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## **THE CONCEPT OF TRANSNATIONAL CRIME AS AN INTERNATIONAL CRIMINAL LAW CATEGORY IN A THEORETIC DIMENSION**

## **КОНЦЕПЦІЯ ТРАНСНАЦІОНАЛЬНОГО ЗЛОЧИНУ ЯК КАТЕГОРІЇ МІЖНАРОДНОГО КРИМІНАЛЬНОГО ПРАВА В ТЕОРЕТИЧНОМУ ВИМІРІ**

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### **Popko Vadym V.**

Philosophy Doctor in International Law, Associate Professor at the Comparative and European Law Chair of the Institute of International Relations, Taras Shevchenko National University of Kyiv. E-mail: vadympopko@gmail.com.

### **Попко В. В.**

Кандидат юридичних наук, доцент кафедри порівняльного і європейського права Інституту міжнародних відносин Київського національного університету імені Тараса Шевченка. E-mail: vadympopko@gmail.com.

### **Попко В. В.**

Кандидат юридических наук, доцент кафедры сравнительного и европейского права Института международных отношений Киевского национального университета имени Тараса Шевченко. E-mail: vadympopko@gmail.com.

**Abstract.** *The article analyzes the concept of a transnational crime as a category of international criminal law, its concept and characteristic properties. The origins of the concept of “transnational crime” are considered, taking into account the diversity of sources of international law, conceptual approaches, the relation between concepts “transnational” and “transboundary”, as well as the features of the concept of transnationality are identified. Different approaches to this problem at the present stage of development of international criminal law are generalized. The author emphasizes the importance of the UN Convention against Transnational Organized Crime of November 15, 2000, which describes the transnationality, the criminalization of criminal acts (money laundering, corruption, etc.); measures to be taken to combat these crimes are determined; issues of jurisdiction, confiscation, arrest, extradition, protection of witnesses, international cooperation of states in the field of mutual legal assistance in the investigation, prosecution and trial of transnational crimes are regulated. It is emphasized that the concept of a transnational crime is based on such important precepts: transnationality; recognition of the crime of a transnational criminal act in the sources of international law and national legislation; national character of a criminal law ban; criminal liability for transnational crime should be based on the principle of legality; a great public danger of a crime, because such an act is detrimental not only to the direct object of the crime, but also to interstate relations.*

**Key words:** *international crime, transnational crime, transnationality, convention, crime, national law.*

**Анотація.** *У статті аналізується поняття транснаціонального злочину як категорії міжнародного кримінального права, його концепція, а також характерні властивості. Розглянуто витоки формування поняття «транснаціональний злочин» з урахуванням різноманіття джерел міжнародного права, концептуальних підходів,*

співвідношення понять «транснаціональний» і «транскордонний», а також виявлено особливості поняття транснаціональності. Узагальнено різні підходи до цієї проблеми на сучасному етапі розвитку міжнародного кримінального права. Автор підкреслює значення Конвенції ООН проти транснаціональної організованої злочинності від 15 листопада 2000 р., якій дається характеристика транснаціональності, криміналізації злочинних дій (відмивання доходів здобутих злочинним шляхом, корупція та ін.); визначаються заходи по боротьбі з цими злочинами; регулюються питання юрисдикції, конфіскації, арешту, екстрадиції, захисту свідків, міжнародного співробітництва держав у сфері надання взаємної правової допомоги в розслідуванні, кримінальному переслідуванні та судовому розгляді транснаціональних злочинів і ін. Підкреслюється, що концепція транснаціонального злочину базується на таких важливих поняттях: транснаціональність, визнання злочинності транснаціонального кримінального діяння в джерелах міжнародного права і національного законодавства; національний характер кримінально-правової заборони; висока суспільна небезпека злочину, так як цим діянням завдається шкода не тільки безпосередньому об'єкту злочину, а й міжнародним відносинам.

**Ключові слова:** міжнародний злочин, транснаціональний злочин, транснаціональність, конвенція, злочинність, національне законодавство.

**Анотація.** В статті аналізується поняття транснаціонального проступлення як категорії міжнародного уголовного права, его концепція, а также характерные свойства. Рассмотрены истоки формирования понятия «транснациональное проступление» с учетом многообразия источников международного права, концептуальных подходов, соотношения понятий «транснациональный» и «трансграничный», а также выявлены особенности понятия транснациональности. Обобщены разные подходы к данной проблеме на современном этапе развития международного уголовного права. Автор подчеркивает значение Конвенции ООН против транснациональной организованной преступности от 15 ноября 2000 г., в которой дается характеристика транснациональности, криминализации преступных действий (отмывание доходов от преступлений, коррупция и др.); определяются меры по борьбе с этими проступлениями; регулируются вопросы юрисдикции, конфискации, ареста, экстрадиции, защиты свидетелей, международного сотрудничества государств в сфере взаимной правовой помощи в расследовании, уголовном преследовании и судебном рассмотрении транснациональных преступлений и др. Подчеркивается, что концепция транснационального проступления базируется на таких важных посылах: транснациональность, признание преступности транснационального уголовного действия в источниках международного права и национального законодательства; национальный характер уголовно-правового запрета; большая общественная опасность проступления, так как этим действием приносится вред не только непосредственному объекту проступления, но и международным отношениям.

**Ключевые слова:** международное проступление, транснациональное проступление, транснациональность, конвенция, преступность, национальное законодательство.

