POJĘCIE I RODZAJE UMÓW MIĘDZYNARODOWYCH DOTYCZĄCYCH WALKI Z PRZESTĘPCZOŚCIĄ

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Umowy międzynarodowe wywierają wpływ na krajowe ustawodawstwo karne w dwojaki sposób: określają obowiązki związane z wyjaśnieniem konkretnych elementów przestępstwa lub określają i wnoszą rekomendacje wyznaczenie określonej kary za określone przestępstwo. W związku z powyższym, autor skupia się na badaniu pojęcia umowy międzynarodowej o charakterze karno-prawnym. Przedstawiona została klasyfikacja według różnych kryteriów: nie tylko pod względem przedmiotu regulacji prawnych oraz ilością uczestników , ale także według innych kryteriów, jak np. elementy przestępstwa, obecność lub brak przepisów dotyczących jurysdykcji kryminalno-prawnej państw umawiających się. Przedstawione zostały również cechy charakterystyczne takich umów, według których możemy wyróżnić ich spośród innych kategorii umów międzynarodowych.

Słowa kluczowe: umowa międzynarodowa o charakterze kryminalno-prawnym, elementy przestępstwa, sankcje, przestrzeganie umowy.

THE CONCEPT AND TYPES OF INTERNATONAL TREATIES ON FIGHT AGAINST CRIMES

International treaties affect domestic criminal law in two ways: they define the obligations regarding the establishment of specific elements of the crime or identify and recommend assigning a particular punishment for a crime accordingly. Thereby, a concept of international treaty on fight against crimes is probed in this article. Classification of international treaties on fight against crimes is conducted on different criteria: not only under the subject of legal regulation and the number of participants, but also other criteria such as the

elements of the crime, the presence or absence of provisions on criminal legal jurisdiction of the Contracting States. Characteristic features of such treaties by which they can be distinguished from other categories of international agreements are pointed out.

Keywords: international treaty on fight against crimes, elements of corpus delicti, self-executing agreement, punishment.

ПОНЯТТЯ І ВИДИ МІЖНАРОДНИХ ДОГОВОРІВ ПО БОРОТЬБІ ЗІ ЗЛОЧИННІСТЮ

Міжнародні договори впливають на національне кримінальне прямо за двома напрямками: визначаючи зобов'язання з приводу встановлення конкретних ознак складу злочину або визначають та рекомендують призначати за певний злочин відповідне покарання. У зв'язку з цим, у статті досліджується поняття міжнародного договору кримінально-правового характеру. Проводиться їх класифікація за різними критеріями: не лише за предметом правового регулювання та кількістю учасників, але й за іншими критеріями, такими як елементи складу злочину, наявність чи відсутність положень про кримінально-правову юрисдикцію держав-учасниць договору. Наводяться характерні ознаки таких договорів, за якими їх можна відрізними від інших категорій міжнародних договорів.

Ключові слова: міжнародний договір кримінально-правового характеру, елементи складу злочину, самовиконуваність договору, покарання.

Statement of the problem. Within the framework of international conferences and under the auspices of international organizations a number of treaties on fight against crimes were adopted, which oblige States Parties to align their domestic criminal law to these conventions in accordance with the recommendations set out in the international instruments, that is to criminalize certain socially dangerous acts, or make qualitative changes to the existing legislative provisions for criminal penalties for the commission of the offenses. International Treaty is the most common legal form, which mediates international relations. Actually, the complete collaboration of states and fixing the results of such cooperation can be realized by the help of such treaties. We have a goal - to define the concept and features of the international treaty on fight against crimes and to conduct their classification not only under the subject to regulation and the number of participants, but also on other criteria (the elements of the crime, the presence or absence of provisions on criminal leagal jurisdiction of the States Parties).

Analysis of previous studies. Some aspects of this problem were studied in the thesis, presented by A. Fohels in 1967. Other scholars, especially V. Butkevych, T. Grevtsova, A. Talalaev and others in their theses and monographs analyze the general concept of the international treaty as

a regulator of social relationships, only partially touching the concept of international agreements on fight against crimes.

