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The problematic aspects of International core crimes and transnational crimes accordingly to International Law

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ABSTRACT

Today, the boundaries of international crime involving states and transnational organized crime are slowly blurring, and as a result, the number of international crimes is steadily growing. The article analyzes two key groups of crimes: crimes indicated in the Rome Statute and transnational crimes under international conventions. This article is based on the analysis of the main groups of crimes: the first group of international crimes committed with state actors, which includes crimes against humanity, war crimes, crimes of aggression, crimes of genocide; and the second group, crimes committed by criminal groups organized in more than one country with the "international" or "transnational" character of such acts. The authors emphasize the norms of international law, according to which the International Criminal Court, together with international criminal tribunals, have jurisdiction over a small range of key international crimes, including genocide, war crimes and crimes against humanity, aggression, committed by state officials. The main objective of this research is to compare the mechanism for investigating crimes in the jurisdiction of international criminal tribunals and the International Criminal Court, together with the national procedure for investigating transnational crimes, through the ratification of international conventions and the establishment of the International cooperation. The article was made with the following methods: induction, deduction, analogy, as well as historical, dialectical and formal legal methods.

KEYWORDS: Core crimes, International crimes, ICC, International Conventions, inter-state cooperation, transnational crimes

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Los aspectos problemáticos de los delitos fundamentales internacionales y los delitos transnacionales de acuerdo con el Derecho Internacional

RESUMEN

Hoy en día, los límites del crimen internacional que involucra a los estados y el crimen organizado transnacional se están difuminando lentamente y, como resultado, el número de crímenes internacionales está creciendo de manera constante. El artículo analiza dos grupos clave de crímenes: los crímenes indicados en el Estatuto de Roma y los crímenes transnacionales en virtud de las convenciones internacionales. El presente artículo se basa en el análisis de los principales grupos de crímenes: el primer grupo de crímenes internacionales cometidos con actores estatales, que incluye crímenes de lesa humanidad, crímenes de guerra, crímenes de agresión, crímenes de genocidio; y el segundo grupo, crímenes cometidos por grupos delictivos organizados en más de un país con el carácter "internacional" o "transnacional" de tales actos. Los autores enfatizan las normas del derecho internacional, según las cuales la Corte Penal Internacional, junto con los tribunales penales internacionales, tienen jurisdicción sobre una pequeña gama de crímenes internacionales clave, incluidos genocidio, crímenes de guerra y crímenes de lesa humanidad, agresión, cometidos por oficiales de Estado. El objetivo principal de esta investigación es comparar el mecanismo de investigación de crímenes en la jurisdicción de los tribunales penales internacionales y la Corte Penal Internacional, junto con el procedimiento nacional de investigación de crímenes transnacionales, mediante la ratificación de convenios internacionales y el establecimiento de la cooperación internacional. El artículo se realizó con los siguientes métodos: inducción, deducción, analogía, así como métodos jurídicos históricos, dialécticos y formales.

PALABRAS CLAVE: delitos fundamentales, delitos internacionales, CPI, convenciones internacionales, cooperación interestatal, delitos transnacionales

Introduction

First of all, it has to be mentioned that the common determination of international criminal law is very complicated and need to be more clarified in International regulations. Accordingly, to the Rome Statute and International criminal tribunals, there are determined four international crimes such as crimes against humanity, war crimes, genocide, and crimes of aggression. However, discussing the present circumstances there is an important need to specify

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such crimes as terrorism, human trafficking and the most important is to explain the possibility to call such crimes as international, using the extraterritorial jurisdiction.

Nowadays, many scientists argue that international criminal law is based on a state-centered international order, and in this case, we can determine only international core crimes in the context of state centered approach. However, on the opposite side, another group of scientists ascertains that international criminal law is also used to reflect a body of legal conventions concerned with transnational crimes. Universal jurisdiction in the aspects of international terrorism has also become preferred technique to prevent impunity for international crimes.

International criminal law contains aspects of both international core crimes and transnational crimes, in that while its origins are those of international law, its consequences are legal penalties against persons.

The present article seeks to determine to main comparison between "international crimes" and "transnational crimes", to discuss the main aspects of evolution of the concepts of crimes, the application of universal jurisdiction as well as limited forms of extraterritorial jurisdiction. The main aim is to evaluate the term of transnational criminal law and international criminal law, its functionality and application in national and international legal system.

