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*Scientific doctrine as a source of law in international law and legal systems of the world*

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# Secção I

# Investigação Científica*

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# Scientific doctrine as a source of law in international law and legal systems of the world

# A Doutrina como fonte de direito no direito internacional e nos sistemas jurídicos mundiais

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**ABSTRACT:** The semantic meaning of the term "doctrine" in the context of science, law-making, and law enforcement processes has not been clearly determined, which presents challenges in defining the role of legal doctrine as a source of law. This article aims to examine legal doctrine as a distinct source of law, clarify its formation process, analyze its regulatory role and potential, with a specific focus on international law as well as the Romano-Germanic, Anglo-Saxon, and religious legal systems. The research methodology employs various approaches such as analysis, synthesis, comparison, analogy, deduction, induction, and abstraction. Through the inductive method, the authors generalize and formulate the perspectives of scholars, while the deductive method allows for the coherent argumentation of the author's position. The study concludes that the definition of legal doctrine as a source of law can be formalized through legislation. It is normatively acceptable to elucidate the concept of legal doctrine, designate doctrine as a source of law, and establish mechanisms for its utilization in law enforcement.
**KEYWORDS:** legal doctrine; concept; legal science; lawmaking; international law.

**RESUMO:** O termo "doutrina" é frequentemente utilizado na ciência, na elaboração de leis e nos processos de aplicação da lei, mas o seu significado semântico ainda não foi determinado, o que torna difícil definir o papel da doutrina jurídica como fonte de direito. O objectivo do artigo é estudar a doutrina jurídica como uma fonte especial de direito, clarificar as especificidades da sua formação e analisar o papel regulador e o seu potencial, prestando especial atenção ao direito internacional, bem como aos sistemas jurídicos romano-germânicos, anglo-saxónicos e religiosos. A investigação baseia-se em métodos como a análise, síntese, comparação, analogia, dedução, indução, abstracção. O método indutivo tornou possível generalizar e formular as abordagens dos cientistas, e o método dedutivo tornou possível argumentar consistentemente a posição do autor. Os autores tiram conclusões de que a definição de uma doutrina jurídica como fonte de direito pode ser formalizada legislativamente. É

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normativamente admissível revelar a noção de doutrina jurídica, determinar uma doutrina como fonte de direito e estabelecer mecanismos para recorrer a esta fonte na aplicação da lei.
**PALAVRAS-CHAVE:** doutrina jurídica; conceito; ciência jurídica; elaboração de leis; direito internacional.

## INTRODUCTION

An important place in the system of sources of law in the theory of law belongs to legal doctrine, that is the works of authoritative jurists, their scientific views and interpretations, scientific comments on regulations, and so on. The term doctrine originally comes from the Greek word “doxa”, which is translated as “opinion”[6]. It should be noted that the legal doctrine forms the legal terminology, produces definitions and contains the basic principles and directions according to which the legislation, society and the state as a whole should develop. According to R. David[7], doctrine today, as in the past, is a very important and vital source of law. This role is manifested in the fact that it is the doctrine that creates the vocabulary and legal concepts used by the legislator.

According to S. Vasiliev[8], the advantages of legal doctrine include: a high level of scientificity, which is provided by legal scholars on the basis of legal views prevailing in society; individualization of legal doctrine to the circumstances of a particular case, which contributes to finding a legally correct and fair solution; written form of expression, which allows to establish the content of legal doctrine; voluntary application of legal doctrine; the doctrine is characterized by constant updating, which occurs due to new ideas and views, but their inclusion in the category of doctrinal occurs only after their testing in practice and support of the majority of scholars and practitioners engaged in jurisprudence; the use of legal doctrine as a source of law contributes to the harmonization of the legal system. At the same time, legal doctrine in relation to legal science and as an integral part of legal ideology is a kind of “mirror” or “litmus test” that reflects the processes taking place in society, is an indicator of

[6] “The Role of the “Doctrine” as a Source of Law in France,” K. Buchanan, 2010, https://blogs.loc.gov/law/2010/12/the-role-of-the-doctrine-as-a-source-of-law-in-france/
[7] R. David, and K. Geoffre-Spinozi, *Basic legal systems of our time* (Paris: Précis, 1992), 24.
[8] S. Vasiliev, “Legal doctrine - a source of procedural law,” *Current Issues of Innovation Development* 2, (2012): 72-73.

how effective the law and practice of its implementation, progressive, such that meet the challenges of today[9].

