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# REGULACJE PRAWNE I NORMATYWNE DOTYCZĄCE WSPÓŁDZIAŁANIA PAŃSTW W ZAKRESIE ZAPOBIEGANIA PRZESTĘPCZOŚCI W WYMIARZE MIĘDZYNARODOWYM

***Dariya Vitiuk***
*kandydat nauk prawnych, docent,*
*docent Katedry Dyscyplin Teoretyczno-Prawnych*
*Państwowego Uniwersytetu Podatkowego (Irpień, Ukraina)*
*ORCID ID: 0000-0002-3457-9984*
*dashastarosta@ukr.net*

**Adnotacja.** Autor przeanalizował regulacje prawne dotyczące współdziałania państw w zakresie zapobiegania przestępczości w wymiarze międzynarodowym. Badanie zostało przeprowadzone zarówno w aspekcie historycznym, jak i dzisiaj. Należy zauważyć, że znaczenie badanego problemu wynika z faktu, że każde państwo, określając bezprawność działań, wzmacnia walkę z przestępczością. Jednak ludzkość od dawna zna zbrodnie, które wykraczają poza granice państwa, naruszając w ten sposób bezpieczeństwo zarówno kilku państw, jak i bezpieczeństwo międzynarodowe całej ludzkości jako całości. Problem ten określał potrzebę zjednoczenia wysiłków państw w celu zapobiegania takim przestępstwom. W związku z tym istnieje potrzeba naukowego badania problemów kształtowania się i rozwoju głównych kierunków międzynarodowej współpracy prawnej w zapobieganiu przestępczości, aby wykorzystać to doświadczenie we współczesnych warunkach. Określono specyfikę kierunków regulacji regulacyjnej i prawnej badanej kwestii oraz zaproponowano sposoby poprawy.

**Słowa kluczowe:** regulacje normatywne i prawne, zapobieganie, przestępstwa, przestępczość, ponadnarodowe.

# NORMATIVE AND LEGAL REGULATION OF THE INTERACTION OF STATES IN THE PREVENTION OF CRIME IN THE INTERNATIONAL DIMENSION

***Dariya Vitiuk***
*Candidate of Juridical Science (Ph.D.), Associate Professor,*
*Associate Professor at the Department of Theoretical and Legal Disciplines*
*State Tax University (Irpin, Ukraine)*
*ORCID ID: 0000-0002-3457-9984*
*dashastarosta@ukr.net*

**Abstract.** The author has analyzed the normative and legal regulation of the interaction of states in the prevention of crime in the international dimension. The research was carried out both in the historical aspect and in the conditions of today. It is noted that the relevance of the investigated problem is determined by the fact that any state formation, determining the illegality of actions, strengthens the fight against crime. However, humanity has long known crimes that go beyond the borders of the state, thus encroaching on the security of several states in particular, and on the international security of all humanity as a whole. This problem determined the need to unite the efforts of states to prevent such crimes. In connection with this, there is a need for a scientific study of the problems of the formation and development of the main directions of international legal cooperation in the prevention of crime in order to use this experience in modern conditions. The specifics of the directions of normative and legal regulation of the researched issue are determined and ways of improvement are proposed.

**Key words:** normative and legal regulation, prevention, crimes, crime, transnational.

# НОРМАТИВНО-ПРАВОВЕ РЕГУЛЮВАННЯ ВЗАЄМОДІЇ ДЕРЖАВ ЩОДО ЗАПОБІГАННЯ ЗЛОЧИННОСТІ У МІЖНАРОДНОМУ ВИМІРІ

***Дарія Вітюк***
*кандидат юридичних наук, доцент,*
*доцент кафедри теоретико-правових дисциплін*
*Державного податкового університету (Ірпінь, Україна)*
*ORCID ID: 0000-0002-3457-9984*
*dashastarosta@ukr.net*

**Анотація.** Автором проаналізовано нормативно-правове регулювання взаємодії держав щодо запобігання злочинності у міжнародному вимірі. Дослідження проведено як в історичному аспекті, так і в умовах сьогодення. Зазначено, що актуальність досліджуваної проблеми зумовлена тим, що будь-яке державотворення, визначаючи протиправність дій, посилює боротьбу зі злочинністю. Однак людству здавна відомі злочини, які виходять за

