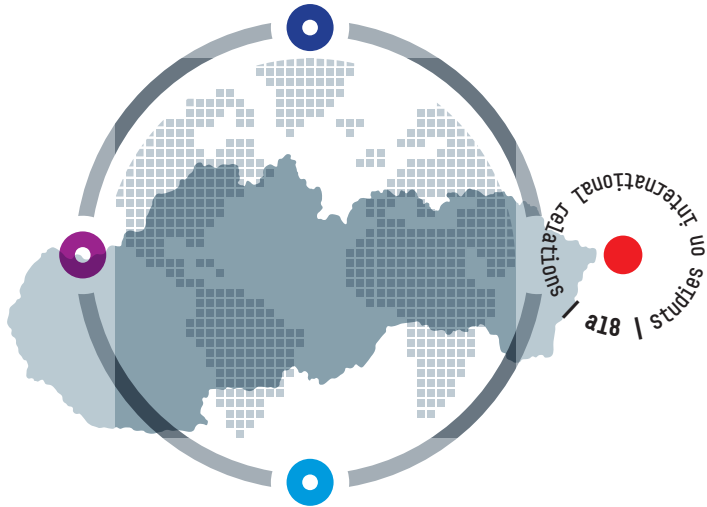




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Border dynamics: legal and illegal migration

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Iceland
Liechtenstein
Norway grants



The project "Safe and Inclusive Border between Slovakia and Ukraine – SIBSU" is funded by Iceland, Liechtenstein and Norway in the amount of € 832 827 through EEA grants. The project is co-financed by the state budget of the Slovak Republic.



The overall goal of the SIBSU project is to facilitate the exchange of ideas, knowledge, information and experience among border and custom services of Slovakia, Ukraine and Norway. The aim is to analyze the opportunities for deepening integrated border management and increase awareness and understanding about the work of the border police and custom services in border regions and municipalities in Slovakia and Ukraine. The project also includes an analysis of the impact of the border on the socio-economic development of the border regions, as well as on opportunities for further cross-border cooperation on both sides border.



öpenhet



State Border Guard
Service of Ukraine



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Bratislava 2023
© Authors & Research Center of the Slovak Foreign Policy Association

publisher

Research Center of the Slovak Foreign Policy Association
Staromestská 6/D, 811 03 Bratislava

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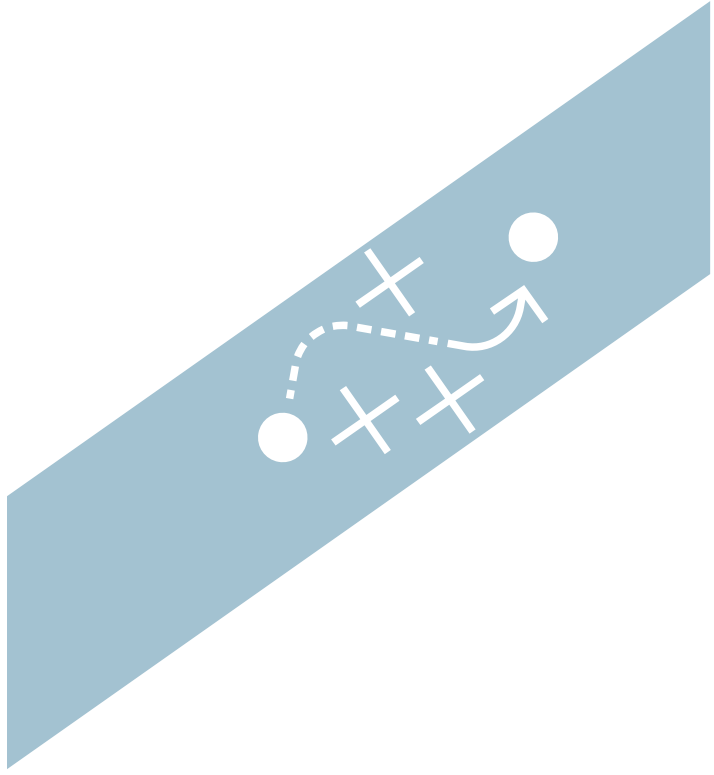
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printed by

Devin Printing House

The policy paper is published within the project Safe and inclusive border between Slovakia and Ukraine – SIBSU funded by Iceland, Liechtenstein and Norway through EEA grants. The project is co-financed by the state budget of the Slovak Republic.