Legal doctrine is primarily the result of intellectual and creative endeavors undertaken by legal scholars. These scholars dedicate their efforts to the study of law, employing formal dogmatic, historical, and other methods. They work towards developing techniques and methodologies for interpreting and systematizing the law, as well as understanding the accumulated legal experience. Through their scholarly work, they aim to create a "scientific picture" of the legal world based on these foundations. The legal doctrine is shaped by their insights, analyses, and interpretations, which contribute to its creation, reproduction, and development. It serves as a body of knowledge that helps guide legal professionals, lawmakers, and practitioners in understanding and applying the law in various contexts[10].

However, it should be noted that legal doctrine is recognized as a source of law primarily in international law, where there is no detailed regulation of public relations by other sources. The sources of law at the international level are the doctrines of the most qualified specialists in the field of public law, as defined in article 38 of the Charter of the International Court of Justice.

Article 21 of the Rome Statute of the International Criminal Court defines the sources of law to which the Court may refer when deciding a case. According to this article, the main sources of law for the Court are the statute itself, norms of international humanitarian law, as well as general principles of law arising from the practice of the Court. The non-mention of scientific doctrine as a separate source of law in Article 21 can be explained for several reasons. The provisions of Article 21 are an exhaustive list of sources of law to which the Court may refer. This means that other sources, such as scientific doctrine, may not be included in this list.

Scientific doctrine usually has the character of analytical and interpretive studies in the field of law, based on the study of legislation, judicial practice, and other sources of law. It is not a direct source of law, such as international treaties or precedents. Courts, including the International Criminal Court,

[9] S. Starikova, “Concepts, features and current issues of legal doctrine,” *Actual Problems of Domestic Jurisprudence* 3, (2018): 47-51.
[10] I. Semenikhin, “Legal doctrine: aspects of understanding,” *Problems of Legality* 141, (2018): 8-21.

usually rely on scientific doctrine as an aid to interpreting laws and determining their meaning. However, this does not mean that scientific doctrine has the status of a direct source of law. Thus, although scientific doctrine can be of great importance to the understanding and teaching of law, it is not usually considered a direct source of law to which judicial decisions can be referred.

In addition, it should be added that the functioning of the European legal space is based on the generally accepted doctrinal ideas and principles of democracy, the inalienability of fundamental human and civil rights and freedoms, the rule of law, and so on. The very realization of the European idea would be impossible in the absence of its thorough development at the doctrinal level by such prominent figures as W. Penn, I. Kant, Saint-Simon, C. Krause, Carlo Cattaneo, W. Hugo, A. Leroy Bolier and many others[11].

The article is devoted to legal doctrine as a source of law. Therefore, its theoretical foundations are drawn from works devoted to this problem. It should be noted that this topic has been studied in many works, including monographic ones. However, it can be stated that these studies are far from completion, taking into account the complexity and multidimensionality of this problematic. In addition, the doctrine as a source of law in these works was considered fragmentarily.

The peculiarities of the doctrine within the framework of comparative jurisprudence were considered by the classics of this topic and other foreign and domestic comparativists. For example, in accordance with the statement of R. David and K. Geoffre-Spinozi[12], the legal doctrine is the backbone of any legal system. Famous German lawyers K. Zweigert and H. Ketz[13] recognized the significant role of doctrine in the formation of law and the legal system. For example, they noted that a decisive role in the gradual formation of civil law was played by well-known lawyers, not only professors, but also practitioners: lawyers, experts, officials and judges. At the same time, Ukrainian researcher H. Behruz[14] notes that it is the doctrine that creates the vocabulary and legal

[11] I. Semenikhin, “The role of legal doctrine in the formation of the European legal space,” *State Building and Local Self-Government* 24, (2012): 187-198.
[12] David, and Geoffre-Spinozi, Basic legal systems of our time, 36.
[13] K. Zweigert, and H. Ketz, *Introduction to comparative jurisprudence in the field of private law* (Oxford: Clarendon Press, 2000), 27.

[14] H. Behruz, *Comparative jurisprudence* (Odesa: Phoenix, 2008), 69.

concepts that are used by the legislature in the implementation of legislative activity.

We agree with S. Iskra[15], who notes that legal doctrine is a system of ideas and principles, as well as scientific views on law, current trends in the legal system, recognized by society and is the conceptual basis of rule-making, law enforcement and interpretive activities.

E. Polyansky[16] provides a valuable definition of legal doctrine, emphasizing its multifaceted nature. According to Polyansky, legal doctrine encompasses a collection of ideas, principles, and legal institutions that are closely intertwined with legal science, law, and practice. It plays a crucial role in establishing the fundamental principles upon which a state's legal system is built. Furthermore, E. Vavilin[17] adds to the understanding of legal doctrine through his research. Vavilin defines legal doctrine as follows:

a) A body of theoretical provisions concerning legal phenomena.

b) A state program or concept that regulates specific relationships, outlining goals, objectives, and the means to achieve them.

c) A set of fundamental legal principles endorsed and enforced by the state.

d) Guiding theoretical principles and essential legal definitions.

e) Scholarly works produced by legal professionals.