Summary of the main statements. The definition of "international treaty" is given by many researchers [2, p. 22; 4, p. 171; 8, p. 1; 13, p. 12; 15, p. 100; 17, p. 5]. D. Field in the draft Code of International Law states that an international treaty is a written agreement between two or more nations for the establishment or abolition of the act, which creates, terminates, or otherwise alter international law [18, p. 139]. By definition of L. Oppenheim, international treaties are agreements or contracts between two or more States concerning various matters of interest to these states [12, p. 105]. Close in sense are those definitions that emphasize the volitional nature of an international agreement [9, p. 183, 188].

The most comprehensive definition of an international treaty was given by the English lawyer George Fitzmaurice: "Treaty is an international agreement, expressed in the unitary formal act (regardless of the name, title or designation), concluded between the parties, two or all of which are subjects of international law that have international legal capacity to conclude international agreements with the aim to create rights and obligations or establish relationships, which are governed by international law" [18, p. 223].

The same definition of international treaty with some differences is given in Article 1 of the Law of Ukraine "On International Treaties of Ukraine" dated 2004[5].

International treaty on fight against crimes is a type of international agreements as it is characterized by common features inherent in international treaties that follow from the above definitions, as well as additional features that characterize the specificity of this type of treaties. That special feature is the indication of the purpose - fighting and preventing crimes. Taking into consideration all mentioned above, we propose our concept of the international treaty on fight against crimes: "International treaty on fight against crimes is an international agreement, expressed in the same formal act (regardless of the name: agreement, convention, pact, protocol, etc.), which concluded between the parties, two or all of which are subjects of the international law that have international legal capacity to conclude international treaties, whose aim is fight against certain criminal acts and prevention such criminal acts".

In this case, the characteristic features of the international treaty on fight against crimes as a source of national legislation are:

1. International treaties on fight against crimes become the source of law on the territory of Ukraine only after the Supreme Council of Ukraine agrees to be bound by an international treaty and this agreement of the Supreme Council occurs in the form of ratification of the treaty.

2. These treaties are primarily have coordinating nature that is they are a model according to which national legislation can be "verified" for its compliance with international standards. Their aim is to promote the convergence of national criminal laws on fight against crimes of international character and international crimes. The main objective of these agreements is to formulate the most accurate model of a crime, according to which the implementation of the treaty will be held into the national legislation.
3. International treaties on fight against crimes are not self-executing, including the fact that the provisions of such agreements include evaluating concepts, are notable for some level of abstraction [11, p. 261]. That is the norms of these treaties are not directly intended to qualification of criminal acts. In this regard, their performance is provided by the adoption of national legal acts.
4. None of these agreements does affect one of the most important issues - the types and limits of punishment. This indicates that it is almost impossible to call a person to criminal liability under the provisions of the international treaty.

The theory states that the validity of the international treaty does not depend on its form, because it does not affect the essence of the consent expressed in the agreement. If consent is aimed on creating of international legal norms, such an international treaty will be a source of international law, regardless of whether it is concluded orally or in writing. On the contrary Art. 2 of the Law of Ukraine "On International Treaties of Ukraine" dated 29 June, 2004 stated that the international treaty of Ukraine, regardless of its name, is a contract that is concluded in writing.

It should also be mentioned that the Constitution of Ukraine and law of Ukraine "On International Treaties of Ukraine" point to the necessity of implementation of international treaties of Ukraine. In this connection the question arises, what international treaties are to be considered international treaties of Ukraine that contain obligations for material criminal law?

Under the provisions of the Vienna Convention on the Law of Treaties from 1969 [3] a State can be recognized a Party to a treaty that has agreed to be bound by the treaty. Thus, the international treaty of Ukraine is an agreement in respect of which Ukraine has completed the necessary internal procedures to make it legally binding on the territory of the State Party, which are usually defined in the agreement.

