



GEORGIAN FOUNDATION FOR
STRATEGIC AND INTERNATIONAL STUDIES

**NATIONAL SECURITY POLICY OF GEORGIA:
PLANNING, COORDINATION AND PRACTICE**

TEONA AKUBARDIA

135

EXPERT OPINION





საქართველოს სტრატეგიისა და საერთაშორისო ურთიერთობათა კვლევის ფონდი
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The purpose of this article is to deliberate and examine the legal and institutional modifications in the planning and coordination of national security policy following the enactment of the Constitution. The article will review the legal and institutional arrangement of the President and the Prime Minister's Advisory Body - the National Defense Council and the National Security Council, their effectiveness and their relevance with the national security challenges facing the country.

Introduction

Georgia faces numerous security challenges at the national, regional or international levels. The Russian occupied regions of Georgia and their so-called recognition of independence, illegal Russian military bases and a buildup of armaments on those bases, the so-called "borderization" and the steps towards annexation, and a severe humanitarian crisis - this is just a small list of the threats that are enumerated in national-level documents in the field of national security.¹

Along with Russia's use of military means, the political, informational and economic pressure is also mounting. The so-called Russian hybrid war is recognized as a challenge for Georgia in various national-level conceptual documents.²

The threats facing the country require effective and adequate national security policy planning and coordination as well as a system of response or prevention against them. The National Security Concept of Georgia, which is the foremost national level strategic document, cites the development of an effective national security system as a priority for the national security policy.³

However, the following situation illustrates problems with the implementation of this priority. The State Security and Crisis Management Council under the Prime Minister, which was supposed to develop national-level conceptual documents, was abolished at the end of 2017 on the basis of government restructuring. The law has delegated this function to the government. To this date, the government has failed to update national level conceptual documents in the field of national security.

As a result, in 2019 the country did not have the following updated national level strategic documents: the Threat Assessment Document and the National Defense Strategy. Despite the changing security environment,

the latest edition of the National Security Concept dates back to 2011. It is noteworthy that the cyber security strategy, which is a national level document, has also not been updated. The Documents still has to be updated.

Under the new Constitution, instead of regulating the issue of the subordination of the National Security Council and moving it from the President to the Prime Minister, in line with the political will of the ruling party, the new advisory body to the President - the National Defense Council - was set up. This new entity becomes operational only during wartime.

Consequently, once more, two advisory councils appeared in the legislation.⁴ If by the Constitution a state of war is declared, the National Defense Council, which is the President's advisory body, is set up. While, the National Security Council, which was created by law in April 2019 as the Prime Minister's advisory body,⁵ is permanently operational.⁶ Its aim is the planning and coordinating of the national security policy at a strategic level. As a result, the government continued to ignore the 2014-2017 experience of the parallelism that resulted from the creation of two councils under the President and the Prime Minister as well as the relevance of the new system vis-à-vis Russia's hybrid war.⁷

Below, we will briefly review the changes in the Constitution and the laws at the political level made by the Georgian Dream's governance in the national security domain. We will discuss the mandates of both advisory councils within the legislature. Finally, we will analyze their relevance in regard to the threats and challenges facing the country.

National Defense Council

Following the approval of the 2018 constitutional amendments, the National Security Council, which was created by the 1995 Constitution for the purpose of providing organization of defense and military reconstruction, was abolished. This very institution was also the President's permanent advisory body according to the organic law of 1996. Instead of NSC, the National Defense Council appeared in the Constitution as a non-permanent body under the President.⁸ It is assembled only after the declaration of the state of war and operates throughout its duration. According to the 2018 edition of the Constitution, the permanent members of the Council are:

President of Georgia, the Prime Minister, the Speaker of the Parliament, the Minister of Defense and the Commander of the Defense Forces.

According to the decision of the President of Georgia, members of the Parliament and the government may be invited as members of the Council. The law according to the Constitution defines the authority and the scope of the National Defense Council.⁹

The law also specifies the intensity of the Council's meetings which are held according to need. As for its authority, the law states: "The Council shall consider matters arising during the state of war in the country and shall make recommendations and proposals regarding the organization of the country's defense and other needs of the state of war."¹⁰ It is also important that technical assistance for the meetings of this Council are not provided by the relevant qualified staff, as was the case with the National Security Council, but by the President's Office.

