
МОРСЬКЕ І ТРАНСПОРТНЕ ПРАВО



Khrystyna Mishehlina*

PhD Researcher

Department of Maritime and Customs Law

National University “Odessa Law Academy”

(Odessa, Ukraine)

ORCID: <https://orcid.org/0000-0002-8924-2705>

***Khrystyna Mishehlina**, PhD Researcher of the Department of Maritime and Customs Law of National University “Odessa Law Academy” (2, Akademichna St., Odessa, Ukraine).

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MARITIME POLICY: ADMINISTRATIVE AND LEGAL MEASUREMENT IN THE CONTEXT OF THE REALIZATION OF THE MARITIME DOCTRINE OF UKRAINE

МОРСЬКА ПОЛІТИКА: АДМІНІСТРАТИВНО-ПРАВОВИЙ ВИМІР У КОНТЕКСТІ РЕАЛІЗАЦІЇ МОРСЬКОЇ ДОКТРИНИ УКРАЇНИ

ABSTRACT

The article is devoted to the research of the main directions and the current state of realization of state maritime policy from the standpoint of the study of administrative – legal mechanisms and means of its realization in the context of the approved the Maritime Doctrine of Ukraine for the period up to 2035. The modern tendencies and directions of the state maritime policy are determined. Some aspects of realization of

maritime policy of Ukraine are considered. The article deals with the mechanisms of formation and implementation of maritime policy within the framework of national maritime jurisdiction. The author outlines the main conceptual directions of the development of the maritime policy of Ukraine and highlights its institutes. The Maritime Doctrine of Ukraine is the basis for the formation and implementation of the maritime policy of Ukraine. The achievement of the maritime policy goals and objectives and ensuring national interests in the coastal waters of Ukraine for a great extent depends upon the effectiveness of the proper implementation means. The means of implementing the provisions of the Maritime Doctrine is undoubtedly based on the executive authorities activities within the frameworks of public administration in the relevant sphere. Such administration is carried out in forms and though the methods, which are regulated by administrative law. At the same time, the national state in the public administration of the maritime area is bound with the rules and requirements of international legal acts on the law of the sea, starting with the general provisions on the State's jurisdiction in the coastal waters, ending up with specific requirements regarding the acting procedures of the respective state authorities. Therefore, in order to form the theoretical basis for updating and improving the current legislation and practice of public administration in the maritime sphere, the topic of work is the study of administrative and legal means of realization of the Maritime Doctrine of Ukraine.

The key words: maritime policy and its implementation, maritime policy institutes, maritime policy of Ukraine, state maritime policy, formation of maritime policy, Ukrainian maritime doctrine and its implementation.

Nowadays, Ukraine has practically lost its starting positions in the development of the maritime economy, which, for the vast majority, was inherited from the Soviet Union. First of all, we note that more losses are related to the logistical component of the national maritime complex, and the loss of competitive advantages is mainly due to a significant decrease in the overall level of industry competitiveness. The main reason for this was the underestimation of its role in the transition to market relations in the light of the democratization of public administration.

In general, the role of maritime policy in achieving the economic power of any state is important to overestimate. Even non-landlocked states are trying to master the resources of the oceans. The State, that has been given the opportunity to land, can not miss this advantage and must really become a maritime state, not a state by the sea.

The article proposes an analysis of the current status of the implementation of the state maritime policy from the study of administrative standpoint and legal mechanisms and means of its implementation in the context of the Government approved in 2009 and updated in 2018, the Maritime Doctrine of Ukraine for the period up to 2035.

The legal issues of the development of the marine economy and the implementation of the marine policy of the State were dealt with by such domestic scientists as T. V. Averochkina, L. M. Davydenko, S. V. Kivalov, B. A. Kormych, S. A. Kuznetsov, K. S. Pismennaya, V. V. Serafimov, O. A. Shhiptsov and others like that.