ISBN 978-80-89645-14-5



Border crossings, socio-economic situation of border areas and cross-border cooperation

Border dynamics: legal and illegal migration

The issue of legal and illegal cross-border migration is extremely relevant for Ukraine, which, shares a border with seven countries, including EU member states. Ukraine's land and sea state border passes through the regions of Vinnytsia, Volyn, Donetsk, Zhytomyr, Transcarpathia, Ivano-Frankivsk, Kyiv, Luhansk, Lviv, Odessa, Rivne, Sumy, Kharkiv, Chernivtsi and Chernihiv. Transcarpathia is the only region that shares a border with four EU countries – Poland, Slovakia, Hungary and Romania. The Slovak–Ukrainian border is 97.9 km long. Slovakia shares a border with five countries. Four of these countries are members of the Schengen Area, so those borders are internal EU borders, while the border shared with Ukraine is an external EU border. There are five border crossing points between Slovakia and Ukraine – three road and two rail: Mali Selmentsi–Veľké Slemence, Maly Berezny–Ublľa, Uzhhorod–Vyšné Nemecké, Pavlove–Matovce, Chop (Guard)–Čierna nad Tisou.¹

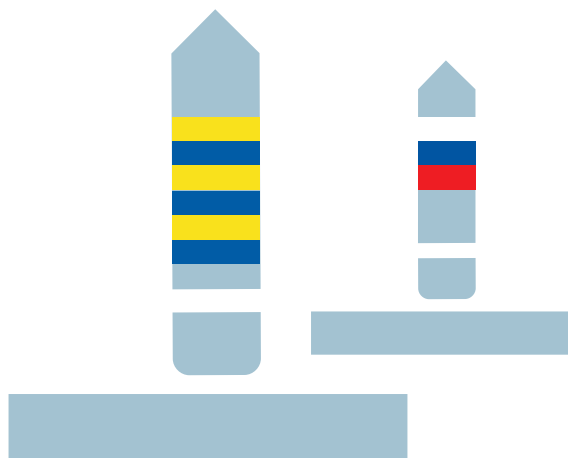
Therefore, the issue of border effectiveness, especially permeability and security, is extremely important not only in bilateral relations between Ukraine and Slovakia, but also in relations between Ukraine and the EU. Along with the work aimed at turning the Ukrainian–Slovak border into a smooth legal crossing, preventing illegal migration,

¹ For more see official website of the State Border Guard Service of Ukraine. Available online: <https://dpsu.gov.ua/> and/or <https://dpsu.gov.ua/en/> (accessed on March 31, 2023).

and mitigating its negative effects on bilateral relations will also be addressed. Hence effective mechanisms for interaction between border authorities and the prevention of illegal movement of people, cars, goods etc., needs to be discussed.

Although many people think migration erodes the traditional boundaries between cultures, peoples, and ethnicities, or has a negative impact on the labor market, recent studies show that the advantages significantly outweigh the disadvantages. Besides the positive exchange of culture and experience, mutual learning, cross-border cooperation as well as collaboration in the humanitarian, economic, political and social sphere, migration plays a key role in modern global markets, filling gaps and keeping them competitive. In addition, migration is a crucial means of maintaining ties with family and friends.

The data on migration processes at the Ukrainian–Slovak border are available from the Ukrainian and Slovak border authorities on the legal and illegal (unregistered) movement of persons, goods, services, vehicles and performed a data analysis of border crime (smuggling of goods, forged travel documents, illegal migration, etc.).