1. Theoretical framework

A significant amount of scholars pay attention to the concept of international law and key aspects of international crimes and general problems of the application of the criminal case-law and the norms of criminal procedure. The works of the following scientists should be noted: Finckenauer James O., Hunter Vermaaten, Walter, Kuchevska S.P., Livey Fiona Rebecca, Luz E. Nagle, M. Cherif Bassiouni, Rachel Locke, Rybalko T.F., Andreas Schloenhardt, Skrylnyk O.O., Slatvytska A.V., Seifpour and Jalalian (2018).

The authors Finckenauer James O. (2000) in his article "Meeting the Challenge of Transnational Crime" as well as Hunter Vermaatena in the report "Answering the Challenge of Transnational Organized Crime" provide the key discussions related challenges of transnational

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crimes in present reality and give relevant law-cases on prosecution of such crimes (Hunter Vermaaten, 2017).

Kemp Walter (2010) with the study "Organized Crime Has Globalized and Turned into a Security Threat" determines the current statistic data as well as link on the connection between domestic crimes and transnational ones.

In the dissertation of Kuchevska S.P (2009). "The issues of harmonization of Ukraine's laws on criminal liability and Statute of the International criminal court" there is a historical overview of the International core crimes as well as the description of international mechanisms of implementation and harmonization of such international norms.

The authors Livey Fiona Rebecca (International legal framework for combating transnational organized crime, 2017), Schloenhardt Andreas (Transnational organised crime and the International Criminal Court developments and debates, 2005) and Luz E. Nagle (Terrorism and Universal Jurisdiction: Opening a Pandora's Box?, 2011) closely developed the theory of transnational crimes and universal jurisdiction of international crimes.

The authors Arkusha, L., Korniienko, M., & Berendieieva, A. "Criminal activity in Ukraine in the light of current conditions" (2019) specify the present situation connected with the transnational crimes accordingly to International Law as well as the domestic statistic data in Ukraine.

All the aspects of the International core crimes for discovered with the help of the following authors and their works: Rybalko T.F., (Legal problems of ratification of the Rome Statute in Ukraine, 2017), Skrylnyk O.O., Slatvytska A.V., (Classification of crimes in international law: theoretical and legal aspect, 2011) and Shulzhenko, N., Romashkin, S., Shulzhenko, O., & Mokhonchuk, S. (Implementation of international crimes under the Rome Statute into national legal systems, 2020).

2. Methodology

The methodological framework of the research is a system of specific and general scientific approaches and methods which provide an objective overview of the issue.

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Taking into account the specifics of the topic, purpose and objectives of the study, the following methods were used: dialectical method - used to conduct a full and comprehensive study of the concept of transnational crime and international crime; theoretical analysis and synthesis (induction, deduction, comparison, analogy, abstraction, classification) - analyzed scientific views on the problem of transnational organized crime and international crimes, studied current international law and analyzed the main manifestations of transnational organized crime, system-structural method - used determination complex of transnational crime and the system of counteraction, formalistic methods - used to interpret and distinguish the basic concepts: transnational crime and international crime, comparative law method - used to compare the provisions of international law.

The use of historical and dialectical methods made it possible to analyze the various stages of development of views on the concept of "international crimes", based on the system method was considered classifications of systematization of international crimes; formal method was used for legal analysis of international law governing international criminal responsibility.

The study is also based on the principles of interdisciplinarity and pluralism. With regard to the principle of interdisciplinarity, the main components of international crimes were studied, as well as the basic definitions of "international crime" were analyzed. The principles of pluralism and additional results allow us to analyze the plurality of the concept of "transnational crimes".

3. Results and discussions

Each discussion between the connection of organized transnational crime and international core crimes must be fully focused on the term's definition. A big challenge in conceptualizing the crime-security relationship is that both concepts are largely ambiguous, on the one side, they deal with quite different legal issues, and on the other hand have much in common.

3.1. What is transnational law?

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In opinion of Hunter Vermaaten and other scientists, there is no determined legal definition on the "transnational crime", but most scientists used to direct the term "offenses whose inception, prevention, and/or direct or indirect effects involve more than one country" (Hunter Vermaaten, (2017).

Accordingly, to the Article 2a of the United Nations Organized Crime Convention, there are four major requirements for identification of transnational organized crime:

- It should be formed with an organized group – three or more people
- Usable for a limited amount of time
- The aim of commitment at least one illegal act punishable by at least four years ' imprisonment
- Established to get a commercial benefit, direct or indirect (Convention on Transnational Organized Crime)

It should be understandable that no country in the world can face with transnational crimes alone especially with terrorism and human trafficking (Aning, K. and Pokoo, J., 2014). Most legal scientists relate the discussed definition to the domestic criminology, and mainly to the inter-state cooperation on international crimes conducted by non-governmental officials.