Vavilin's definition encompasses various aspects of legal doctrine, emphasizing its theoretical, practical, and normative dimensions. It underscores the importance of legal doctrine as a comprehensive framework that combines theoretical insights, practical guidance, and authoritative principles supported by the state.

At the same time, the European Court on Human Rights also refers to doctrine when making decisions[18], for example, the case of Jorgic v.

[15] S. Iskra, "Definition of legal doctrine in its relation to legal science," *Enterprise, Economy and Law* 11, (2018): 177-180.
[16] E. Polyansky, "Legal doctrine as a basic concept of law: nature, structure, meaning," *Scientific Works of the National University "Odesa Law Academy"* 17, (2015): 297-313.
[17] E. Vavilin, "Some problems of the mechanism of protection of subjective civil rights," *Jurisprudence* 3, (2002): 178-186.
[18] A.A. Grynchak, Y.S. Tavolzhanska, S.V. Grynchak, V.S. Smorodynskyi, and K.V. Latysh, "Convention for the protection of human rights and fundamental freedoms as a constitutional instrument of European Public Order," *Public Organization Review*, (2022): Article in Press.

Germany[19], in which the ECtHR referred to the scientific doctrine to define the concept of "genocide". For example, in the case of Tolstoy-Miloslavsky v. The United Kingdom[20], the role of the doctrine of English law in the consideration and resolution of defamation cases was demonstrated. The European Court, in addition to judicial precedents and opinions of judges, referred to the relevant domestic legal norms, the provisions of several paragraphs of Halsbury's Laws of England, excerpted from Gatley's Libel and Slander monograph, as well as a quote from Duncan and Neill on defamation.

Indeed, as noted by D. Chernovol[21], the Court of Justice of the European Union engages in the interpretation of legal doctrines as integral components of the acquis communautaire. Several doctrines hold significance in this context, such as the doctrine of the supremacy of Community law, the doctrine of the direct effect of Community law, the principle of protection of fundamental human rights, the principle of equality and non-discrimination, and the principle of legal certainty, among others. These doctrines play a crucial role in shaping and guiding the legal framework within the European Union[22].

While scholars have acknowledged the significance of legal doctrine as a source of law, a comprehensive analysis of its role and impact is still lacking. Researchers have identified the doctrinal elements that influence legal decision-making and interpretation, but further exploration and investigation are needed to fully understand the nature and scope of legal doctrine as a source of law. The ongoing study of doctrine by legal scholars contributes to the evolving understanding of its role and importance within the legal system.

## Materials and Methods

The development of the theory of state and law in any country necessitates a critical reassessment of its fundamental categories and requires in-depth

[19] "Case of Jorgic v. Germany. (Application no. 74613/01)," The European Court of Human Rights, 2007, https://invisiblecollege.weblog.leidenuniv.nl/files/2007/07/jorgic%5B1%5D.pdf

[20] "Tolstoy Miloslavsky v. the United Kingdom. Application No. 18139/91," The European Court of Human Rights, 1995, https://mmdc.ru/praktika_evropejskogo_suda/praktika_po_st10_evropejskoj_konvencii/europ_practice72/

[21] D. Chernovol, "The role of separate legal mechanisms of integration of the national law of Ukraine into the system of law of the European Union," *Current Issues of State and Law* 3, (2007): 97-105.

[22] V.V. Vapniarchuk, I.I. Puchkovska, O.V. Tavolzhanskyi, and R.I. Tashian, "Protection of ownership right in the court: The essence and particularities," *Asia Life Sciences* 2, (2019): 863–879.

research that combines insights from legal science and related fields of knowledge. One category that warrants profound exploration is the problem of doctrine as a source of law. The formulation of conceptual provisions regarding doctrine as a source of law considers the methodological principles of the contemporary stage of scientific development.

The study is based on a dialectical approach to understanding the emergence and historical development of legal doctrine as a source of law. This approach recognizes the interplay between opposing principles of social life and the nature of historical events and phenomena. The research tools employed adhere to the principles of objectivity and pluralism in comprehending legal doctrine as a source of law. Furthermore, the study draws on various methods to accomplish its objectives and fulfill its research goals. These methods are rooted in modern scientific practices and have been tested in practical applications.

The research relies on both general scientific and specific private methods. General scientific methods such as analysis, synthesis, comparison, analogy, deduction, induction, and abstraction are employed to generate new knowledge. For instance, the inductive method enables the generalization and formulation of scholars' approaches to doctrine as a source of law, while the deductive method facilitates the coherent presentation of the author's position. Other formal logical methods, such as analysis, synthesis, generalization, and abstraction, are used to draw conclusions. The research also incorporates methods like the transition from theoretical and legal abstraction to sector-specific concretization, regulatory modeling, and legal forecasting.