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These authorities are the State Border Guard Service of Ukraine (SBGS)² and the Bureau of Border and Foreign Police (BBFP) of the Presidium of the Police Force of the Slovak Republic.³

It is important to note that Slovak border management changed substantially following Schengen accession in 2007. Based on the conclusions of the Schengen evaluation of Slovak land borders in 2006, the BBFP was transferred from the Presidium of the Police Force and integrated into the organizational structures of the interior ministry. The BBFP drafted the National State Border Management Plan of the Slovak Republic, which was approved in May 2007. In joining the Schengen area on December 21, 2007, Slovakia became responsible for protecting its external EU border. That meant abolishing the internal borders with Austria, the Czech Republic, Hungary, and Poland. At the same time, Slovakia had to set up security, customs and inspection controls and reinforce its control and surveillance forces on the external border with Ukraine to ensure EU standards were met. Based on the evaluation report by the Schengen evaluation mission, the Slovak Republic had to change its data protection, police cooperation, external border controls at land and air borders, as well as its visa policy. The BBFP also took on new responsibilities in police and judicial cooperation in criminal matters and policy as regards visas, immigration and the free movement of people. As of May 2007, the following changes were made:

- the Regional Office of the Serious Crime Investigation Department was set up in Sobrance;

² Ibid

³ For more see official website of the Bureau of Border and Foreign Police of the Presidium of the Police Force of the Slovak Republic. Available online: <https://www.minv.sk/?bureau-of-border-and-foreign-police-of-the-presidium-of-the-police-force-2> (accessed on March 31, 2023).

- the Regional Office of the Department of Operative and Investigative Activities East of the National Unit to Combat Illegal Immigration was reinforced under the Border Police Directorate in Sobrance;
- the Risk Analysis and Statistics Department was set up;
- the Training Department was set up;
- the Mobile Intervention Unit was reinforced;
- the Department of Central Visa Authority was set up.

In April 2011, the BBFP was transferred from the interior ministry to the Presidium of the Police Force. That was the last major organizational change to take place on the Slovak side within the period under study ending in 2020. Following its accession to the Schengen area in 2007, Slovakia adopted the EU terminology and started differentiating between “internal” and “external” borders. That terminology is used in this study to enable a better comparison of the data. The key terms are defined based primarily on the Statistical Overview of Legal and Illegal Migration in the Slovak Republic issued annually by the BBFP:⁴

- Border – a line separating two countries, indicating administrative divisions, or other areas.
- Internal border – part of the border of the Slovak Republic – the common land border between the Slovak Republic and other EU member states, i.e.

⁴ “Štatistický prehľad legálnej a nelegálnej migrácie v Slovenskej republike 2011,” [Statistical overview of legal and illegal migration in the Slovak Republic 2011] Ministry of the Interior of the Slovak Republic, 2011. Available online: https://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocniky/rok_2011/2011-rocnika-UHCP-SK.pdf (accessed on March 31, 2023).

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Austria, Czech Republic, Hungary and Poland. Airports are included under the term when pertaining to intra-Schengen flights.⁵

- External border – part of the border of the Slovak Republic – the common land border between the Slovak Republic and an EU non-member state. Airports are included under the term when pertaining to non-Schengen flights, in this case Ukraine.
- Legal migration – entering, leaving or staying in a country in compliance with international agreements and the immigration law of that state.
- Illegal migration – entering, leaving or staying in a country in violation of international agreements and the immigration law of that state.
- Illegal border crossing – includes all instances of foreign citizens attempting to cross or having crossed the border illegally, regardless of direction, “where the time period between crossing and apprehension is less than 48 hours and they were apprehended by a police patrol performing border control tasks”.

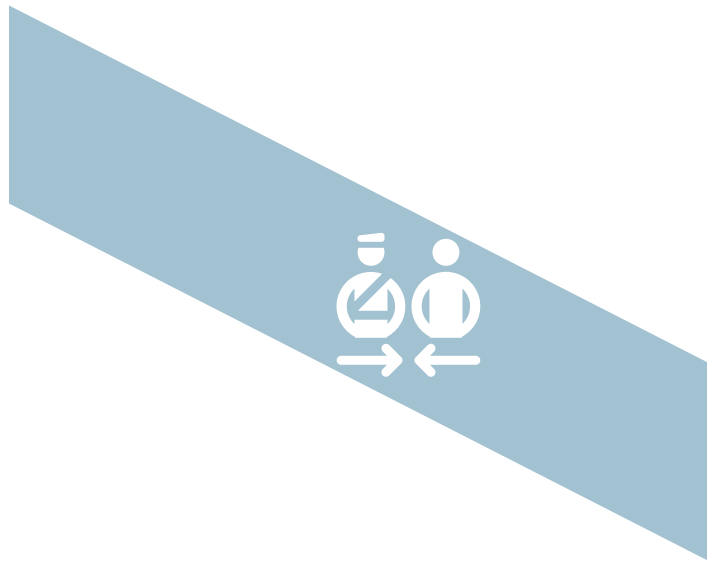


⁵ Flights to a member state or from a member state only, without landing in a third country.