кордони держави, таким чином посягаючи на безпеку як декількох держав зокрема, так і на міжнародну безпеку всього людства в цілому. Дана проблема і визначила потребу в об'єднанні зусиль держав по запобіганню таким злочинам. У зв'язку з цим і виникає необхідність у науковому дослідженні проблем становлення і розвитку основних напрямків міжнародно-правового співробітництва у запобіганні злочинності для використання цього досвіду в сучасних умовах. Визначено специфіку напрямків нормативно-правового регулювання досліджуваного питання та запропоновано шляхи удосконалення.

**Ключові слова:** нормативно-правове регулювання, запобігання, злочини, злочинність, транснаціональні.

**Introduction.** The relevance of the investigated problem is determined by the fact that any state formation, determining the illegality of actions, strengthens the fight against crime. However, humanity has long known crimes that go beyond the borders of the state, thus encroaching on the security of several states in particular, and on the international security of all humanity as a whole. This problem determined the need to unite the efforts of states to prevent such crimes. In connection with this, there is a need for a scientific study of the problems of the formation and development of the main directions of international legal cooperation in the prevention of crime in order to use this experience in modern conditions.

**Main part.** The main goal of writing this article is an attempt at a comprehensive scientific study of the problems of the formation and development of the main areas of international legal cooperation in crime prevention, an analysis of the doctrinal approaches of scientists and the norms of international treaties in this area, the identification of the main areas of international legal cooperation in crime prevention, substantiation of their specifics.

**Research materials and methods.** In the analysis of historical and legal problems of international crime prevention, the following methods were used: formal-legal, comparative-legal, historical-legal, analysis of judicial practice, data of the Prosecutor General's Office.

The theoretical basis of this article was modern scientific developments of domestic and foreign scientists regarding the application of preventive measures to participants in criminal proceedings, directions for improving legislation on this issue, and law enforcement practice.

The method of synthesis and generalization was used to form conclusions.

**Results and their discussion.** It is worth noting that even in ancient times, international aspects of combating criminal offenses appeared. From the moment of the emergence of international law, the institution of extradition of criminals was born, which in the process of historical development underwent significant changes.

If a person who committed a crime in the territory of one state is hiding in the territory of another state, the cooperation of these states was necessary. In the Soviet science of international law, it is reasonably recognized that extradition is considered as an act of legal assistance (Галенская, 1968: 20). Extradition of criminals is understood as "an act of legal assistance based on international treaties and generally recognized principles of international law, which consists in the transfer of an accused or convicted person by the state in whose territory he is located to the state that requires such extradition, to the state in whose territory the person committed the crime or of which she is a citizen, or to the state that suffered from the crime, in order to bring her to criminal responsibility or to enforce the sentence" (Валеев, 1976: 28).

Accordingly, the legal assistance of one state to another is the first direction of state cooperation in preventing and fighting crime. In modern conditions, in addition to the extradition of criminals, agreements on legal assistance in criminal proceedings provide for the conduct of search and investigative actions on the territory of one state on behalf of another state (Договори про надання правової допомоги по цивільним, сімейним і кримінальним справам, укладені СРСР з іншими соціалістичними державами, 1973).