The study employs an integrated approach that combines methods of structural-functional analysis, comparative legal analysis, and formal legal analysis to examine the institutions, principles, and relationships related to the subject of research. For example, the formal legal method aids in comprehending the essence of doctrine as a source of law and its correlation with other sources of law. The structural-functional method assists in identifying the specific characteristics inherent to doctrine as a source of law and studying its place within the legal system of society, its impact on public relations, legal consciousness, legal education, law implementation, and positive law.

The historical method is also utilized extensively in the research. It allows for an examination of the evolution of doctrine as a source of law and helps reconstruct a series of events and facts related to the influence of legal schools on the formation of doctrine as a source of law. Moreover, the historical method is applied to explore the conditions and reasons behind the emergence of legal doctrine in the history of legal systems in society. The method of legal modeling is employed to develop recommendations for improving modern legislation.

The theoretical foundation of the study relies on the works of domestic and foreign authors, while the legal framework is established by the Constitution of Ukraine, international law instruments, and national laws. The empirical basis of the research comprises doctrinal texts and materials from judicial practice.

## Results

The role and importance of legal doctrine as a source of law in different legal families is different. For example, in the Romano-Germanic legal family, doctrine is an additional source of law, because the main one is a legal act. In the Anglo-Saxon legal family, doctrine is a mandatory source of law, along with legal precedent and custom, although additional one. The greatest role is played by legal doctrine within the traditional-religious legal family, because the sacred texts, which contain mostly norms of archaic content can not regulate all the diversity of existing social relations[23]. Moreover, the works of scientists had a strong influence on the creation of the system of international law, especially at the first stage of its development.

Thus, the legal doctrine as a source of law appeared and developed in the Romano-Germanic legal system in Ancient Rome. For example, M. Karmalita[24] makes a generalization that the activities of lawyers as a source in Roman law helped to avoid contradictions between other ways of fixing and expressing law in Rome. In addition, the influence of elements of the legal culture in ancient Rome on medieval Western jurisprudence is undeniable. The development of jurisprudence in Western European countries was stimulated by borrowing from

[23] O. Gubanov, “Legal doctrine as a source of law within the Romano-Germanic, Anglo-Saxon and religious-traditional legal family: a comparative characteristic,” *Law and Society* 6, (2015): 9-14.
[24] M. Karmalita, *Legal doctrine - a source (form) of the right* (Kyiv: Taras Shevchenko National University of Kyiv, 2011), 78.

the ancient Roman legal culture. At the same time, in the history of the Romano-Germanic family of law, the dominance of different sources of law in their hierarchy can be traced. Thus, the dominant place of doctrine among the sources of law was occupied in the 12-18 century. Today, there is a multi-source law, which is dominated by general principles of law, expressed in both codified and non-codified law[25].

In the Anglo-Saxon legal family, doctrine as a source of law began to be recognized from the 12th century. Indeed, a special place among the sources of Anglo-Saxon law is occupied by legal doctrine, which should be understood as judicial comments written by the most authoritative English lawyers, and descriptions of case-law – a practical guide for lawyers. Moreover, the works of scientists are still used in England to resolve legal disputes. For example, in the United Kingdom, the works of legal scholars are recognized as a source of constitutional law, namely: Bracton (Treatise on the Laws of England, 1250); Blackston (Comments on the laws of England, 1566); Coke (Legal Institutions of England, 1628); Forster (Decisions of the royal courts, 1763).

The reason behind the utilization of scientific works by British experts such as D. Locke, D. Lowe, D. Mill, E. Burke, A. Daisy, E. May, and others lies in their encompassing nature, which includes crucial generalizations and analyses of both explicit and implicit constitutional provisions. In situations where statutes, constitutional agreements, and court precedents are lacking, Parliament and the courts often refer to these scientific works to fill the gap.

By relying on the insights provided by these British experts, lawmakers and judges can gain a deeper understanding of legal principles and concepts. The scholarly works of these experts offer valuable perspectives that aid in legal interpretation and decision-making. These works serve as a source of guidance when there are no specific legal provisions to rely on. Their expertise contributes to legal development and helps ensure that legal decisions align with the fundamental principles and societal values that underpin the legal system.

It is important to note that the reliance on scientific works as a source of legal reasoning extends beyond the British context. In various legal systems,

[25] L. Korchevna, *Doctrine as a source of law* (Odesa: Odesa I. I. Mechnikov National University, 2005), 34.

particularly those influenced by common law, scholarly writings hold significant weight in shaping legal interpretations and providing guidance in the absence of explicit legal authorities. These works contribute to the ongoing evolution and refinement of legal doctrine, serving as essential resources for legal practitioners and decision-makers[26].

