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"INTERNATIONAL CRIME": DIFFERENT APPROACHES TO THE QUESTION OF THE CONCEPT DEFINITION

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Abstract

The article attempts to study the political and legal essence (nature) of international crime as a negative phenomenon of social reality within the analysis of various scientific approaches. The complex use of four scientific research methods (analysis, synthesis, formal legal, and comparative methods) allowed us to analyze different theoretical approaches regarding the concept definition of "international crime." The authors concluded that the concept "international crime" could be considered in four aspects in the modern doctrine of international criminal law: 1) acts that are expressed in state violation of international obligations arising from the operation of international norms of jus cogens, which predetermine the international legal responsibility; 2) acts that are expressed in state violation of international obligations arising from the operation of international norms of jus cogens, which entail the implementation of international criminal liability of individuals responsible for their commission; 3) acts that, due to specific forms of external expression, embody the highest character of public danger, allows us to characterize them as evil in itself (malum in se); 4) acts that infringe on definite elements of the international legal order – international peace and security of humanity. The definition of international crime is given, which means a complex act committed in the context of an institutionalized policy that encroaches on the international peace and security of humanity and causes concern to the international community and, as a result, falls under universal jurisdiction.

Keywords: International crime, international peace, security

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1. Introduction

In the history of human civilization, acts that encroached on the most important social relations have always been committed, which projected the interests of the entire world community. But it was only after the Second World War that the international community took political and legal measures to counteract those acts, which encroached on universal peace and security, causing concern to humanity. It marked the birth and development of a conceptual and legal paradigm for combating international crimes. International peace and human security have ceased to be perceived as some metaphysical values, the pursuit of which arose in the great philosophers' minds exceptional ideas about a universal order based on the peaceful existence of States and peoples (May, 2008). On the contrary, it is no exaggeration to state an epochal shift in the conceptual and legal paradigm from the political-declarative recognition of the need to combat inhumane acts that infringe on international peace and security of humanity to the complete categorical (unconditional) prohibition of such acts through the establishment of a regime of international criminal responsibility for their commission.

Within the retrospective analysis of the development of criminal responsibility for international crimes in the system of international criminal law, there is an ambiguous process of criminalization of acts as international crimes. Indeed, back in 1915, The Declaration of the Allies (the Entente countries) recognized crimes against humanity as the gravest crimes against civilization under international law. The next stage in the development of responsibility for international crimes was associated with the post-war processes (the Nuremberg Trials in 1945-1946 and the Tokyo Trial in 1946-1948) when persons involved in committing crimes against peace, crimes against humanity, and war crimes during World War II took criminal responsibility. In turn, the Convention on the Prevention and Punishment of the Crime of Genocide in 1948 criminalized genocide. Simultaneously the adoption of the International Convention on the Suppression and Punishment for Apartheid in 1973 recognized it as an international crime. The group of war crimes, reflected in the Charter of the Nuremberg Tribunal and based on provisions of the customary law and the Hague Law, has long been casuistically expanded and specified (specified by regulations) in four particular Geneva Conventions and several additional protocols to them. The criminal wrongfulness of crimes against peace is expressed in the criminalization of planning, preparation, unleashing, waging an aggressive war, and participation in a mutual plan or conspiracy aimed at committing these crimes. In 1974 The UN General Assembly resolution 3314 (XXIX) was adopted, in which the crime of aggression was legally enshrined. In the current development conditions of international criminal law, the UN International Law Commission is also developing a draft Convention on the Prevention and Punishment of Crimes against Humanity (Bassiouni, 2014).

The criminalization of acts causing concern to the entire international community continued through the work of the International Law Commission. At different times, the Commission presented various drafts of the Code of Crimes against the peace and security of humanity, reflecting ambiguous approaches to the list of such crimes. Further, genocide, crimes against humanity, and war crimes became the subject of consideration within the framework of international jurisdiction in the International Tribunals for Rwanda's work in 1994 and the Former Yugoslavia in 1991. It is believed that the culmination of the development of international criminal responsibility for acts, causing concern to the

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entire international community and encroaching on the universal peace and security of all humanity was the adoption in 1998 of the Rome Statute of the International Criminal Court. This international document reflected the previous experience of normative legal regulation of responsibility for international crimes.

2. Problem Statement

At the same time, acts encroaching on universal peace and security have not always been perceived (and are still perceived today) by the national legislature as criminal acts marked by the highest character of public danger. It creates different approaches in the political and legal response to these acts. For example, in some common law countries (USA, Canada, UK), aggressive warfare is not criminalized to the present time. In other countries, aggressive war is criminalized according to the Nuremberg trial model (Article 353 of the Criminal Code of Russia, Article 437 of the Criminal Code of Ukraine, art. 122 of the Criminal Code of Belarus, Article 160 of the Criminal Code of Kazakhstan). The crime of aggression covers the definition presented in the UN General Assembly resolution of 1974 (for example, Article 404 of the Criminal Code of Georgia) (May, 2008).