It also includes cases of readmission, where a foreign citizen is apprehended outside the country by foreign authorities and is returned to the country from which he or she came.

- Illegal stay – includes foreign citizens who are illegally present in the Slovak Republic, whose stay is not in compliance with the national legislation and/or international agreements; regardless of whether they entered the Slovak Republic legally or illegally, or were detected during a border check when leaving the Slovak Republic, excluding attempts at an illegal border crossing.
- Third country nationals – all individuals who are not Slovak nationals or EU nationals (including stateless persons).
- Visa – authorization issued by a Schengen member state for transit through or an intended stay in a member state.

Negative migration is all types and forms of illegal migration and the consequences for interstate relations, the economy and ordinary citizens, especially those living in



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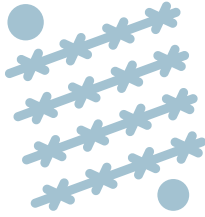


border regions. Unfortunately, illegal migration can affect the person's health, for instance unsuccessful attempts to cross the border or smuggle goods. Illegal movement (of persons, vehicles, goods) occurs on the Slovak-Ukrainian border, damaging relations between the two countries and harming the population on both sides of the border.

According to the SBGS data, illegal migration across the Slovak-Ukrainian border can be broken down into the following types of non-admission or detention at the border: denial of entry, including on the basis of interviews; detention (illegally attempting to cross the border, violation of the rules of stay); identification of migrants (illegal migration: illegal border crossing, violation of the rules of stay) by border guards and at checkpoints; organizing illegal crossings, including malicious disobedience. These can be grouped into three main datasets:

1. denial of entry;
2. detention;
3. illegal migration.

The number of organized illegal crossings on the Ukrainian-Slovak border is extremely low, with only one such attempt detected during this period – in 2009. The figures on individuals illegally crossing the border and the data



on rule violations declined markedly in 2020, after a sharp increase in 2017–2019 (following the introduction of visa-free travel). In 2020, the established system of travel, accommodation, employment was disrupted with the hasty introduction of border crossing restrictions due to the COVID-19 pandemic.

Additional challenges associated with legal and illegal migration between Ukraine and Slovakia include other types of border crossing violation. The main ones are:

1. document control violations;
2. smuggling and the violation of customs rules.

Under Ukrainian legislation, document control violations come under illegal crossing of the state border or attempted illegally crossing of the Ukrainian state border. Illegally crossing of the state border or attempted illegally crossing of the state border is defined as crossing or attempting to cross the Ukrainian state border at a point where there is no checkpoint or at a checkpoint without the required documents or using forged documents or documents containing inaccurate information about the person, or without the permission of the relevant authorities Article 204-1, Ukrainian code of administrative offenses).⁶

⁶ "Кодекс України про адміністративні правопорушення, редакція від 26. 05. 2022," [The Code of Ukraine on Administrative Offenses, version of 26. 05. 2022] 2022. Available online: <https://zakon.rada.gov.ua/laws/show/80731-10#Text> (accessed on March 31, 2023).

Exceptions include Ukrainian citizens who are the victim of crimes related to human trafficking and are returning to Ukraine without an official document and foreigners or stateless persons entering Ukraine with the intention of obtaining asylum or being recognized in Ukraine as refugees or persons in need of additional protection, if they have applied for asylum or for recognition as a refugee or a person in need of additional protection (Ukraine law on refugees and persons in need of additional or temporary protection").⁷

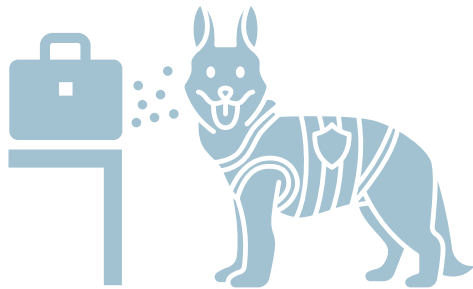
Cigarette smuggling is a common problem in Ukraine and many other countries. It is linked to customs and tax offences, as well as harm to human health, as consumers often pay more attention to the price of goods than the quality and excise stamps. Therefore, in an effort to effectively and transparently counter smuggling, parliaments pass national legislation that clearly targets smuggling and the degree of responsibility for the particular type of violation. Special bodies are also set up. In Ukraine these include the Customs Service, the National Police, the State Fiscal Service, the State Tax Service, and the Security Service.