With the proclamation of Ukraine's independence, a document that formed and laid the foundation for implementing the main principles of the Ukrainian State maritime policy, became the National Program for Research and Use of Resources of the Azov and Black Sea Basins, other parts of the World Ocean for the period until 2000, approved by the Presidential Decree of 16.12.1993 № 595/92 (hereinafter – the Program). The program united the wealth of the young state in virtually all areas of maritime activity and included the development of more than 50 special subprograms and projects, but the Program was not implemented and became the basis for the development of the Maritime Doctrine of Ukraine until 2035 (hereafter – Doctrine, Maritime Doctrine). Following the adoption of the Doctrine (2009), to direct and coordinate the efforts of various branches of power to restore the position of Ukraine as a naval state should have been adopted somewhat earlier. Decree of the President of Ukraine dated May 16, 2008 No. 463/2008 “On the decision of the National Security Council and Defense of Ukraine “On Measures to Ensure the Development of Ukraine as a Marine State”, but this did not take place and the Decree expired in 2014 in accordance with the Decree of the President of Ukraine dated 06/06/2014 No 504/2014 “On the decision of the National Security and Defense Council of Ukraine April 28, 2014 On cancellation of some decisions of the National Security and Defense Council of Ukraine” and ceasing to be invalid some decrees of the President of Ukraine”.

The mid-1990s and early 2000s were marked by the adoption of two other program documents of the sector: Programs for the search and disposal of chemical weapons remains flooded in the exclusive (maritime) economic zone of Ukraine for 1997 – 2002, approved by the Cabinet of Ministers of Ukraine from 25.11. 1996 No. 1415 (for official use) and the Integrated Program for the Suppression of Unlawful Fishing of Fish by Foreign Vessels in the Territorial Sea and the Exclusive (Marine) Economic Zone of Ukraine for 2002 – 2006, approved by the Cabinet of Ministers of Ukraine dated 12.09.2002, No. 1353.

Subsequently, the Strategy for the Development of Ukraine Seaports for the period till 2015, – which expired in connection with the approval of

the new Strategy by 2038, was approved in accordance with the Decree of the Cabinet of Ministers of Ukraine dated July 11, 2013, No. 548-p. This is acts that list the program documents in the marine industry and is limited. It is undeniable that during the history of the Ukrainian independency, many laws and regulations were adopted in order to streamline the work of the maritime industry of the young Country. Nevertheless, sectoral legislation still need be improved, since today the formation of Ukraine as a maritime Country takes place under conditions of active political dialogue and economic cooperation with the EU and NATO, which realazes the issue of the Ukranain establishment as a naval Country. Well-considered maritime policy and effective administrative and legal mechanisms in the complex can become one of the elements of building an effective competitive economy.

It is necessary to mention S.V. Kivalov's thesis that the marine policy of the most Countries of the world is nowadays defined and formed within the framework of the relevant program documents – marine doctrines and strategies. The norms of such documents determine the most significant vectors of the development of the naval power of the Countries, determine the strategic tasks and priorities of the development and the national merchant shipping, the number of naval forces and the exercise of the rights of States in all areas of the oceans (Kivalov, 2018, p. 8).

The notion of “maritime State” is important in the context of the study of maritime policy is which is mostly a geopolitical category, but the Doctrine defines the strategy and the main directions for the further development of Ukraine as a maritime state, but without revealing the concept. Marine State is the subject of enforcement and actually implements state maritime policy through the executive authorities. Indeed, at all times of the state, located on the sea or ocean coast, they defined their own maritime activity as one of the main priorities of domestic and foreign policy. Coastal areas have always been the pledge of stable economic growth, contributed to the formation of statehood, had a significant defensive significance and in many ways conditioned the emergence of the power of the great sea states of the world. After all, having free access to the sea spaces, laying and constructing vessels, building such ports, such States could rely on finding new land, developing trade, attracting commodity and human flows, conducting wars outside their own land areas, and, as a result, expanding their sphere of jurisdiction (Kivalov, 2018, p. 9).