For example, as R. Walker[27] notes: “In the leading case, Joice v. Director of Public Prosecutions (1946) The House of Lords, in deciding whether a foreigner enjoying the protection of the crown can be charged with treason under the Treason Act 1351, relied solely on the doctrine”. At the same time, in the Anglo-Saxon legal system, in order to qualify as compulsory works of lawyers, they had to be assimilated by judicial practice when resolving specific legal cases, and not approved by the supreme legislative power in the form of a normative legal act. It should be noted, that doctrines of religious countries, in particular Muslim doctrine and a number of similar ones, are a set of religious and theoretical works of scholars. The value of Muslim doctrine is characterized by its ability to act as a formal source of law and an informal element of lawmaking. Jewish legal doctrine is understood in the broadest interpretation as the writings of theologians, as the opinions of various Jewish academic schools, as rabbinic ideas and views on the understanding and interpretation of various biblical statements and texts[28].

In our study, we will pay attention to the analysis of doctrine as a source of international law. It should be noted that in the 19th century and even at the beginning of the 20th century, international law was considered to a large extent as doctrinal law. Thus, in Article 38 of the Statute of the International Court of Justice, it is noted that the Court applies the doctrines of the most qualified specialists in public law of various nations as a subsidiary means for determining legal norms. At the same time, the dictionary notes that subsidiary sources are intended to be merely material or evidential, and not in themselves establishing a rule of international law[29]. V. Vitzthum[30] believes that the

[26] O. Biloskurska, “Constitutional doctrine as a source of constitutional law,” *Rule of Law* 29, (2018): 139-145.
[27] R. Walker, *The English legal system* (London: Oxford University Press, 1976), 62.
[28] Karmalita, Legal doctrine - a source (form) of the right, 85.
[29] J. Grant, and C. Barker, *Encyclopedic dictionary of international law* (Oxford: Oxford University Press, 2009), 75.
[30] W. Vitzthum, *Völkerrecht* (Berlin: De Gruyter, 2019), 122.

significance of a scientific doctrine stems from its historical role. However, the international legal concepts of scientists from different countries and cultural communities are currently hardly consistent with each other. The consequence is the increasing importance of collective opinions and collective statements by international associations, such as Institute of International Law and the International Law Association.

Helmersen[31] highlights that the weight of legal teachings varies, indicating that different works carry different levels of authority. This differentiation in weight can be inferred from the language used in Article 38(1)(d) of the ICJ Statute, which refers to the teachings of the "most highly qualified publicists." This wording implies that certain authors possess greater expertise than others, and only the teachings of the "most qualified" are relevant to the ICJ. The Statute suggests a distinction between the most highly qualified individuals and the rest, indicating that the ICJ can only consider the teachings of the former.

However, it is important to note that legal doctrine is heterogeneous in nature, encompassing opinions from writers of various backgrounds. These include individuals authorized by states, academics appointed ad hoc to provide legal opinions, and experts grouped together for specific purposes. Furthermore, legal teachings are disseminated through different forms and platforms, such as monographs, articles, and even internet blogs. As a result, the power and significance of individual opinions can be evaluated and distinguished.

Therefore, within the realm of legal doctrine, the weight and authority attributed to individual opinions may vary. The qualifications, expertise, and reputation of the authors, as well as the context and platform of their publications, all play a role in determining the strength and influence of their teachings. The ICJ, in its consideration of legal doctrine, may accord greater weight to the opinions of the most highly qualified publicists based on their recognized expertise and contributions to legal scholarship[32].

It should be noted, that the doctrine itself has the property of self-renewal due to new ideas and views, but it introduces these ideas and views as its

[31] S. Helmersen, “Finding ‘the most highly qualified publicists’: lessons from the international court of justice,” *European Journal of International Law* 30, (2019): 509-535.
[32] S. Sivakumaran, “The influence of teachings of publicists on the development of international law,” *International and Comparative Law Quarterly* 66, (2017): 1-37.

elements only after this or that hypothesis is not only confirmed by practice, but also recognized by the overwhelming majority of scientists and professional practitioners. It is also necessary to highlight such basic features of the legal doctrine as: generally recognized, time-tested and practical, authoritative; the sustainability of the doctrine; confirmation of doctrinal provisions by integrating them into legislative acts and, as a result, into judicial lawmaking; independent nature of legal doctrine, etc. Thus, the doctrines of the most qualified specialists in public law of different nations imply the scientific works of the most famous and authoritative international lawyers from different states. These are scientific authorities in their countries and abroad, authors of international law courses, special rapporteurs of the UN International Law Commission, recognized experts on certain international legal problems, etc.