Since the end of the 15th century, states began to conclude multilateral agreements on the fight against certain types of criminal offenses that encroach on the interests of many countries, on the normal development of relations between states. Slave trade was recognized as the first such crime. At the Congress of Vienna in 1815, the Declaration on the Abolition of the Negro Slave Trade (Declaration Relative to тне Universal, 1815) was adopted. Later, a number of international documents were adopted to combat the slave trade. In the General Act of the Brussels Conference of 1890, regulations were included, which included a list of specific measures to prevent the slave trade, established a "doubtful line", which included the western part of the Indian Ocean, the Red Sea and the Persian Gulf, where warships of the contracting parties had the right to detain and inspect all suspicious vessels (Convention Relative to Slave trade and importation into Africa of fire aims, 1980). It should be noted that these measures were aimed only at the fight against the slave trade, and not at the fight against slavery. In 1919, the Treaty of Saint-Germain repealed the provisions of the Brussels General Act of 1890, but stipulated that the parties would make every effort to completely eradicate slavery and the slave trade. Only the League of Nations developed a document that prohibits not only the slave trade, but also the use of slave labor. In 1924, the Council of the League of Nations appointed a temporary commission on slavery, which prepared a draft of the Convention on Slavery. The Convention was signed by the states on September 25, 1926 (Міжнародне право в документах, 1982: 377). According to this convention, the participating states undertook the following obligations: "a) to prevent and stop the slave trade; b) continue to strive gradually and in the shortest possible time for the complete abolition of slavery in all its forms", and the means to achieve this goal is the obligation of the participating parties to apply measures of strict punishment for violations of the norms of national criminal legislation prohibiting slavery and the slave trade (Міжнародне право в документах, 1982: 378). After the establishment of the UN, a number of documents were adopted in which slavery was condemned and prohibited. First of all, it is worth mentioning Art. 4 of the Universal Declaration of Human Rights of 1948: "No one shall be held in slavery or servitude; slavery and the slave trade

are prohibited in all their forms" (Universal Declaration of Human Rights, 1948). In 1956, at the International Conference Against Slavery organized by the United Nations, the Supplementary Convention on the Condemnation of Slavery, the Slave Trade, Institutions and Customs Similar to Slavery (hereinafter – the 1956 Convention) was adopted. In Art. 6 of the 1956 Convention defined that "reducing another person into slavery or inducing another person to commit himself or a person dependent on that other person into slavery, or attempting to commit such acts, or complicity in them, or participation in secret conspiracy to commit any of these acts is a criminal offense under the laws of States parties to the Convention, and persons found guilty thereof are liable to punishment" (Міжнародне право в документах, 1982: 381).

As a result, the member states of the specified convention defined the crime of slave trade and the use of slave labor and undertook to implement them in their national legislation. Another important point should be considered the provision of the convention that the subject of such crimes is only a natural person. The 1956 Convention also included crimes related to the possession of slaves. In Art. 5 of the 1956 Convention makes it a criminal offense to commit acts that lead to the death, branding by burning or in any other way of a slave or a person in a state of servitude in order to mark his condition, either for the purpose of punishment or for any other reason. Persons who have committed such a crime are subject to punishment. In Art. 3 of the 1956 Convention, the agreed position of the participating states is that the transportation or attempt to transport slaves from one state to another by any means of transport is considered a criminal offense under the laws of the states that are parties to the convention, and persons found guilty of these crimes, subject to severe punishment (Міжнародне право в документах, 1982: 380). In order to prevent the slave trade and the use of slave force, the participating states undertook to include an agreed set of crimes in their national criminal legislation and to bring to justice individuals guilty of these crimes. At the same time, the participating states undertook to take the necessary measures to prevent these crimes: to introduce the necessary legislation, material and other guarantees to prevent the slave trade and the use of slave labor. B of the 1956 Convention stipulates the obligation of the participating states to cooperate with each other to fight crimes. This includes the exchange of information with the aim of ensuring the practical coordination of the measures that are applied, notification of cases of slave trade known to them (Article 3), cooperation with the UN and with each other in the implementation of the provisions of the convention (Article 8) (Міжнародне право в документах, 1982).

Slavery and forced labor are prohibited by such an important document as the International Covenant on Civil and Political Rights of December 16, 1966. In Art. 8 of this pact is about the fact that no one should be held in slavery, slavery and the slave trade are prohibited in all their forms. No one should be kept in a state of servitude, should not perform forced labor.

Along with the conventions on the prohibition of slavery and the slave trade, a number of agreements on the fight against similar crimes were concluded. In 1910, the Convention on the Prohibition of the White Slave Trade was signed in Paris, which provides for the criminal liability of persons who trade in white women and children, as well as involve women in prostitution (International Agreement for the Suppression of White Slave Trade Traffic, 1904). In 1921, the Convention on the Suppression of Trafficking in Women and Children was signed, which was supplemented by a protocol developed by the United Nations General Assembly in 1947. To date, all previous norms have been included in the current Convention on the Suppression of Trafficking in Human Beings and the Exploitation of Prostitution by Third Parties of March 21 1950 (hereinafter referred to as the 1950 Convention), developed by the UN General Assembly.