⁷ "Закон України «Про біженців та осіб, які потребують додаткового або тимчасового захисту», редакція від 03. 03. 2016," [The Law of Ukraine on refugees and persons in need of complementary or temporary protection, as amended on 03. 03. 2016] 2016. Available online: <https://zakon.rada.gov.ua/laws/show/3671-17#Text> (accessed on March 31, 2023).

However, besides the legislation and the relevant government institutions, Ukraine also needs an effective state strategy to counter smuggling and customs violations, with appropriate legislative amendments and improvements to the system of penalties (such as criminalizing cigarette smuggling, and perhaps different penalties according to the volume smuggled).

Despite the number of bodies responsible for combating smuggling in Ukraine, there are still cases of corruption among state employees, including the border service.⁸ Greater effort is therefore required in this area, particularly through the involvement of external experts and partners through international organizations, such as *Office européen de lutte antifraud* (OLAF), Financial Action Task Force (FATF), Europol. Cooperation between Slovak and Ukrainian border agencies would also be effective for the use of best national practices in detecting and combating smuggling. Another issue is the difference between cigarette prices in Ukraine and the EU, which encourages smuggling.



⁸ "4100 доларів США за контрабанду цигарок – підозрюється прикордонник із Закарпаття," [4100 USD for cigarette smuggling – a border guard from Zakarpattia is suspected] Office of the Prosecutor General of Ukraine, January 14, 2022. Available online: <https://gp.gov.ua/ua/posts/4100-dolariv-ssa-za-kontrabandu-cigarok-pidozryujetsya-prikordonnik-iz-zakarpattya> (accessed on March 31, 2023).

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Public awareness and information campaigns on the harm caused by smuggling, especially in border regions (constant visualization through various types of advertising) is also important.

When properly designed, implemented, monitored, and analyzed, border management can prove very beneficial for the government, private sector and for communities living on either side of the border. Therefore, it should not be seen simply as "gatekeeping", but as a process with potential to bring economic benefits and multilevel positive exchanges. For this reason, border agencies need to collaborate closely and communicate carefully to make sure they contribute toward achieving common aims that benefit all/both parties.

Although both Ukraine and Slovakia recognize that policies, processes, staff, and facilities are essential for good border management, data collection remains underused and underdeveloped. Based on the very different conclusions drawn from the data gathered and offered to researchers by the respective border agencies, we can assume that the communication and cooperation over data collection between the two countries is far more sufficient.

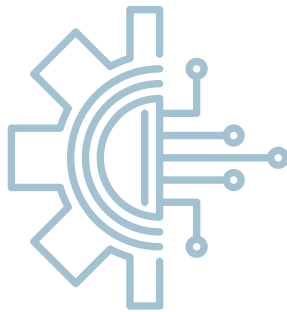
Therefore, one of the strongest recommendations is that both countries should adopt a new, comprehensive, coordinated, and collaborative approach to data collection at the border. This recommendation can be extended to the EU and its data management at the external border. The EU collects data from its external borders and has taken



steps to unify the process across member states,⁹ but it should also unify and streamline cross-border cooperation with non-member states to enable more effective data processing and use.

While there are many concepts of effective border management (see e.g., the World Bank, Collaborative Border Management, and the relevant literature e.g., in the *World Customs Journal*), we believe that a unified and clear data gathering methodology could make a big difference. The new approach should include regular, comprehensive communication between Ukrainian and Slovak counterparts on, for instance, a monthly basis. Frequent data comparison will enable any necessary adjustments and reveal blind spots and opportunities.

Border management agencies perform an essential role in community protection, crime prevention, fiscal events as well as public health protection and even cultural protection. Nonetheless, it is also important to note that we can expect a major shift toward the facilitation of economic growth, competitiveness, and innovation. That will require the capacity to read and interpret data and recognize trends.