Establishing the legitimacy of one doctrinal position compared to another can depend on several criteria. The legitimacy of a doctrinal position can be based on the quality of the argument and the sound logic that supports it. Arguments must be well-founded, rational, and supported by authoritative sources and evidence. Sometimes the legitimacy of a doctrinal position may depend on the support of authoritative figures in the field of law. If a position is supported by eminent scientists, lawyers, judges, or international organizations, this can give it more weight and legitimacy.

A doctrinal position that is consistent with existing legislation, international treaties, case law, and general principles of law may have greater legitimacy because it conforms to a system of established rules and norms. The legitimacy of a doctrinal position can be determined by its practical value. If a position contributes to the achievement of justice, the development of effective legal solutions, or the solution of pressing problems, this can give it greater legitimacy and support from the legal community and society. However, it is worth noting that determining the legitimacy of a doctrinal position is a complex process and can vary depending on the context, the legal system, and the beliefs of different individuals. Ultimately, the legitimacy of a doctrinal position may be decided through discussion, debate, and the gradual acceptance of such a position in legal practice and academia.

It is worth adding that the doctrine did not go through the procedure of collective development and approval, which aims to approach the criteria of

democratic control. The doctrine lacks a formal procedure for involving the general public and the expert community in its development and approval. The main idea of this thesis is to emphasize the importance of democratic control and broad participation in the process of creating legal norms.

Legal doctrine is usually the result of the work of lawyers, scholars, and legal experts. It is based on their analysis of legislation, case law, and other sources of law. However, the doctrine development process does not usually involve extensive public participation or consultation with interested parties. Many legal systems have formal procedures for adopting and approving legal norms. These procedures generally involve extensive discussion, consultation with various interested parties, public hearings, and the opportunity to make changes. However, doctrine, as an unofficial source of law, often goes beyond such formal procedures and is not subject to their control.

In the world of law, there are a large number of different doctrinal positions from different branches of law. This indicates the absence of a single doctrinal position and the ambiguity of opinions among scientists and lawyers. The lack of a collective development and approval procedure can lead to disagreements and conflicts between different doctrinal positions. It is worth noting that the need for democratic control in the process of developing legal norms is a subject of debate. Some doctrinal positions may be widely recognized and accepted in legal practice, despite the lack of a formal procedure for their approval. The application of doctrinal positions in specific cases may depend on their validity, the influence of authoritative persons, and recognition in the legal community.

## Discussion

In most countries, legal doctrine is a so-called non-traditional or indirect source of law. However, its importance should not be underestimated. The doctrine certainly influences the legislator. For example, as R. David[33] notes, doctrine is a source of law of paramount importance to this day, since it creates a dictionary and legal concepts used by the legislator, establishes the methods by which law is discovered and laws are interpreted. Also, the doctrine influences

[33] David, and Geoffre-Spinozi, Basic legal systems of our time, 38.

the legislator, who often only expresses the tendencies that have been established in the doctrine, and accepts the proposals prepared by it.

In the literature devoted to the analysis of the sources of Romano-Germanic law, the term “doctrine” is used in a broad sense, namely:

a) doctrine can be understood as a combination of philosophical and legal theories.

b) doctrine also encompasses the opinions of legal scholars regarding specific matters pertaining to the nature and substance of various legal acts, as well as issues related to legislation and the implementation of laws.

c) additionally, doctrine encompasses the scholarly works of highly esteemed researchers in the field of state and law, whose contributions hold significant authority.

d) comments on various codes, individual laws, models of various regulatory legal acts[34].

In practice, the legal doctrine is manifested in the drafts of normative legal acts prepared by scientists and approved by the state authorities; expert opinions of lawyers on the interpretation and application of the rule of law in specific legal cases; works of legal scholars, which are recognized as mandatory for law enforcement officers and subjects of law, etc.

It should be noted that doctrine is most closely related to legal science. Moreover, it can be very difficult to separate one from the other, nevertheless, the analysis of the properties and features of the right doctrine and legal science allows us to say that these are still diverse phenomena. So, the main criterion for separating legal doctrine from legal science is the authority of a concept or research that claims to be a doctrine. Thus, legal doctrine, in fact, is a part of legal science, for which the authority and “persuasive force” is recognized. Moreover, a doctrine can acquire the force of a source of law in the following ways: by actual action without state recognition, but with the approval of society and legal circles; by judicial assimilation in the process of resolving specific legal cases; by authorization by the supreme state authorities as mandatory in regulations.

[34] F. Dessemonten, and T. Ansay, *Introduction to Swiss law* (Hague: Kluwer Law International, 2004), 114.