The 1950 Convention stipulates that the participating states recognize as a criminal offense solicitation, temptation, inducement for the purpose of prostitution, exploitation of prostitution, maintenance, management and financing of brothels (Articles 1, 2). States Parties shall take all necessary measures to stop trafficking in persons of both sexes for the purpose of prostitution (Article 17), to identify foreigners engaged in prostitution and to provide data to the State of origin (Article 18). In the Convention of 1950, all the crimes specified in it involve extradition, and therefore detailed rules for the provision of legal assistance by the participating states (Articles 6, 9–13) (Конвенція про боротьбу з торгівлею людьми й експлуатацією проституції третіми особами, 1950).

In the process of international cooperation of states to prevent criminal offenses that threaten the interests of many states and disorganize international communication, a large number of agreements were concluded (Bassiouni, 1987: 105).

But all these agreements are similar to the preventive clauses of the convention against slavery and the slave trade described above. The development of conventions to combat criminal offenses that threaten the interests of many states and undermine international communication continues today. UNO member states pay special attention to the fight against international terrorism, mercenary and some other criminal offenses. Therefore, the second direction of cooperation between states in combating crime is the conclusion of international conventions. The agreements already in force were developed in different historical contexts and differ markedly in terms of style and nature of obligations. But it is possible to single out several characteristic features inherent in these conventions. In all conventions, certain illegal actions are recognized by all participating states as socially dangerous, and the contracting parties undertake to include them in their national legislation as criminal offenses that must be severely punished. Participating states undertake to take all necessary measures to prevent and stop these crimes. They also undertake to intensify cooperation in various forms with each other and with the UN to establish punishment for the criminal offenses provided for in these conventions. All conventions deal with the criminal responsibility of individuals personally. Features of the second direction of cooperation between states are noted by many domestic and foreign lawyers (Бородін, Ляхов, 1983: 2).

After the First World War, in connection with attempts to create an international criminal code, lists of international crimes were discussed at several international conferences. At the first international conference on the unification of criminal legislation in 1927 in Warsaw, the following international criminal offenses were included: counterfeiting of metal money and state securities; slave trade; trafficking in women or children; deliberate use of any kind of substances capable of causing public danger; drug trade; trade in pornographic literature; other crimes stipulated by international conventions concluded by these states (Решетов, 1983: 9).

But here a difficult situation arose with the list of international crimes, and theoretically – with the definition of the concept of "international crime". Already after the First World War in Art. 227 of the Treaty of Versailles provided for the possibility of bringing the former Emperor of Germany Wilhelm II to criminal responsibility before a special international tribunal on a public accusation "in the highest form of international morality and the sacred power of the agreement", i. e. for the start of the First World War and the commission of war crimes during it (Решетов, 1983: 11). Articles 228, 229 of the Treaty of Berlin provided for the extradition of German soldiers and officers who committed war crimes to the countries against which these crimes were committed (Курс міжнародного права, 1967: 102). Even before this agreement, in the Peace Decree of 1917, imperialist war was qualified as a "crime against humanity."

Western jurists, supporters of state criminal responsibility (B. Pella (Pella, 1925: 239), K. Caldanya (Saldana, 1925: 316), N. Politic (Politis, 1927: 127) considered aggressive war an international crime, as well as a threat an aggressive war, the intervention of one state in an internal political struggle or the exercise of the powers of another state.

Domestic jurists rightly noted that international crimes are such offenses that pose a threat to general peace and security, in the cessation and prevention of which the entire world community is interested (Трайнін, 1956: 13). As for criminal crimes, for the prevention of which the second direction of interaction in this field was created, they began to be called quasi-international crimes (Решетов, 1983: 11), quasi-international torts (Василенко, 1976: 171), crimes of an international nature (Карпець, 1988: 48).