⁹ "Štatistický prehľad legálnej a nelegálnej migrácie v Slovenskej republike 2011," op. cit.

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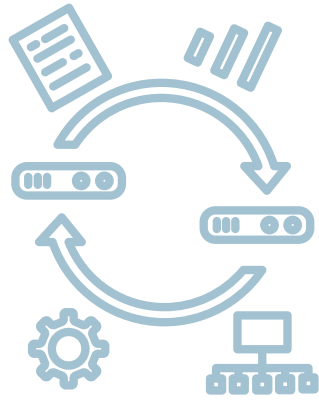
Border dynamics: legal and illegal migration



Border management agencies are constantly required to respond to increasing competitiveness, procedural and safety requirements and to deliver efficient and effective services, often without additional funding. The growing requirement to facilitate higher export-led economic growth will put further strain on the border agencies, placing them under a greater level of scrutiny. We believe that more effective data collection and more intense collaboration between the two border agencies could help decision-making on where to allocate the available funding to maximize the desired results. A data-led approach to border management can help states overcome a multitude of issues, predict trends, prepare better for future challenges and overcome a wide range of operational or institutional issues.

Collaborative and data-led border management between the two countries could create opportunities for the agencies to demonstrate their innovativeness and serve as an example for other countries (country branding). The data still appear to be collected and stored individually by each border agency, with little interaction and information-sharing between the agencies. It is therefore important to be aware of possible capacity constraints that may stall effective collaboration. Both the Slovak and Ukrainian agencies should strive to improve their data-sharing on both the national and international level.

When considering various models of effective cross-border management, *Collaborative Border Management*



designed by Tom Doyle¹⁰ could be used as a viable source of inspiration by both the Slovak and Ukrainian agencies. It includes the concept of a virtual border, which encompasses the entire transport process and supply chain.

Its effectiveness lies in the fact that the agencies collaboratively collect, share, and process the data. An inter-agency approach allows both agencies to obtain a complete overview of the risks and opportunities and make better informed decisions.

This structure preserves the independence and specific mandates of Customs and other agencies involved in border management. The successful implementation of CBM results in more appropriate treatment of traders and passengers as a result of more thorough and accurate data collection and analysis... CBM ultimately delivers lower costs and greater control to border management agencies... By collating previously distributed and perhaps

¹⁰ T. Doyle, "Collaborative border management," *World Customs Journal* Vol. 4, January 2010. Available online: https://www.researchgate.net/publication/265030847_Collaborative_border_management (accessed on March 31, 2023).

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individually incomplete information into one body of common inter-agency information, border management agencies can form a more complete and informed eligibility and compliance management decisions.¹¹



¹¹ T. Doyle, "Collaborative border management," *World Customs Journal* Vol. 4, No. 1, p. 17. Available online: [https://worldcustomsjournal.org/Archives/Volume%204%2C%20Number%201%20\(Mar%202010\)/03%20Doyle.pdf](https://worldcustomsjournal.org/Archives/Volume%204%2C%20Number%201%20(Mar%202010)/03%20Doyle.pdf) (accessed on March 31, 2023).

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Slovak Foreign Policy Association (SFPA), founded in August 1993, is an independent, non-partisan and non-profit organization whose activities are devoted to active contribution to the integration of the Slovak Republic to the community of democratic states and their political and security structures. It is the oldest foreign policy think-tank in Slovakia. Through its programs of meetings, seminars, workshops and publications, the SFPA spreads objective information about international relations from primary sources. Its research center (RC) was established in 1995. In accordance with its status, the RC SFPA provides:

- independent expert analyses on crucial issues of international relations and foreign policy;
- publishes periodical and non-periodical expert publications serving to increase awareness in the field of international relations and foreign policy and to serve as a source of qualified information for both, the expert and general public;
- organizes expert events and participates in international scientific cooperation in the field of international relations and security;
- contributes to the fostering of the expert discourse on international relations and foreign policy;
- creates a favorable environment for the growth of the new generation of the Slovak experts in the field of international relations; and
- stimulates the interest of wider Slovak public in the global events as well as a deeper understanding of the significance of foreign policy and its link to the domestic policy.

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ISBN 978-80-89645-14-5



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