Although the Constitution states that the President is the Supreme Commander of the Defense Forces and this is precisely the capacity for which the President chairs the National Defense Council in the wake of a constitutionally declared state of war, the law conditions that the President needs the agreement of the Prime Minister to convene a council meeting.¹¹ By the same law, the agenda of the Council meeting is also determined in agreement with the Prime Minister.¹²

Georgia can be said to be that rare country where two advisory councils exist in order to deal with these issues and the Council operating under the country's Supreme Commander only functions during a state of war. The institutional model of the temporary Council of Defense is a rarely used in practice with Hungary being one of the rarest exceptions to this from the group of Central European new democracy countries. However, it should be noted that Hungary does not have such a susceptible national security environment as Georgia and its security is protected by NATO.

According to the widespread Western practice, National security council is primarily a body of the heads of state, rarely of the heads of a government (e.g., Czech Republic, Slovenia), but as a whole, the existence of such a council is not directly linked to the system of governance. The Security Council also operates under the head of state in a system of governance where the executive branch belongs to the government. That is to say, through the Security Council the President does not necessarily become

involved and tries to control the executive functions. Therefore, Security Councils (rarely called Defense Councils) under the president are found not only in presidential or mixed systems (Lithuania, Poland, Romania, Croatia, Moldova) but also in some of the pure parliamentary republics (Estonia, Bulgaria, Latvia). It is not about interfering in the president's governance but about having a collaborative deliberation tool for communicating more actively and effectively with one another. It operates in virtually all post-totalitarian new democracies and also in our region which is characterized by security peculiarities. Finally, the creation of a security council should serve the security needs of the country and be focused on this goal.

Defense organization is an unceasing process and its proper functioning requires the care of both the Supreme Commander of the country and the involvement of senior political officials with the participation of the heads of relevant agencies. The purpose of the continuity of defense organization is to avoid the threat of war and realize the strategic interests of the country. Once the security policy is set, a meeting of the National Security Council is precisely the venue where these goals are attended. Response to national security matters and the dangers arising therefrom do not begin immediately at the outset of war. This is even more important in case of hybrid warfare when war is no longer just of a conventional nature.

Accordingly, it should be concluded that in view of the new version of the Constitution, the National Defense Council does not serve the purpose of the country's defense organization or is it systematically relevant to Georgia's contemporary security challenges.

National Security Council

In this section we will discuss the legislative and institutional framework established by national legislation and how it relates to the security of the country.

As mentioned in the introduction, the National Security Council was created by an April 2, 2019 amendment to the law. The aim of the National Security Council¹³ is described by the law as follows: "The National Security Council is being created for the purpose to inform the Prime Minister of Georgia and prepare policy decisions for him on the issues that pose a threat to national security and state interest, and to plan and coordinate national security policy at the strategic level."¹⁴

It should be noted that in addition to security policy planning and coordination, the Council has another important function which is described in an article of the law dedicated to the Council's scope and framework and that is "to develop recommendations for the Prime Minister to make appropriate decisions for the purpose of managing crisis situations at the political level which contain danger to the national interests of Georgia."¹⁵ This mandate was added to the National Security Council by law in 2011 in light of the August war experience and by that addition the function of preparing political decisions was extended for all types of crises.¹⁶

The abovementioned rule cannot be implemented in real life for one reason: today's legislation is not familiar with the definition of crisis. (Its definition was removed from the civil security law in 2017). The only law where there is a reference to a crisis as a different regime is the Law on Defense Planning whose Article 5 specifies the planning of action in times of crisis and emergency and/or state of war and other emergency situations.¹⁷ The existing legislation only deals with emergency situations and a state of emergency and/or war.

As for the authorities of the Council, the law clarifies those matters arising from its status and aim. These issues cover domestic and foreign security, as well as defense, and are explained in section 19-2 of the law in the following way:

- The Council discusses and analyzes domestic and foreign policy issues directly related to ensuring national security. It also reviews and analyzes information on the state of affairs in the field of national security, identifies and assesses threats, develops recommendations for preventing and tackling these threats.
- The Council will develop proposals for avoiding and eliminating the effects of certain events containing threat for Georgia in the areas related to political, defense, social, economic and security policy.
- In relation to the situation in the occupied territories, the Council reviews and analyzes the current situation as well as assesses the risks and challenges directly related to ensuring national security and safeguarding Georgia's state interests.