The mechanism of origin and action of legal doctrine as a source of law N. Parkhomenko[35] reflected the following: the emergence of the need for legal regulation of certain social relations> scientific research> the emergence of the idea and its justification> support for the idea at the official level and public approval> transformation of the idea into a concept of legal reform in a particular sphere of public life. Given the important role of doctrine as a source of law in international law, we consider it necessary to conduct a more detailed study in this area. It should be noted that during the period when international law was predominantly customary law, the doctrine of international law played a much greater role than in modern conditions, in which international law has become mainly contractual and the role of international legal doctrine has somewhat decreased.

The doctrine affects the formation of international legal norms. It plays a significant role in the process of codification of international law, in the formation of the international legal position of the state on certain issues. For example, in the preparation and during the work of international conferences and organizations. Thus, the doctrine plays a certain role not only in the process of applying international law, but also in the process of its development. In addition, the fundamental foundations of the theory of international law have indeed been developed, with the enormous contribution of science; but, firstly, as the world changes, these foundations also require a theoretical review and, sometimes, making adjustments; secondly, modern life highlights new legal problems in international relations, which cannot be solved without fundamental theoretical elaboration.

The great role of doctrine was noted by R. Gardiner[36]. According to his argument, the identification of principles of general international law, even when they are codified in treaties, necessitates an assessment of customary practices to determine if there is evidence of a widespread and accepted practice that is recognized as law. This process is not as unrestricted as it may initially appear, but it does demand a willingness to engage in thorough academic research, which can sometimes be extensive in nature. Undoubtedly, the positive aspects

[35] N. Parkhomenko, "To clarify certain aspects of the nature of legal sources of law," *Journal of Kyiv University of Law* 2, (2007): 9-15.
[36] R. Gardiner, *International law* (London: Pearson Higher Education, 2003), 88.

of using the doctrine are: flexibility to changing living conditions, the ability to offer a solution to a legal case, as well as the ability to answer questions that arise in the practice of law enforcement (gaps in law, ambiguity and inconsistency of legislation).

Moreover, the doctrine has a significant impact on the lawmaking and law enforcement process when there are gaps in the law, when the courts are considering a situation or relationship that is either not regulated at all by law, or unclear and contradictory norms are applied to them. The main problem of using such a source of law as doctrine is the problem of accessibility of law and legal certainty. If in the case of legislation this principle is relatively easy to implement (unpublished laws do not apply), then in the case of legal doctrine it is hardly possible to ensure legal certainty. In addition, it usually takes a long time for a particular scientific development or concept to become a doctrine. This is a complex and multi-stage process, which most often ends with the integration of doctrinal developments into legislative norms or judicial lawmaking. Cases of direct recognition of the works of individual scientists by the norms of law are practically absent in modern law.

The doctrine cannot supersede the principle that there can be no crime, no law, and no punishment without a previous law providing for them. This is an important legal principle known as the principle of legality. This principle plays an important role in protecting the rights and freedoms of citizens and ensuring equality before the law. Let's consider this thesis in more detail. The principle of legality requires that legal norms, including the definition of crimes, the definition of punishments, and the procedures for their application, are provided for in the previous law. This means that the state must establish clear, publicly known, and sufficiently predictable norms that define crimes, impose restrictions, and establish punishments. Doctrine, in turn, refers to the theoretical concepts, interpretations, and understanding of the law that develop in scientific research and the opinions of lawyers. It can express recommendations, ideas, and arguments about the interpretation of laws, but is not itself legally binding or enforceable.

Therefore, the doctrine cannot replace the principle of legality, because it has no legal force to create or change legal norms. Changes in the law, in particular the definition of new crimes or the establishment of new punishments,

must take place through a legislative process involving parliament or other competent bodies with legislative power. Only after the adoption of such a law, it acquires legal force and becomes the basis for recognizing a crime and applying punishment. The principle of legality is an important element of the rule of law and ensures predictability, stability, and protection of citizens' rights. It ensures that no person can be punished for doing an act that is not an offense under the law and also that no person can be punished for an act that was not criminalized at the time it was committed.

At the same time, the unwritten nature of the legal doctrine, its ambiguity can cause different solutions to identical, typical legal cases, i.e. to introduce inconsistency and confusion.

In addition, it seems necessary to recommend law enforcement agencies to use doctrinal views when resolving legal disputes by observing a number of conditions:

1) the views applied must be generally accepted, generally recognized in the legal class, i.e. supported by the majority of scientists and practitioners;

2) the doctrine must be authoritative, come from recognized scientists or scientific schools and be based on scientific research conducted;

3) the legal doctrine must relate to the merits of the legal case;

4) the law enforcement agency must refer to the relevant work, works of a scientist, or receive a signed, reasoned opinion from an expert scientist, or indicate that certain views that do not have a specific author are generally accepted;

5) it is necessary to refer to the legal doctrine in case of contradictions of legal norms, gaps in law, ambiguity or ambiguity of law.