As it stated in Neil Boister's article, the scientist Mueller determines the term of transnational crime with more criminological aspect than a juridical one. He links his statement with the United Nations Crime Prevention and mentions that to detect and report such crime incidents arisen across foreign boundaries, transgressing the rules of a variety of States, or making an effect on another country (Neil Boister, 2003).

The author Fijnaut argues that the concept of transnational crimes is a multipurpose category that encompasses the variety crime forms including organized, professional, financial, corporate, and political ones as well. Mr. Fijnaut further challenges the use of the 'transnational' term, because not all supranational violence necessarily crosses state borders. Also in this context, he finds out the reliance of illegal transboundary drug distribution on domestic development and on the largely geographic origin of those offences. Consequently, his conclusions were based on the statement that "transnational crime" is deceptive and does not contain both national and international aspects of this category of crime (Neil Boister, 2003).

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However, we must remember that discussed definition is mostly functional rather than normative one and the main aim is to prosecute crimes committed within more than one country and establish the cooperation within international community on prosecuting such crimes.

Since the application of the International Convention against Transnational Organized Crime (2000) the first mechanism of improvement law enforcement and international cooperation in respect of all kinds of offences committed by transnational organized crime was implemented into international law (Hunter Vermaaten, 2017). How it is determined in Article 2, sub (a) United Nations Convention against Transnational Organized Crime by the term of organized criminal group we should firstly mean:

> "a structured group consisted of three or more persons. The group must act with the common aim of conducting serious wrongdoings (crimes or offences) and therefore – directly or indirectly get benefits" (Convention on Transnational Organized Crime. United Nations Office on Drugs and Crime, 2000).

However, the author Harmen van der Wilt indicates that the Convention's scope of interpretation is restricted to crimes of a 'transnational nature,' which ensures that more than one country's interests are impaired. The object of the Convention is to combat illegal organizations and their members; s well as criminalize on national levels the conduct of person contributes to the achievement of the criminal aim of such criminal group" (Hunter Vermaaten, 2017).

3.2. What are international core crimes?

As Rachel Locke states the formation of international criminal justice has been conducted since the half of the twentieth century (Rachel Locke, 2012).

The International Criminal Court (ICC) is an independent body and operates independently of the United Nations. All costs for Court maintenance shall be born by the contributions of the Member States and by voluntary contributions of international organizations, governments, individuals and corporations.

According to the Statute, the ICC initiates proceedings when national courts refuse or are objectively unable to deal with crimes against humanity, genocide, and war crimes (Special edition: Understanding the International Criminal Court).

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> "The ICC may violate case on their own without special recourse to his injured party. The jurisdiction of the Court is limited to four types of crime:
> 1. Genocide is an act of intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such.
> 2. Crimes against humanity - acts that carried out on a large-scale or systematic attack on civilians if such an attack is carried out with the aim of: murder, extermination, enslavement, deportation or forcible transfer of population, torture, rape, sexual slavery, coercion to prostitution, pregnancy, sterilization, forcible destruction of people, apartheid crimes, imprisonment or other ill-treatment deprivation of physical liberty in violation of fundamental rules of international law (Chapter VII: Crimes against humanity — Report of the International Law Commission, Sixty-seventh session (2015).
> 3. War crimes - serious violations Geneva Conventions of August 12, 1949, namely the commission of one of the acts against persons or property provided by the provisions of the document.
> 4. Crimes of aggression. In the General Resolution UN Assembly "Definition of Aggression" in 1974 a list of acts (inexhaustible) that qualify as aggression is given. These include the use of force by the state against sovereignty, territorial integrity, and political independence of another state or any other actions incompatible with the UN Charter" (Rybalko T.F., 2017).

3.3. International criminal law in the context of transnational crimes

International core crimes and transnational crimes are differing significantly in their concept of the criminal organization's leaderships. For instance, there is strictly interference of state actors in international core crimes, and the activity of non-governmental actors in transnational crimes.

The scientist G.V. Ignatenko distinguishes two areas of international crimes:

1. international crimes - the actions of persons who embody criminal policy of the state, as if personifying international crimes of the state;
2. transnational crimes of an international nature - actions that encroach on the interests of several states and constitute an international danger, but is committed by persons (groups of persons) out of connection with the policy of any state, in order to achieve its own wrongdoing goals (Skrylnyk O.O., Slatvytska A.V., 2011).