It is worth that the fundamental international maritime document in, 1982 (United Nations Convention on the Law of the Sea, UNCLOS'82),

does not use the category of “maritime state”, but includes references to “coastal state”, “state-archipelago”, “a Country in a geographically disadvantaged position”. UNCLOS’82 also practically equated the capacity of States that have access to the sea and those that do not have it. This his position is the result of the treaty practice of the States and in general corresponds to the interests of the continental and coastal states. Thus, UNCLOS’82 consolidates the following rights of the continental states: the right to peaceful passage through the territorial sea (Article 17); the right to exploit the relevant part of the balance of permissible catches of living resources in the exclusive economic zones of the coastal States (Article 69); freedom of the open sea (Article 87); the right of navigation (Article 90); the right to use the resources of the international seabed area (Article 141). In view of the above, a State may also be navy one, without geographic access to the coast. Today, 44 States have no access to the World Ocean (16 in Africa, 14 in Europe, 12 in Asia, and 2 in South America). All these countries, in accordance with the provisions of UNCLOS’82, can develop the direction of economic activity associated with the oceans, and, accordingly, formulate and implement state maritime policy.

It is believed that the implementation of maritime policy by the state should take place within the framework of national administrative jurisdiction, albeit on the basis of the norms of international law. The administrative jurisdiction of the state in the sea, having an international legal basis, is subject to detailed regulation in domestic law (Averochkina, 2014, p. 44).

As stated in the Doctrine, at the current stage of State formation, the fact of the establishment of Ukraine as a naval State has a particular importance, based on the peculiarities of its geographical location, place and role in the global and regional system of international relations. Ukraine has a unique potential for development as a maritime State. Among the States of the Black Sea basin, it has the most powerful port potential. 13 seaports are operating on the Ukrainian coast of the Black and Azov Seas, with a berthing front of about 40 km. There are 7 large shipbuilding factories in Ukraine, 9 shipbuilding enterprises, marine instrumentation and electrical wiring, several dozens of medium and small shipbuilding and ship repair factories, 15 research institutes and design bureaus. It should be noted that the stated potential of the Ukrainian State, provided that a well-balanced maritime policy can be carried out, can be, firstly, effectively used as a basis for further economic development, and secondly, in the long run, multiplied.

An additional asset of the Ukrainian state from the point of view of the theory of the sea code is that it has a history of marine activity – marine genetics, which contributes to the revival of its as a naval state (Stepanova, 2016, p. 22).

The implementation of a well-considered maritime policy will not only ensure regulation of external, but also internal, social relations related to maritime activities. Effective maritime policy is determined by World experts, which is one of the factors of the development of World shipping and State maritime policy development within the framework of world practices is therefore important.

Maritime doctrine is in general a syncretic document and defines the concept, purpose of the State customs policy, the basic principles of its implementation, and declares the steps that must be taken for the overall improvement of the State of maritime activity.

At present, Ukraine has a number of problems related to the implementation of maritime policy: weak competitiveness of the ship repair and shipbuilding industries, wear or out-of-date of basic tangible assets, infrastructure problems, etc. Implementation of maritime policy is expected to take place in stages and in clearly defined directions. At the present time, Ukraine, through national maritime policy, should ensure the achievement of national interests in the coastal zone – in inland sea waters, territorial sea, in the exclusive economic zone, on the continental shelf of Ukraine, and on the high seas.

It should be remarked that for the Ukrainian legal tradition, the “doctrine” on is a standard document, but it is positive that the legislator has fixed the key issues of maritime activity in this form. The doctrine, as an element of the system of normative legal acts, should be considered as a general document, which is the basis for the formation of the content of state policy in a particular field. In view of the above, the Doctrine should be considered as a “strategy” inherent in Ukrainian law.