The lack of criminal law unification at the national level is also observed concerning war crimes, genocide, and crimes against humanity. In addition, the national legislature often follows the path of expanded (in comparison with international criminal law) criminalization of acts that infringe on peace and security. An illustrative example in this regard is the national experience of the criminal law fight against crimes against peace and security in the Russian Federation. The Criminal Code of the Russian Federation has an independent section XII, the norms of which provide for liability for acts that have been criminalized in international criminal law as crimes against peace and security, together with for conventional crimes and certain international non-criminal acts. In particular, the norms on aggressive war (Article 353), genocide (Article 357), and war crimes (Article 356) were implemented into Russian criminal legislation. At the same time, the criminalization of aggressive war is based on a truncated version of the Nuremberg model. The norms on genocide cover the signs of the objective side, the way they are presented in the Genocide Convention of 1948. And the legal norms on war crimes establish responsibility for the use of prohibited means and methods of warfare. It is noteworthy that Russia has not criminalized the inhumane acts that constitute the fourth group of international crimes - crimes against Mankind (May, 2008).

In addition, as crimes against the peace and security of humanity, the national legislation of the Russian Federation criminalized acts that in the system of international criminal law are only conventional crimes. Such crimes include mercenary activity (although Russia has not signed or ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989, she still recognizes this act as a crime) and attack on persons or institutions that enjoy international protection (the establishment of criminal liability is related to Russia's acceptance of obligations related to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 1973). Individual acts (public calls for the unleashing of aggressive war, illicit trafficking in weapons of mass destruction, rehabilitation of Nazism, ecocide, and acts of international terrorism) were criminalized based on international provisions on non-criminal acts (these are acts that are not criminalized in the system of modern international criminal law, but they are subject

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to universal condemnation and political and legal prohibition) from the standpoint of the conceptual and legal foundations of international criminal law.

Thus, the lack of a uniform criminal law policy in the field of ensuring international peace and security of humanity, taking into account new and emerging threats caused by modern trends of globalization and scientific and technological progress, as well as the dynamism of international relations, actualizes the question of a common understanding of the concept of "international crime".

3. Research Questions

In modern legal science, the concept of "international crime" is often identified together with such concepts as "crimes against international law," "crimes under international law," "crimes against humanity," "international crimes," "crimes against the peace and security of humanity" and "crimes that cause serious concern to the entire international community" (Kopylova, 2019). The spread of definitions does not allow scholars to determine the most acceptable concept of such an act.

4. Purpose of the Study

The purpose of the study is a comparative analysis of different conceptual approaches regarding the political and legal essence disclosure of this phenomenon. There are four approaches in the center of comparative legal analysis developed in the modern criminal law theory. They include international crime as an international delict, generating the global legal responsibility, global crime as a violation of an international obligation, generating the realization of international criminal responsibility, international crime as an evil in itself, and acts that infringe on global peace and human security.

5. Research Methods

The article uses such methods as (1) analysis (the concept of "international crime" as an object of research is considered from different perspectives), (2) synthesis (this method is reflected in the development of a general definition of "international crime" by combining the signs of the phenomenon identified in the analysis), (3) a formal legal method that allows analyzing national normative legal documents regulating criminal liability for crimes against the peace and security of humanity, (4) a comparative method, which is expressed in the comparative ratio of different approaches to the definition of the essence of the phenomenon.

6. Findings

The modern criminal law theory gave birth to different approaches regarding the conceptual and legal definition of the acts that make up the concept of "international crime."

Thus, some representatives of international criminal law science emphasize the global legal prohibition of an act based on ensuring the principles of public international law, which are threatened due to the commission of these acts. In this case, the criminalization of such acts is tied to the recognition of international obligations arising from the operation of international norms of jus cogens (Bassiouni,

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1996). International crimes are defined through acts related to the violation of international obligations of States arising from the operation of international norms of *jus cogens*. Following article 53 of the Vienna Convention on the Law of Treaties of 1969, peremptory regulations of general international law (jus cogens) include norms accepted and recognized by the international community of States as regulations. The deviation from these norms is unacceptable and can only be changed by a subsequent norm of general international law of a similar nature. Despite the different theoretical understanding of the legal content and limits of the mandatory norms of *jus cogens*, the worldwide concept of jus cogens has not lost its relevance for a long time (Helmersen, 2014; Linderfalk, 2020).