There is no generally accepted term defining these international criminal crimes. During and after the Second World War, a third direction of cooperation between states in crime prevention emerged: a number of international agreements were adopted on the prosecution and punishment of major war criminals and the creation of international military tribunals for this purpose. The Declaration on Hitler's Responsibility for Atrocities, adopted by the CRCP, CSA and Great Britain and published on October 30, 1943, provided that all German war criminals "shall be sent to the countries where their heinous acts were committed, in order that they could be tried and punished in accordance with the laws of those liberated countries" (Міжнародне право в документах, 1982: 825). After the Second World War, the Soviet Union, the United States of America, Great Britain and France signed the Agreement on the Prosecution and Punishment of Major War Criminals of European States of August 8, 1945, which provided for the creation of an international military tribunal to try war criminals whose crimes were not associated with a certain geographical location. Art. B 6 of the Statute of the International Military Tribunal of August 8, 1945, which is part of this agreement, the composition of crimes against peace, humanity and the composition of war crimes was prescribed (Міжнародне право в документах, 1982: 827). As a result, the UN General Assembly confirmed the principles of international law enshrined in the Charter and the Judgment of the Nuremberg International Military Tribunal in its resolutions. On behalf of the UN General Assembly, the International Law Commission is developing a draft Code of Crimes against the Peace and Security of Mankind. It included only international crimes. The UN General Assembly approved the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, and the Convention on the Suppression and Punishment of the Crime of Apartheid of December 30, 1973, which recognized genocide and apartheid as crimes against humanity, and participating states undertook to warn, prevent and punish natural persons, regardless of their position.

A characteristic feature of international crimes is the fact that they represent an offense committed by a state against the entire world community, and the international legal responsibility of states also includes the criminal responsibility of natural persons who are representatives of this state. And, finally, the fourth direction of cooperation of states in crime prevention is their participation in the work of international organizations dealing with these issues. Back in 1872, the International Criminal and Penitentiary Commission was created in London at the First International Penitentiary Congress, which existed until 1950, when its powers were transferred to the UN. At its conferences, the International Criminal and Penitentiary Commission discussed the problems of coordinating the activities of police bodies in the fight against crime; mutual legal assistance and identification of criminals; extradition of own citizens to states; criminal punishment of foreigners; problems of crime prevention. The League of Nations created a number of advisory committees to combat trafficking in women and children, trafficking in opium and other drugs, and combating slavery. These committees were engaged in research work and generalizations on the implementation of contracts within their competence (Бородін, Ляхов, 1983: 17).

In 1923, the International Criminal Police Commission was established in Vienna, the purpose of which was the following tasks: a) to facilitate the establishment of mutual business contacts between police bodies within the limits of the laws in force in the participating countries; b) take care of the creation and successful operation of all national institutions whose duty is to combat criminal offenses.

After World War II, this commission was transformed into the International Criminal Police Organization (Interpol). In Art. 2 of the Interpol Charter defines the purpose of the organization:

«1. Promote broad mutual interaction of all criminal police agencies within the limits of the legislation in force in the states and in the spirit of the Universal Declaration of Human Rights. 2. To create and develop institutions that can contribute to the successful prevention and fight against criminal crime.» In connection with the assigned tasks, Interpol is an international center for the registration of criminals and coordinates the international search for persons who have committed certain crimes with an international element.

The United Nations in accordance with paragraph 3 of Art. 1 of its charter carries out international cooperation in solving international problems of an economic, social, cultural and humanitarian nature. The cooperation of states in the fight against criminal offenses is included in these issues of UN activity. Thus, the member states of the UN have taken upon themselves the responsibility to honestly implement such cooperation in accordance with the basic principles of international law (Article 2 of the UN Charter). The UN General Assembly developed and submitted for signature a number of international conventions on combating such international crimes as genocide (1948), apartheid (1973), international criminal crimes, slavery and the slave trade (1953, 1956), illegal drug trafficking (1961), crimes against persons enjoying international protection (1973), etc. In addition, it has adopted a significant number of declarations relating to the prevention of criminal offences.