Legislative process, carried out in Ukraine through the implementation of international law into the criminal legislation of Ukraine is the main and necessary focus of national mechanism for implementing the international obligations of Ukraine. According to Art. 9 of the Law of Ukraine "On International Treaties of Ukraine" [5], an international treaty is enforceable upon its entry into force for Ukraine. If an international agreement includes international obligations relating to

criminal law, then it should be released into force through adopting a law on ratification.

And since this category of international treaties require amendments to the criminal law of the state, which according to the Constitution of Ukraine is the sole prerogative of the legislative body of Ukraine, such agreements should not be listed below the interstate treaties and should be concluded on the name of Ukraine.

Treaties of Ukraine, which foresee the international obligations in the sphere of criminal law, can be put in force since the internal procedure of their ratification. This provision could be argued in such a way. Criminal legislation of Ukraine consists only of the Criminal Code of Ukraine. All other regulations, which provide for criminal liability, must be included in the Code. Accordingly, the provisions of international treaties of Ukraine, which contain the obligations to take necessary measures for the recognition of a crime punishable, should be included in the Criminal Code of Ukraine. As to the other forms of recognition of the obligatory provisions of international treaties in Ukraine, such as signature, approval, acceptance or accession to a treaty, the analysis of the contents of articles of the Law of Ukraine "On International Treaties of Ukraine" (Part 1 of Art. 12, part 1 of Art. 13) brings us to the conclusion that all these forms of giving consent for the international treaty can be allowed under certain conditions. However, if an international treaty contains obligations which greatly affect the rights and obligations of the citizens of the state, in the case of accession to this treaty or its approval Ukraine is obliged to issue a law on ratification. That is why the international treaties of Ukraine, the implementation of which requires changes in existing or new laws, must be ratified in accordance with Art. 9 of the Law of Ukraine "On International Treaties of Ukraine". International treaties of Ukraine are not a source of domestic criminal law as long as they are not ratified and domestic criminal law is not amended accordingly. As pointed out by E. Usenko, international law can not have the strength in the area of domestic regulation without its transformation into national law through the publication of an internal act or its incorporation into domestic law otherwise [16, p. 68].

The next question is what international treaties are considered to be self-executing. Most authors are inclined to believe that self-executing are those international treaties that do not require the publication of internal law for their implementation [7, p. 157]. This provision is contained in Part 3 Art 5 of the Federal Law of the Russian Federation "On International Treaties of the Russian Federation [10]. Unfortunately, in the corresponding law of Ukraine there is no indication of what treaty should be considered self-executing, so we can agree with I. Lukashuk and V. Tolstyk that self-executiveness of the international law must be fixed in the law itself or must by clearly inferred from such a law [14, p. 72].

After analyzing more than 70 international treaties aimed at preventing and fighting against crimes, it should be mentioned that almost all of these agreements are not self-executing. In 90 % of

these treaties (regardless of which institution they were adopted by and what is their name), there is an indication that each State Party shall take such measures as may be necessary: a) to establish as criminal offenses under its domestic law set forth in the relevant international treaties, and b) to make those offenses punishable by appropriate penalties, taking into account the gravity of these crimes. That is, in order to establish the recommended criminal act to be unlawful, State Party should make amendments to the already existing criminal law and determine the type and extent of punishment for these crimes as none of the reviewed international instruments indicates the possible penalties. This is an exclusive prerogative of each state. Exceptions are only a number of international conventions relating to humanitarian law (conventions devoted to the observance of customs and methods of war) and the International Convention for the Prevention and Punishment of Genocide. These conventions are self-executing and must be executed even by those states that are not parties to the Conventions. However, we believe that even if the treaty states that it is self-executing, it should be incorporated in domestic law since to impose criminal liability only on the basis of an international agreement is not possible. Criminal legislation of Ukraine recognizes to be criminal almost all the acts listed in these international treaties, so the question of self-executiveness of analyzed treaties automatically disappears.