De jure, such acts can be qualified as international delict that causes the onset of global responsibility of the State and criminal acts that predetermine the criminal responsibility of individuals in the regime of international jurisdiction. The functional connection of an international act with a state that functions as an instrument of criminal policy also adjoins this approach.

Within the framework of this approach, we can trace the dualism of the nature of the international crime. On the one hand, global crime should be understood as illegal acts committed by States and expressed in non-fulfillment of international obligations. Indeed, we are talking about the definition of transnational crime through internationally wrongful actions of States related to the violation of international obligations of that State. The draft articles on the responsibility of States for internationally wrongful acts of 2001 once reflected this approach.

On the other hand, prohibition of certain acts (international criminal law wrongfulness) is expressed in the obligation of States to investigate and prosecute the persons responsible for their commission or extradite such persons to another State, ready to administer justice (the basic principle of extradition is aut dedere aut judicare).

Criminalization of acts in the system of international criminal law in form demonstrates the crime as an international one, which means a political and legal prohibition of such acts and in concreto testifies to interstate cooperation in the field of ensuring international law and order.

Other authors define the concept of "international crime" through the specific nature of the external expression of such acts. This approach is based on the Latin formula *malum in se* (evil in itself). Such acts are initially *i priory* recognized as inadmissible and illegal regardless of their actual criminalization. The public danger of such acts is determined by their nature of external expression, which is realized in the intent direction (for example, encroachment on the fundamental values of humanity). It is also determined by seriousness and scale, together with the specific attitude of the international community, expressed in recognition of such acts as "shocking the conscience of humanity" (Carsten, 2019; Dimock, 2016). This approach tends to a greater extent to a philosophical understanding of the research subject, based on the recognition in social relations practice of inhumane acts as a category that has evolved in the context of the development of ideas of humanism and the liberalization of political discourse.

We should pay particular attention to the approach according to which an international crime is an act committed with the direct or indirect participation of the State. It is assumed that the probability of violating the universal peace and security of humanity increases provided international criminal acts are committed with the direct or indirect participation of State authorities. Indeed, the facts known in the

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history of the commission of genocide, crimes against humanity, and war crimes were usually committed with the participation of States (for example, the Turkish Armenian Genocide from 1915-1923, the Holocaust during World War II, genocide, and war crimes during the civil war in Yugoslavia in 1995, genocide and crimes against humanity in Kampuchea in 1975-1979, aggressive wars). This thesis is only partially correct. At the same time, it is impossible to exclude the possibility of committing international crimes (perhaps, except for the crime of aggression) by non-State actors in international relations (transnational companies, private military companies, illegal armed formations, terrorist organizations, and global criminal communities). For example, while considering the civil war state in modern Syria for violations of international humanitarian law, signs of war crimes and crimes against humanity are seen both on government troops' part and the opposition's part, terrorist organizations, and the armed forces of other states. For this reason, the connection of an international crime with State policy should not be considered as a criminalizing sign of a criminal act.

The fourth group of scholars focuses not so much on binding to the norms of international law as on the specific value of those objects (international peace and security of humanity) against which encroachments are committed. To a certain extent, this approach is based on the law-making work of the International Law Commission to create a unified Code of Crimes against the Peace and Security of Mankind. In the history of the development of international criminal law in the second half of the XX century, there were three known drafts of such codes (1954, 1991, and 1996), which proposed criminalization of socially dangerous acts that infringe on international peace and human security (McCormack & Simpson, 1994). In contrast to the previous approaches, this perception of the public danger of international crimes acquires an institutional and legal expression. Thus, it makes it possible to distinguish international crimes from other international delicts and unfriendly acts that do not have a sufficient degree of public danger comparable to the international crimes. Taking into account the relevant nature of the objects of criminal law protection (international peace and security of humanity), the modern realities of the complications of international relations, negative trends of scientific and technological progress, together with emerging threats to the sustainable development of the international community, scientists suggest a broader system of international crimes, referring to them in addition to the principal (crime of aggression, war crimes, genocide, and crimes against humanity) also torture, attacks on persons enjoying international immunity, international terrorism, piracy, illicit trafficking in weapons of mass destruction, and the like (Bassiouni, 2014; Heller et al., 2020).

In addition, in the current conditions of digital transformation of public relations, proposals are made to recognize certain socially dangerous acts committed in cyberspace as international crimes (Kittichaisaree, 2017). Some scholars also argue the position, according to which the digital age determines the transformation of international crimes that have developed in modern international law (in particular, the crime of aggression and war crimes), which can be committed through information and telecommunications technologies (Baranov et al., 2019; Dinstein, 2012; Lilienthal & Nehaluddin, 2015).