The Council's jurisdictions in the matters of national defense are represented in the law as follows:

- Discusses issues related to the type, composition and quantity of defense forces.
- Discusses the issue of the deployment, use and movement of another country's military forces in specific and statutory cases to protect the state.
- Considers the issue of declaring a state of war in the event of a military attack on Georgia or the immediate threat.
- The Council also studies and analyzes the state of affairs in international conflict zones bearing in mind the interests of Georgia, develops various scenarios of possible developments and where appropriate assesses relevant threats, risks and challenges. As a result, the Council will develop proposals for Georgia's involvement in cooperation in the field of international security and Georgia's collaboration with the collective defense systems. The Security Council will develop recommendations on Georgia's participation in overseas campaigns dedicated to the improvement of international security.

As for national security:

- The Council spearheads and coordinates the development of national-level conceptual documents.
- Considers the issue of declaring a state of emergency throughout the country or on any part of it during mass riots, the violation of the country's territorial integrity, military coup, armed uprising, terrorist act, natural or man-made disaster or epidemic or in cases where public authorities are deprived of the normal exercise of their constitutional powers throughout the country.
- Develops recommendations on Georgia's international cooperation in the field of national security.
- Deliberates within its competence draft laws related to national security matters and proposed international treaties. Upon the instruction of the Prime Minister of Georgia, the Council considers other matters in the field of national security falling within the competence of the government and the Prime Minister of Georgia and develops

recommendations on these matters. It develops recommendations on strategic communication in the field of national security. Finally, the Council exercises other powers conferred upon it by the legislation of Georgia.

As mentioned above, the Council is an advisory body to the Prime Minister and is chaired by him. It is authorized to review matters specified by this law for the preparation of highest-level decisions. The Council makes no decisions independently of the Prime Minister.

By law, the Council is convened by the Prime Minister on his own initiative or at the request of a permanent member. Council meetings are usually closed but can be made public by the Prime Minister's decision. By law, a Council meeting is usually held once every three months which means that if needed an unplanned meeting can be convened to discuss the issues listed above. The official proceedings of a Council meeting are recorded and signed by the Chairman (the Prime Minister) and the Secretary of the Council.¹⁸

The law defined the following composition of the Council's permanent members:

The Prime Minister of Georgia, Minister of Defense of Georgia, Minister of Internal Affairs of Georgia, Minister of Foreign Affairs of Georgia, Minister of Finance of Georgia, Head of the State Security Service of Georgia, Head of the Intelligence Service of Georgia and the Commander of the Defense Forces of Georgia.

It should be noted that the composition of the permanent members of the Council is almost similar to that of the National Security Council with the exception that the Chief of Intelligence was not a permanent member of the National Security Council. However, its members included the Chairman of the Parliament and the heads of two parliamentary committees as well as the President and the Secretary of the Council.

As for the President, as a result of a compromising agreement in the new Council between the government and the President and based on a decision of the Prime Minister of Georgia, a person nominated and trusted by the President of Georgia may be invited to the Council for the purpose of providing him or her with information on a meeting. However, the position of a trustee and the extent to which this individual is aware of a national security matters is not stated in the law. Moreover, the law does

not allow the minutes of the Council meeting to be submitted to the President. Accordingly, the President is only informed when his representative is invited to the session.

There are also changes regarding the Secretary of the Council. Unlike the previously existing practice, according to the law the Secretary is no longer the National Security Adviser to the Prime Minister and a separate political official. By the decision of the Prime Minister, the function of the Secretary of the Council is assigned by law to one of the permanent members of the Council. Such a practice is not common in Georgia as in most Western countries. By law, the Secretary of the Council coordinates the activities of the entire Council. The scope of the Secretary is broader than just the management of the apparatus. It also includes the coordination of the work of the Council's apparatus.¹⁹ At the same time, the Council has a separate Head of Apparatus as defined by the law.

In the discussion on the draft law, some of the parliamentary opposition and non-governmental organizations working in the field had a different view on the secretary and saw both political and contextual risks although the initiated draft was not altered.²⁰

Since May 2019, the Council changed two Chairmen (Prime Minister Mamuka Bakhtadze was replaced by Prime Minister Giorgi Gakharia) and three Council Secretaries (Giorgi Gakharia and Levan Izoria).²¹ The Minister of Internal Affairs, Giorgi Gakharia, who was the First Secretary of the Council, was replaced by Levan Izoria who took over the post of the Head of the Intelligence Service. However, after his resignation from that position on February 19, 2020, Vakhtang Gomelauri became the Secretary of the Council in his capacity as the Minister of the Interior.²² The frequent change of Council Secretaries once again points to the ineffectiveness of imposing the Council secretary's position onto a permanent member.