Thus, today international treaties on fight against crimes are the focal point of international legal cooperation mechanism to combat crimes among the states. The first criterion by which such treaties can be classified is the amount of legal regulation of relations. By this criterion, international treaties can be divided into those that are completely devoted to cooperation in the fight against crimes, and international treaties that aim to regulate public relations, and only in part regulate such cooperation [6, p. 39].

In deciding whether a treaty is devoted to issues of criminal law, it is advisable to pay attention to textual wording of most treaties. For example, the International Convention on the Suppression and Punishment of the Crime of Apartheid of 10 December, 1985, Article 1 states that "the States Parties to the present Convention declare that apartheid is a crime against humanity … and is a crime violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security. The States Parties to the present Convention declare criminal those organizations, institutions and individuals committing the crime of apartheid". This statement directly points to the obligation of the states to recognize a crime those actions that are included in the concept of apartheid.

Similar provisions are contained in most international treaties on fight against crimes[1].

[1] United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, 20 December, 1988; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including

As for the treaties, which are aimed at regulating the other public relations, and only in part regulate cooperation in the fight against crimes, we can include the following agreements: the Paris Convention for the Protection of Industrial Property March 20, 1883; the UN Convention on the Continental Shelf April 29, 1958; the Convention on the High Seas April 29, 1958; the International Convention for the Protection of New Varieties of Plants December 2, 1961' the Universal Copyright Convention July 24, 1971, etc. That is, these international treaties have been adopted to regulate public relations, but they also contain provisions which oblige States Parties to recognize certain number of criminal offenses or to put some important object under the protection of criminal law.

Another criterion for the classification of treaties on fight against crimes serves the object of legal regulation. According to this criterion, all international agreements can be divided into those that contain obligations in the substantive criminal law (usually multilateral conventions and protocols)[2] and agreements that regulate the procedure of adjective relations between the law enforcement (usually bilateral agreements on how to provide legal assistance in criminal cases)[3].

For the number of participants the international treaties on fight against crimes can be divided into multilateral and bilateral agreements. Multilateral treaties are usually devoted to the regulation of liability for a certain crime or set of crimes. Bilateral agreements govern mainly procedural issues (for legal assistance in criminal prosecution, extradition, execution of the sentence, etc.).

For the range of issues that are regulated be the international treaties, international agreements can be divided into those that are dedicated to improving the provisions of the General Part of the domestic criminal law[4] and agreements, which are devoted to the improvement of the

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Diplomatic Agents, 14 December, 1973; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September, 1971; International Convention for the Suppression of Acts of Nuclear Terrorism, 14 September, 2005.

[2] International Convention on the Elimination of All Forms of Racial Discrimination 21 December, 1965; Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems 28 January, 2003; Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 17 November, 1970; United Nations Convention against Corruption 31 October, 2003, etc.

[3] Agreement between Ukraine and Turkmenistan on the transfer of persons, sentenced to imprisonment for further punishment March 23, 2005; Agreement between Ukraine and the Arab Republic of Egypt on Extradition 10 October, 2004; Agreement between Ukraine and the Republic of Panama on Mutual Legal Assistance in Criminal Cases 4 November, 2003; Agreement between Ukraine and the Democratic People's Republic of Korea on Legal Assistance in Civil and Criminal Matters 13 October, 2003, etc.

[4] European Convention on Extradition 13 December, 1957; European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders 30 November, 1964; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity 26 November, 1968; European Convention on the International Validity of Criminal Judgments 28 May, 1970; Convention on the Transfer of Persons with Mental Disorders for Compulsory Treatment 28 March, 1997, etc.

Special Part of the domestic criminal law[5].

For the elements of corpus delicti there are three main groups of elements of corpus delicti that international treaties on fight against crimes influence on: 1) international treaties that oblige to protect certain public relations (object, victim) through criminal means[6]; 2) international agreements that oblige to put under the protection of the criminal law elements related to the objective side of a crime[7]; 3) international treaties that define the characteristics of the subject and the subjective side of a crime[8], and 4) international agreements that define type and limits of punishment[9].