Despite critical objections, it should be noted at the same time that this approach is topical in the light of modern trends in the development of new weapons and promising in terms of the development of international criminal law in the field of ensuring international peace and security of humanity. Indeed, it is hardly appropriate to blindly deny the ongoing changes in the sphere of military thought and military

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affairs. In current conditions, the complications of international relations and scientific and technological progress, computer network attacks committed against critical infrastructure facilities of other states are becoming a reality. These determine both the development of international information security law (Biller, 2018; Macak, 2017; Schmitt, 2019) and the transformation of national military doctrines (Finlay & Payne, 2019).

For example, it is determined in the military doctrines of some states (Russia, the USA, and China) that modern military conflicts are accompanied by an increase in information warfare, which is used as tools to achieve political goals without the direct use of military force. The doctrines also speak about the increasing role of information and control systems used in the conduct of hostility, together with the state of interstate relations in the military-political sphere using modern technical means and information technologies. At the same time, cyberspace is becoming a new theater of military confrontation between states whose national and international interests come into conflict.

The position of those authors who claim that the potential harm from possible cyber-attacks, expressed in undermining information security, weakening the economic system, and disorganizing the military infrastructure, can be commensurate with the consequences of the direct use of the armed forces, seems convincing and justified (Dinstein, 2012; Lilienthal & Nehaluddin, 2015). In addition, in the conditions of the modern international security system, when the direct use of armed force by one State against the sovereignty, political independence, and territorial integrity of another state is an unlikely scenario for complicating international relations, cyber-attacks become the instrument of unlawful interference in the internal affairs of another state (Buchanan, 2020; Roguski, 2021).

The analysis of various approaches to understanding the nature of this phenomenon allows us to state diverse variants of conceptual and legal definitions of international crimes, disclosed through the following alternative factors that make up its contextual element:

- Violation by States of international peremptory norms (jus cogens);
- The specific nature of the external expression of such acts, indicating the inherent danger of the phenomenon (for example, the direction of intent, seriousness, and scale, specific attitude on the part of the international community);
- Functional relationship with the state acting as a subject of criminal policy;
- Encroachment on international peace and human security.

At the same time, it should also be noted that these approaches, on the one hand, overlap with each other, and on the other hand, they coincide in some moments. For example, the understanding of an international crime through the violation of obligations arising from the operation of jus cogens norms to some extent intersects with the definition of international crimes as crimes against the peace and security of humanity, since the violation of such norms can threaten the international legal order. Moreover, acts that violate the norms of jus cogens do not always endanger international peace and human security (for example, acts of aggression, which are not serious enough or sporadic (isolated) war crimes). A similar situation occurs with a functional connection with the state acting as a subject of criminal policy.

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7. Conclusion

Thus, there are four approaches to the concept of "international crime" in the theory of international criminal law: 1) acts that are expressed in violation by a State of international obligations arising from the operation of international norms of jus cogens, which predetermines the onset of international legal responsibility; 2) acts that are expressed in violation by the State of international obligations arising from the operation of international norms of jus cogens, which entails the implementation of international criminal responsibility of individuals responsible for their commission due to the fact of their primary (that is, at the international level) criminalization; 3) acts that, due to specific forms of external expression, demonstrate the highest character of public danger, which allows them to be characterized as evil in itself (malum in se); 4) acts that infringe on definite elements of the international legal order – international peace and security of humanity.

The conceptual and legal definition of an international crime through the understanding of international peace and security of humanity, acting as fundamental values that form the basis of the international legal order, corresponds to modern trends in world politics and the development of international criminal law.

An international crime is a complex act committed in the context of an institutionalized policy, encroaching on the international peace and security of humanity and causing concern to the international community, getting under universal jurisdiction as a result. The current understanding of an international crime as a complex act that encroaches on international peace and security of humanity does not mean that the groups of such crimes that have developed in the system of international criminal law (crime of aggression, genocide, war crimes, and crimes against humanity) are sufficient and final.

It is impossible to exclude the emergence of new acts that encroach or endanger the above objects since scientific and technological progress, destructive forms of globalization, and modern processes of intercultural interaction demonstrate new threats to humanity (for example, international terrorism, illicit trafficking in weapons of mass destruction, ecocide, the creation of human beings, interference in the internal affairs of other states ("color revolutions"), cyberattacks, and drug trafficking). The option of criminalizing acts that infringe on the international peace and security of humanity and that are committed in the information space as international crimes are also not excluded.

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