Transnational criminal law is dealing with international offences, which are exempt from the jurisdiction of the International Criminal Court. Unlike International criminal (core) law, the transnational criminal law does not recognize individual criminal liability and is in most

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cases an informal scheme of international duties that creates national criminal law (Rybalko T.F., 2017). The enforcement conventions place duties on the member states to introduce and execute such local crimes. Non-observance to comply with defined legal conclusions obtained in the form of a global violation or crime; solutions for failure of State parties to behave in conformity with their domestic law shall be the normal procedures of treaty rights and the rule of collective obligation (Neil Boister, 2003). When the State declines to meet its duties, it cannot claim for the inadequacy of its own penal statute or for the enforcement of the rule. Nevertheless, in relation to the central offense, the enacting authority stems within state legislation as well as personal criminal liability is entirely beyond the reach of national law (Neil Boister, 2003).

Dissimilarities of structural existence and jurisdiction are the fundamental embodiments of the structure of international, multilateral, and national crimes, and even more these offenses are a danger to various international beliefs and interests (Rybalko T.F., 2017). Bassiouni offers two alternate criteria for illegal behavior that fit within his appropriations concept of international crime: the existence of either an foreign or a multinational feature (M. Cherif Bassiouni, 1996).

Assessment of certain two major elements indicates a little in common, because therefore they characterize activity that affects specific types of interests. This analysis offers one of the key arguments for distinguishing between International Criminal Law and Transnational Criminal Law. International crime that include many small activities that endanger individual human rights and interests, and whose collective public existence illustrates the exceptional significance that gives individual acts the unprecedented capacity to jeopardize foreign values or interests. International crime is often distinguished by the intervention of the State, which makes it difficult to expect justice to be served by the State itself and involves an extraordinary standard of international law that supersedes national law (Neil Boister, 2003).

Some authors propose to distinguish extradition, transnational and international crimes in the framework of international crimes, which are "international" in the origin of the criminal prohibition, such that "criminalized by international law and potentially fall not only under national but also under international criminal jurisdiction" (Kuchevska S.P., 2009).

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The author Kuchevska S.P. also described that the offences (core crimes) mentioned in the ICC Statute are international in nature and origin (Kuchevska S.P., 2009). This is indicated by such formulations as: "grave crimes" (grave crimes), "international crimes" (international crimes) and "most serious crimes of concern to the international community as a whole" (the most serious crimes of concern to the international community), which used in the Preamble and Art.5 of the Rome Statute with the indication of its nature and origins.

Should be remembered that the criminal law policy of a number of states, in combating crimes against peace, should not only implement special international regulations on acts that contain signs of criminal responsibility and encroach on international peace, but also develop their own separate special corpus delicti. In this case, as noted by the author Reznik Y.S., this is a more effective mechanism of criminal law against such criminal manifestations at both local (national) and global (international) level compared to the development of the international convention mechanism in this area (Reznik Y.S, 2019).

Another important aspect is the increase in the number of cases of cooperation between transnational crime organizers and state governments. In particular, as the scientist James Bergeron points out, namely the organizational skills of criminals, the lack of transnational attribution, and strong international criminal connections in many countries can be an alternative to a poor state and as a result - the development of corruption and the shadow economy (James Bergeron, 2013).

The effectiveness of any criminal measures depends on the mechanism of their implementation, on its clear and stable functioning. The criminal justice body occupies a key place in this mechanism. Therefore, whenever the development of legal science related to international law approaches to the question of their implementation, which is mostly possible in international criminal proceedings. The main mechanism for combating international crimes is an effectively functioning system of criminal justice (Kuchevska S.P., 2009).

Conclusion

There are many ways to harmonize international and national law, but first, we should define and distinguish the international crimes' concept in the context of International core

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crimes and transnational crimes. The choice of a method depends on the specifics of national legislation and mostly on its interaction with international law.

We would like to conclude that transnational organized crime and international crime have in a lot of common characteristics: they are both committed by - or by means of – organizations, however in the first case – collectively by non-state actors, and in the second case – we are determining individual criminal responsibility of state actors.

The important elements of international organized crime is also ranked, fixed, or identified organizational structure with the usage of strong internal regulations and discipline and as a consequence, with the harsh protection of its leaders.

The last but not least, transnational criminal law is dealing with international offences which are exempt from the jurisdiction of the International Institutions like International Criminal Court or Criminal Tribunals, and unlike International criminal law, the transnational criminal law does not recognize individual criminal liability and is in most cases an informal scheme of international duties that creates national criminal law.

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