We can also define two types of substantive criminal law provisions contained in international treaties on fight against crimes: a) provisions relating to a crime and punishability of a conduct set forth herein, and b) provisions relating to the criminal law jurisdiction of the States Parties on these crimes.

When deciding on criminal legal jurisdiction of the States Parties concerning crimes, established in the international instruments, there is a significant difference among them. Therefore, the proposed by O. Boyzov and B. Volzhenkin division of all international treaties on fight against crimes into three groups seems to be reasonable:

1. International treaties that do not contain jurisdictional provisions.

2. International treaties containing rules of criminal legal jurisdiction, but do not involve the exercise of state's jurisdiction if a crime was committed beyond its territory by a foreigner.

3. Treaties providing criminal legal jurisdiction by the State Parties on foreigners, who have committed crimes outside the state. With that various embodiments of the criminal legal jurisdiction are foreseen in these treaties.

Conclusions. Concluding the review of the main types of international treaties on fight against crimes, it should be noted that:

1. In the process of elaboration of all international treaties on fight against crimes all delegates from the State Parties should coordinate the list of criminal acts before adopting a treaty,

[5] Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others 2 December, 1949; Single Convention on Narcotic Drugs 30 March, 1961; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 8 November, 1990, etc.

[6] Convention relating to the unification of certain rules concerning collisions in inland navigation 15 March, 1960; International Convention for the Prevention of Pollution from Ships 2 November, 1973; Convention on the Physical Protection of Nuclear Material 26 October, 1979; International Convention against the Taking of Hostages, 17 December, 1979, etc.

[7] Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications 12 September, 1923; International Convention for the Suppression of Counterfeiting Currency 20 April, 1929**;** International Convention on the Suppression and Punishment of the Crime of Genocide 9 December, 1948, etc.

[8] International Convention on the Suppression and Punishment of the Crime of Genocide 9 December, 1948; Geneva Conventions 12 August, 1949; International Convention on the Suppression and Punishment of the Crime of Apartheid 10 December, 1985; International Convention for the Protection of Submarine Telegraph Cables 25 April, 1928.

[9] International Convention for the Protection of Submarine Telegraph Cables points on such possible kinds of punishment as "personal arrest" and "fine"; Single Convention on Narcotic Drugs envisages a possibility to assign such punishment as imprisonment or other kinds of loss of liberty.

taking into account all the necessary elements of corpus delicti and apply commonly used terminology. Above all, this will help to create a uniform system of application of criminal legal measures in the fight against crimes and to some extent will help to avoid obstacles in cooperation in the fight against crimes. For example, when extradition, which is provided in most treaties, it is a necessary demand that the act, in respect of which extradition is executed, is considered to be as a crime both by the law of the State, which is seeking the extradition and the law of the State whom the request for extradition is addressed for.

2. When drafting treaties on fight against crimes, approximate punishment for such crimes should also be agreed as effectiveness of the fight against crimes through the criminal legal norms depends not only on the recognition of a criminal act, but depending on the degree of responsibility.

International agreements play an important role in the interpretation and application of the Criminal Code of Ukraine. International treaties affect domestic criminal law in two ways: they define obligations regarding the establishment of specific elements of corpus delicti or identify and recommend appointing a particular punishment for a crime accordingly. Of course, international legal system in combating crimes in its capacity is much narrower than the national criminal legal system. This assessment of the role of international treaties is almost indistinguishable from that of scientific doctrines. And as for the relation of the state bodies to the international treaties on fight against crimes, they must strictly adhere to international law, especially in cases where these provisions are directly or indirectly been intended. We agree that international treaty itself expresses only an agreement of a State to criminalize certain acts - then a State must change or create a new criminal legal norm. However, the content of treaties is created from material legal rules that articulate if not all of the corpus delicti, then some part of its elements, and can serve both as a model for national legislation and as provisions that are focused on their joint application with the relevant rules of national criminal laws through their interpretation.

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