Thus, the legal doctrine as a source of law has a significant impact on the development of modern law. At the same time, in international law, although the majority of scholars recognize the influence of the doctrine on the activities of the UN International Law Commission, international courts and arbitration, there is nevertheless a tendency to reduce its role in the development of international law, in comparison with the role of doctrine in the days of classical international rights.

The similar position has A. Aust[37]. Among other things, he noted that the role of writers on international law is subsidiary. In the early stages of international law, their opinions may have carried more weight than they do in the present day. Currently, their significance primarily lies in the extent to which their books and articles represent scholarly works based on comprehensive research into the existing state of the law (lex lata). This is in contrast to simply comparing the opinions of other writers regarding what they believe the law should be (lex ferenda). A meticulously researched scholarly work will naturally have a greater impact on a court, whether at the domestic or international level.

It is worth noting that legal doctrine differs from other sources of law in its nature and role. Legal doctrine is theoretical thinking, research, and analysis of legal issues carried out by scientists, lawyers, academics, and other experts. It expresses views and opinions on legal issues, interpretation of legislation, analysis of judicial practice, and establishment of general principles of law. Legal doctrine is an unofficial source of law. It has no direct legal status, such as legislation, international treaties, or case law. It has no legal force to enforce legal regulations.

Legal doctrine performs the role of interpretation and development of law. It can contribute to the understanding of legislation, the determination of its content and objectives, as well as to fill gaps in legislation through the analysis of practice and new challenges. Doctrine can also create new concepts and ideas that can be used in legislative and judicial practice. Legal doctrine can have different levels of authority depending on the recognition and influence of certain doctrines. Certain authoritative doctrines can have a major impact on lawmaking, judicial decisions, and the development of law, but they do not have direct legal force. It is important to note that in some jurisdictions, especially in the continental legal system, the scientific doctrine may have some weight in the interpretation of legislation and the adoption of judicial decisions. However, this depends on the specific legal systems and practices of the country.

## Conclusion

[37] A. Aust, *Handbook of international law* (Cambridge: Cambridge University Press, 2010), 32.

The issue of legal doctrine has been and remains the subject of numerous studies, but many issues remain unresolved or debatable, so this study can contribute to the research of this issue. Currently, insufficient attention is paid to the legal doctrine, its role and importance in the system of sources of law are underestimated. The current situation is justified by the fact that the legal doctrine is a kind of scientific basis containing prescriptions of a declarative nature that are important for the upcoming transformations, in this connection, it is more problematic to refer it unequivocally to the sources of law.

At the same time, the doctrine, formed by leading scientists, lawyers, practitioners, most adequately reflects the needs of social development, it is an essential element in the formation of the proper level of legal consciousness and legal culture. Legal doctrine is one of the most ancient sources of law, however, there are still disputes over its attribution to the system of sources of law. It should be noted that at the present historical stage, there are not so many situations when a doctrine becomes a source of law; in particular, the legal doctrine is now mandatory in countries belonging to the Anglo-Saxon and Muslim legal families. In the Romano-Germanic legal family, doctrine is an auxiliary source of law. Moreover, doctrine is an indispensable source of international law.

The doctrine has a significant impact on the lawmaking and law enforcement process when there are gaps in the law, when the courts are considering a situation or relationship that is either not at all regulated by law, or unclear and contradictory norms are applied to them.

It is the doctrine that creates the vocabulary and legal concepts that the legislator uses. The role of doctrine is important in establishing the methods by which law is discovered and laws are interpreted. A legal doctrine should be recognized as a source of law due to: gaps in law, inconsistency and ambiguity of legal norms, its actual application in practice by state bodies, as well as in connection with its merits, persuasiveness, reliability, flexibility, etc. It can also be enshrined in relevant normative legal acts. Such acts are acceptable to reveal the notion of a legal doctrine, define a doctrine as a source of law, and establish mechanisms for resorting to this source in law enforcement.

Doctrine is also the source of international law. At the same time, the doctrine of international law can have a significant impact on its development.

By supporting basic principles and norms, opposing obsolete concepts, the doctrine makes a significant contribution to the development of international law. Taking into account all of the above, it seems necessary to highlight the main promising directions for the development of legal doctrine, inter alia: the use of the doctrine in the law-making process, in the development of normative legal acts; the use of the doctrine in the production of scientific expertise of regulatory legal acts and their projects; implementation of the doctrine in judicial legal positions.

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