The Economic and Social Union of the United Nations (hereinafter – ECOCOC) and its functional social development commission prepare drafts of international agreements for the prevention of crime for the United Nations General Assembly, research and make reports on relevant problems and prepare recommendations for the United Nations General Assembly to combat crime, convene the necessary conferences and creates the necessary auxiliary bodies (Articles 62–66 of the UN Charter). Accordingly, EKOCOC established the Permanent Central Committee on Narcotics, organized for drug control (ООН. Короткий довідник, 1965: 65). United Nations Committee on Crime Prevention and Control, Congress on Crime Prevention and Treatment of Offenders.

However, one cannot agree with the position of C. B. Borodina and E. H. Lyaxova that the UN "directly controls the problems of combating criminal crime" in connection with the fact that the General Assembly of the UN adopted resolution 415 (B) of December 1, 1950 and assumed the functions of the International Criminal and Penitentiary Commission. This statement is related to the exaggeration of the role of the Congress in preventing crime and dealing with offenders in the Committee on the Prevention of Crime and the Fight against it, which are ECOSOS bodies (Бородін, Ляхов, 1983: 22).

First of all, the competence of UN bodies is determined by the UN Charter, not by resolutions of the UN General Assembly. It is clear that the norms on the activities of the United Nations in 1950 and the competence of the bodies of the United Nations, established in the Constitution of the United Nations, convincingly show that a number of conventions and declarations related to the prevention of crime were adopted in 1950, and that the General Assembly of the United Nations is the main body, where issues of interstate cooperation in crime prevention are resolved. ECOCOC itself, not to mention its bodies, is an auxiliary body that operates under the direction of the UN General Assembly.

Textbooks on international law state that the main tasks of states in the fight against crime are the following: a) agreement on the qualification of crimes that pose a danger to several or all states as crimes of an international nature; b) coordination of measures to stop and prevent crimes of an international nature; c) establishment of jurisdiction over crimes and criminals; d) ensuring the inevitability of punishment; e) provision of legal assistance in criminal cases, including the extradition of criminals (Міжнародне право, 1982: 353).

C. B. Borodin and E. H. Lyakhov called the following the main directions of interstate cooperation in crime prevention: a) extradition of criminals and provision of legal assistance in criminal cases; b) scientific and informational (exchange of national scientific and practical experience, justification of problems and joint research); c) provision of professional and technical assistance to states in the fight against criminality; d) contractual and legal coordination of the fight against crimes affecting several states (cooperation of states in the fight against certain types of crimes based on international agreements) (Бородін, Ляхов, 1983: 11).

Of the described approaches, the one generally recognized is the separation into a special direction of cooperation between states in the fight against crime, the issuance and provision of legal aid.

All other tasks of cooperation between states in the prevention of crime, specified in textbooks on international law (harmonizing the qualification of international criminal crimes, coordinating measures to stop and prevent them, ensuring the inevitability of punishment by establishing jurisdiction over such crimes and punishing the persons who committed them), form another one direction of international crime prevention. In this regard, it should be considered that C. B. Borodin and E. H. Lyakhov absolutely correctly noted this circumstance. As for the scientific and information direction and the provision of professional and technical assistance, these directions are typical for the activities of international organizations. However, those authors who believe that international cooperation in crime prevention is carried out in two forms are absolutely right: on the basis of international agreements and within international organizations. Thus, it can be argued that the fight against international crime is also another direction of international cooperation in crime prevention.

**Conclusions.** Thus, it can be argued that the normal functioning and development of interstate relations is conditioned by the objective needs of the state and society, harming them as a result of criminal offenses in any case harms both the interests of the state itself and society. In this regard, the main areas of cooperation between states in preventing crime were formed: 1) states providing each other with legal assistance in criminal cases (including extradition) on the basis of international agreements; 2) establishment of international agreements in the case of international legal responsibility of states for committing international crimes of criminal liability of natural

persons guilty of committing these crimes; 3) definition in international agreements of the composition of crimes that threaten the interests of states and the order in international relations, acceptance by the states-participants of the agreements regarding the obligations to warn and prevent such crimes, as well as bring to justice the persons guilty of committing these crimes; 4) activities of international organizations on the development of international standards for legal aid, prevention of international crime, as well as provision of advisory and scientific and technical assistance to states in the fight against crime.

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