legal status of the modern Ukrainian-russian border. Monograph. Mykhailo Tugan-Baranovsky Donetsk National University of Economics and Trade, Department of Ukrainian Studies. 82 pages. ISSN 978-617-7553-83-9. Kryvyi Rih, Ukraine. Available online. http://elibrary.donnuet.edu.ua/1659/1/Romanykha_kordon_monografiya.pdf. Consultation date: 28/04/2023.

- STATE BORDER GUARD SERVICE OF UKRAINE. 10 mobile border detachment (Kyiv city). 2023. Available online. In: <https://dpsu.gov.ua/ua/structure/chastini-centralnogo-pidporyadkuvannya/10-mobilniy-prikordonniy-zagin/>.
- STATE BORDER GUARD SERVICE OF UKRAINE. History. 2023. Available online. In: <https://dpsu.gov.ua/ua/-2003-2014-rr-podalshe-stanovlennya-ta-rozvitok/>.
- STATE BORDER GUARD SERVICE OF UKRAINE. Kennel training center (city of Velyki Mosty). 2023. Available online. In: <https://dpsu.gov.ua/ua/structure/zahidne-regionalne-upravlinnya/kinologichniy-navchalniy-centr-derzhavnoi-prikordonnoi-sluzhbi-ukraini/>.
- STATE BORDER GUARD SERVICE OF UKRAINE. The main training center for personnel of the State Border Guard Service of Ukraine named after Major General Ihor Momot (Cherkasy city). 2023. Available online. In: <https://dpsu.gov.ua/ua/structure/chastini-centralnogo-pidporyadkuvannya/golovniy-centr-pidgotovki-osobovogo-skladu-derzhavnoi-prikordonnoi-sluzhbi-ukraini-imeni-general-mayora-igorya-momota/>.
- THE STATE BOARDING SCHOOL WITH ENHANCED MILITARY-PHYSICAL TRAINING «CADET CORPS» NAMED AFTER IVAN KHARITONENKO OF THE STATE BORDER GUARD SERVICE OF UKRAINE. 2023. Available online. In: <http://kadetka.sumy.ua/index.php?id=87>.
- UNITED STATES COAST GUARD. 2023. Available online. In: <https://www.uscg.mil/About/Strategy/>. Consultation date: 28/04/2023.
- U.S. CUSTOMS AND BORDER PROTECTION. 2023. Available online. In: <https://www.cbp.gov/about>. Consultation date: 28/04/2023.
- U.S. SECURITY COOPERATION WITH UKRAINE. 2023. Available online. In: <https://www.state.gov/u-s-security-cooperation-with-ukraine/>. Consultation date: 16/11/2023.
- WOLTERS KLUWER. Straz Graniczna. 2023. Available online. In: <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/straz-graniczna-16793876>. Consultation date: 28/04/2023.