According to the results of the analysis of the Doctrine, propose to define the following conceptual directions of the maritime policy of the Ukrainian state:

- development of the maritime industry, which includes the revival and development of merchant shipping, port activity, shipping, fisheries, mining and transportation of energy resources, use of water bioresources;
- development of naval activity containing provisions for countering aggression and providing defense from the sea; development of the

infrastructure for the base of the Naval Forces of the Armed Forces and the Marine Security of the State Border Guard Service and its restoration in the Autonomous Republic of Crimea after the return of the temporarily occupied territory to the jurisdiction of Ukraine; development of the control system Naval Forces of the Armed Forces and Marine Security of the State Border Guard Service, strengthening of the forces and means of the Naval Forces of the Armed Forces and Marine Security State Committee rdonsluzhby in the Azov Sea and reorientation of military and military-technical cooperation with Eastern vector (Russian Federation) on the western (NATO and the European Union). This direction also includes the restoration of the training system. Maritime doctrine in the context of the development of the system of training prepares a system that includes the development of naval education as a component of the military education system, the development of educational institutions and domestic naval science;

- development of scientific and technical potential, which consists in preservation, use and development of scientific and technical potential of the sea-economic activity, training and retraining system of scientific personnel, research fleet, fundamental and applied research;

- development of coastal regions (including maritime activities and ecological aspects of the development of coastal regions) is to implement the policy of maximizing the use of location, social, cultural and economic specifics, and the rational combination of economic benefits with cultural, recreational, tourist and recreational opportunities. In addition, in this aspect, a decentralization reform is seen as a positive development, which can significantly increase the role of local self-government;

- development of tourist, recreational and recreational services and cruise shipping, which consists in the formation of a competitive market of tourist and recreational and health services of the coastal regions, its integration with other types of maritime activities;

- development of international and interregional cooperation is to protect and ensure the proper ecological status of the sea and the coastal protected zone, sustainable development of environmental activities in the framework of maritime activities, rational use of marine resources.

One of the first steps towards improving the provision of maritime activity in the context of the implementation of the provisions of the Maritime Doctrine is the Decree of the Cabinet of Ministers of Ukraine dated May 20, 2009 No. 545-p. “On Approval of the Concept of the Draft Law of Ukraine “On Maritime Policy of Ukraine”, according to which

the main objective of the Concept is to determine the ways of legislative regulation of relations related to the internal and external policies of Ukraine in the field of maritime activity.

In the national scientific community, in recent years, a debate has been held on the adoption of the Law of Ukraine “On Maritime Policy”, which not only would specify the provisions of the Maritime Doctrine, but also proposed specific administrative and legal instruments for the implementation of the Doctrine.

At present, state maritime policy, as proposed by the Maritime Doctrine, can be implemented as a system of goals, measures, means and concerted actions of central and local executive authorities aimed at the realization of national interests at sea. In essence, the maritime policy of the state includes specific management decisions aimed at securing their own interests. Today’s state maritime policy can actually be realized through the establishment of certain rules and principles for its implementation.

Within the framework of the above-mentioned conceptual directions of maritime policy, it is obvious that they fall within the scope of legal norms of various industry affiliations, that is why it is proposed to allocate separate institutes in the framework of maritime policy: the maritime industry; naval activity and the protection of maritime borders; scientific and technical potential; coastal regions; recreational and health services and cruise shipping; international and interregional cooperation. It is also logical to point out the need to build a hierarchy on the principle of priority of state programs (strategies) for the development of designated institutions within the Maritime Doctrine. Thus, profile of Ukraine ministries can propose for each of their directions their development strategies for each of the institutes: the maritime industry – the Ministry of Infrastructure of Ukraine; naval activity and the protection of maritime borders – the Ministry of Defense of Ukraine, the State Border Guard Service, the Ministry of the Temporary Occupied Territories and internally displaced persons; Scientific and Technical Potential – Ministry of Economic Development and Trade of Ukraine; Seaside regions – Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine; recreational and health services and cruise shipping – Ministry of Infrastructure of Ukraine, Ministry of Culture of Ukraine; international and interregional cooperation – Ministry of Foreign Affairs of Ukraine.