The Prime Minister's advisory body will be one-year-old in April; however, as of today, it is effectively non-functional. This argument can be substantiated by the fact that only two sessions have been called as of February 2020 even though the law says that the Council should usually meet once every three months.²³ The first so-called "technical meeting"²⁴ was held on May 1, 2019 and the last one on November 13 of the same year.²⁵ In the second and final session on November 13, an announcement was made by the former Secretary of the Council, Levan Izoria, about the elaboration of national level conceptual documents. A public announcement mentioned

the update of the threat assessment document. In addition, the Secretary said: "Starting today, work will begin on the creation of a comprehensive national security concept."²⁶

It is also noteworthy that the Interagency Commission necessary to develop these documents was set up exactly two months after by Government Decree # 21 on January 13, 2020.²⁷ It is chaired by the Secretary of the Council and his deputy is the Head of the Council's office .. The Interagency Commission is staffed by the deputy ministers of those agencies which are members of the Council. The novelty is that the representatives of the parliamentary committees on defense and security, and foreign affairs were also asked to participate. However, public information is not available on either the first meeting of the Commission or the expected deadlines and so it is unclear when the draft versions of these documents will be available.

Therefore, the following factual circumstances are at hand:

- The Council cannot or does not meet even once every three months as established by the law,²⁸ let alone the need for extraordinary meetings. Since June 2019, the following events unfolded in the country that would potentially require the calling of the next extraordinary meeting: the crisis following the visit of the Russian MP Gavrilov and Russia's decision to suspend direct flights, the Chorchana-Tselisi checkpoint related crisis, the humanitarian crisis in the occupied territories, the massive cyber-attack against the government and the private sector in October and the escalation of problems vis-à-vis US-Iran relations and others.
- Documents in the field of national security as established by the law have not been updated.
- The Council through a political deliberation framework does not inform the Prime Minister on issues that threaten national security and state interest nor does it assist the Prime Minister to prepare appropriate policy decisions that are related to planning and coordinating the national security policy at a strategic level.
- All in all, it should be noted that the Council's disuse as a tool and its actual inactivity are directly linked to the personal will of the incumbent Prime Minister, Giorgi Gakharia, who by law convenes Council meetings and appoints the Secretary of the Council.

Conclusion

The analysis of the legislation on the entity responsible for policy planning and coordination at the political level in the field of national security reviewed in this article provides the opportunity for the following conclusions:

- There seems to be no direct correlation between the political structure of the country and the model of the Security Council. In implementing constitutional and legislative changes, the ruling power did not take into account the widespread practice of the creation of security councils – that is to use as a foundation the already existing national traditions in this field as and magnitude of threats facing national interests. It also failed to maintain as a guiding principles, those ideas and approaches that would enable the tackling of challenges with combined force. Accordingly, the country needs one permanent Security Council under the Constitution and the law which would be grounded on the aforementioned widespread practice and adequately safeguard the national security of the country.
- The government has failed to develop a clear vision and secure a political or public consensus on the matter.²⁹ The fact that a large number of specialists working in the field and the opposition parties did not agree with the legislative changes initiated by the majority creates a danger that the next government will once again alter the existing system. However, the continuity of institutions is crucial for the sustainability of strong state institutions.
- The lack of the renewal of the national-level conceptual documents required by law in the field of national security creates a feeling, within and without, that the country does not appreciate the dangers it faces, does not plan its national security policies in accordance with the threats and, therefore, fails to coordinate them. This, on its own, weakens the national security of an already vulnerable country and makes it easier for the adversary to act against our national interests.
- The absence of a crisis definition in the legislation is yet another clear example of the fact that a crisis management system is absent at the political level. For a country facing a hybrid war, the proper operation of this system is of vital importance. When designing the system, it is necessary to take into account the country's past experience, analyze the mistakes and update the system in light of existing threats.

- The failure to convene Council meetings even within the time period established by the law once again reinforces the fact that the system in place is fictional which, on the one hand, is indicative of the Prime Minister's political will and, on the other hand, the attitude of the whole ruling political team towards Georgia's national security.

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