In addition, the development strategies of each institution should be developed taking into account suggestions and comments of central

executive authorities with special status, relevant public services, agencies, inspections and local authorities and local self-government bodies within the framework of decentralization policy. In our opinion, an important aspect of the implementation of maritime policy in Ukraine may be the active cooperation of the state with representatives of the private sector of the maritime sector.

Thus, the aforementioned directions of the maritime policy of Ukraine in their synergy and with the support of the main stakeholders of the industry will lead to the effective implementation of the state maritime policy. In my opinion the first steps that could positively influence the activation of cooperation with the main players of the market of the maritime complex can be as follows:

- the formation of a clear state maritime policy and the principles of its realization, which can be realized by developing action plans for the implementation of the development strategy for each of the institutes proposed above (or in a simplified version – an action plan for the implementation of the Maritime Doctrine);

- taking into account the proposals of representatives of the maritime sector of the economy, including in the framework of private-public partnership, through communication (in various forms, for example: round tables, seminars, conferences, working meetings, etc.) to identify the main markers, priorities and directions implementation of maritime policy;

- popularization of the Ukrainian flag. At the current stage, Ukraine needs to be formed to implement simple and inexpensive models for administrating the registration of sea vessels and the exercise of the right to use the Ukrainian flag;

- introduction of minimum standards of service quality and supervision of their observance by maritime market participants. First and foremost, it is important to consolidate the freight market (linear agents and operators, freight brokers, spy management companies) and the market of transport intermediaries (services of sea agents, customs brokers, forwarding companies, and others). Optimization of these markets within the maritime transport market directly influences the formation of the market as a whole and the development of various types of integration satellite entities that will positively affect the development of the economy as a whole;

- reduction of tax burden and implementation of cheap lending. First, there are currently no tax breaks for the maritime industry and there is a significant tax burden on market players. Secondly, national legislation

does not contain transparent mechanisms for obtaining cheap loans by market participants, there are no effective mechanisms for providing maritime mortgages and mortgages (including mortgages of ships).

Conclusions

This Maritime Doctrine describes how we will design, organize, and employ the Sea Services in support of our national, defense, and homeland security strategies. It also sets maritime priorities in an era of constrained resources, while emphasizing warfighting capabilities and forward naval presence to advance national interests today and guide preparations for tomorrow's challenges. In my opinion, Ukrainian Maritime Policy calls for the development of new sustainable strategies to protect coastal regions from the effects of global climate change and also specifically calls for the development of an innovative system of sub-sea disposal of carbon.

1. Maritime security must be supports Ukraine efforts to uphold the laws, rules, and norms that govern standards of behavior in the maritime commons for transit, trade, and the pursuit of natural resources. Particularly important is cooperation with other coast guards to address both military and non-military state-sponsored challenges to sovereign rights. Ukraine's implementation of maritime policy should take place within the framework of national administrative jurisdiction on the basis of international law, taking into account world trends and best world practices.

2. Development of the marine industry, naval activity, scientific and technical potential, coastal regions, tourism, recreational and health services and cruise shipping; international and interregional cooperation are presented as the main conceptual directions of the development of the maritime policy of Ukraine and its institutes.

3. It is recommended to consider the implementation of maritime policy by constructing hierarchy on the priority principle state programs (strategies) for the development of designated institutions within the framework of the Maritime Doctrine.

4. Maritime Doctrine is generally a declarative document and does not define specific administrative and legal mechanisms for implementation. In connection with this, it is necessary to develop the strategies of their development by the specialized ministries of Ukraine for each of the institutes of maritime policy. The development strategies of each institution should be developed taking into account suggestions and observations of central authorities of special status, relevant state agencies, agencies, inspectorates,

local authorities and local self-government bodies within the framework of decentralization policy, taking into account the results of communication and experience of cooperation with representatives of private the sector. Based on the development strategies of the institutes of maritime policy, it is necessary to develop an action plan for its implementation. The question remains and the precise definition of administrative and legal mechanisms and markers for the implementation of maritime policy remains relevant.

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АНОТАЦІЯ

Мишеглина К. М. Морська політика: адміністративно-правовий вимір у контексті реалізації Морської доктрини України. – Стаття.

Статтю присвячено дослідженню основних напрямів та сучасного стану реалізації державної морської політики з позиції дослідження адміністративно-правових механізмів та засобів її реалізації у контексті затвердженої Морської доктрини України на період до 2035 р. З метою формування теоретичного підґрунтя оновлення та вдосконалення діючого законодавства і практики публічного адміністрування морської сфери темою статті було обрано дослідження адміністративно-правових засобів реалізації Морської доктрини України. Було визначено сучасні тенденції та напрямки державної морської політики. Розглянуто окремі аспекти реалізації морської політики України. У статті досліджено механізми формування та реалізації морської політики у межах національної морської юрисдикції. Автором виокремлено основні концептуальні напрямки розвитку морської політики України та розглянуто її інститути. Морська доктрина України є основою для формування та реалізації морської політики України. Від ефективності засобів її реалізації безпосередньо залежить досягнення цілей та завдань морської політики та забезпечення національних інтересів у прибережних водах України. Основою засобів реалізації положень Морської доктрини є діяльність органів виконавчої влади у рамках публічного адміністрування відповідної сфери. Таке адміністрування здійснюється у формах та за допомогою методів, врегульованих адміністративним правом. При цьому, держава у здійсненні публічного адміністрування у морській сфері зв'язана правилами та вимогами міжнародно-правових актів з морського права, починаючи із загальних положень щодо юрисдикції держави у прибережних водах, закінчуючи специфічними вимогами щодо порядку діяльності відповідних суб'єктів владних повноважень.

Ключові слова: морська політика, інститути морської політики, морська політика України, державна морська політика, формування морської політики, реалізація морської політики, Морська доктрина України, реалізація Морської доктрини.

АННОТАЦИЯ

Мишеглина К. Н. Морская политика: административно-правовое измерение в контексте реализации Морской доктрины Украины. – Статья.

Статья посвящена исследованию основных направлений и современного состояния реализации государственной морской политики с позиции исследования административно-правовых механизмов и средств ее реализации в контексте утвержденной Морской доктрины Украины на период до 2035 года. С целью формирования теоретической основы обновления и совершенствования действующего законодательства и практики публичного администрирования морской сферы темой статьи было выбрано исследование административно-правовых средств реализации Морской доктрины Украины. Были определены современные тенденции и направления государственной морской политики. Рассмотрены

отдельные аспекты реализации морской политики Украины. В статье исследованы механизмы формирования и реализации морской политики в рамках национальной морской юрисдикции. Автором выделены основные концептуальные направления развития морской политики Украины и рассмотрены ее институты. Морская доктрина Украины является основой для формирования и реализации морской политики Украины. От эффективности средств ее реализации напрямую зависит достижение целей и задач морской политики и обеспечения национальных интересов в прибрежных водах Украины. Основой средств реализации положений Морской доктрины является деятельность органов исполнительной власти в рамках публичного администрирования соответствующей сферы. Такое администрирование осуществляется в формах и с помощью методов, урегулированных административным правом. При этом, государство в осуществлении публичного администрирования в морской сфере связано правилами и требованиями международно-правовых актов по морскому праву, начиная с общих положений относительно юрисдикции государства в прибрежных водах, заканчивая специфическими требованиями о порядке деятельности соответствующих субъектов властных полномочий.

Ключевые слова: морская политика, институты морской политики, морская политика Украины, государственная морская политика, формирование морской политики, реализация морской политики, Морская доктрина Украины, реализация Морской доктрины.