**Research problem setting.** In today's globalization of crime, international criminal law becomes intensive. Its key category is the concept of “international crime”, whose socially dangerous problems require further reflection and study. In particular, the system of classification of international crimes in connection with the formation of a separate group of transnational crimes and the determination of their place in the system of international criminal law needs to be improved. Separation of transnational crimes as an independent category of international criminal law has led to the formation of a transnational criminal law,

in the process of formation and development of which the essence of finding the legal nature of its key category is “transnational crime”. The concept of a transnational crime arose in the theory of international criminal law under the influence and development of the doctrine of condemnation of socially dangerous acts that pose a threat to peace, humanity, life and health of a person, his/her rights and values. Based on this fundamental postulate, the concept of a transnational crime requires clarification of its features, conceptual approach, the distinction of characteristic properties and their reflection in normative acts.

**The purpose of the article** is to study the concept of “transnational crime” as a category of international criminal law, its historical origins of formation and clarification of features, based on the theoretical achievements of the science of international law.

**Analysis of recent research.** Transnational criminal law is becoming more and more sought after in modern jurisprudence. In the formation of this concept, the classical works of both foreign and domestic scientists are of fundamental importance, in particular the works of R. Ago, D. Anzilotti, M. Baimuratov, M. Bassiuni, I. Blishhenko, A. Bossard, M. Buromensky, V. Butkevich, V. Vasilenko, G. Werle, M. Hnatovsky, L. Zablotsky, P. Kazansky, L. Kamarovsky, A. Kaseze, O. Kybalnik, M. Korkunov, D. Levine, F. List, I. Lukashuk, F. Martens, A. Naumov, V. Panov, V. Pella, A. Ferdros, V. Shabas and others. The concept of transnational criminal law was established in a foreign legal doctrine (M. Bassiouni, N. Boyster, A. Bossard, G. Werlet, A. Cassese, J. Martin, A. Romano, K. Rodionov, J. Truntsevsky, J. Schwarzenberger) and domestic scientists also take an active part in its formation (V. Antipenko, P. Bilenchuk, M. Hnatovsky, N. Zelinskaya, N. Dremin, A. Kozachenko, N. Klevan, T. Syroid). Separate aspects of transnational criminal law have become the subject of sectoral studies in criminology, some issues are studied in criminal procedural law. However, the key category of transnational criminal law, a transnational crime, is insufficiently investigated, especially its separate aspects related to the notion of transnationality, international legal regulation and domestic punishment.

**Presentation of the main material.** The concept of a transnational criminal offense is the concept of an *international offense*. It has a high social danger compared to other crimes, as it is characterized by two objects: firstly, social relations are violated, with the aim of protecting which are concluded international treaties (conventions), and secondly, relations are violated that characterize the implementation of such an international obligation. In the first case, the object of the offense is a wide range of relations - it can be peace, security of mankind, freedom of the person, security of the state, environment, etc., in the second - compliance with the principle of *pacta sunt servanda* (the treaties should be observed).

Professor N. Zelinskaya notes: “the concept of an international crime reaches its roots in the channel of natural-legal views” [Zelinska, 2006: p. 250]. It arose and developed as the peoples perceived the unconditional truth that there were violations that encroach on the foundations of the existence of all mankind and undermine the rights of every human being. The term “crime” in the vocabulary of all peoples of the world most adequately reflects the moral condemnation of this evil.

The first attempts to substantiate and codify the notions and features of specific offenses, an international crime, to develop procedural forms and procedures, types and sizes of sanctions were used at the end of the XIX century. They were developed at the beginning of the XX century. in the writings of P. Kazan, L. Kamarovsky, M. Korkunov, F. Liszt, F. Martens, A. Ferdros, and other scholars. To international crimes they attributed the aspiration of some states to absorb others and their aspirations for world domination, an attack without a declaration of war and enough reason. They considered the crime as an attack on the general legal order, which obliged the states to introduce into their national legislation the rules of international criminal law.

The formation of the modern concept of international crime as a category of international law began to emerge with the emergence of a new direction in the international legal cooperation of States in the fight against international crime. Among the first such

agreements were the Convention on the phylloxera of 1881, the Paris Agreement on the Protection of Underwater Telegraph Cables in 1884, the Convention on the Slavery of September 25, 1926.

In the twentieth century the development of the concept of “international crime” was carried out within the framework of international organizations, in particular, between two world wars, under the aegis of the League of Nations, there was a long, but unsuccessful, codification of the relevant provisions on liability for international offenses. A certain contribution to the development of this issue was made at the time by US scientists, where there was private codification, which included the drafting of specific conventions, in particular Government Responsibility, Diplomatic Protection, “Responsibility of States for the harm done to their territory and owned by the American Institute of International Law and the Law Faculty of Harvard University. Professor D. Levin, analyzing the work, wrote: “For a long time they were inevitably conducted in the same plan - the plan for the formation of norms on the responsibility of states for the damage inflicted on foreigners” [Levin, 1966: p. 14]. The basis of these programs was laid by ideas based on the science of private law, so the advantage was provided to the procedures and conditions for compensation for the material and moral damage inflicted, its volume, order, the form of the corresponding calculations, and others like that. Therefore, in defining any act in the field of international relations, the term “international tort” was used most often, which corresponded to the development of theoretical searches and time requirements. Italian professor D. Ancylotti, using the term “international delict”, covered two groups of offenses: international crimes and conventional crimes, understanding any breach of an obligation imposed by virtue of international law or contradicting the obligation “ the sacrifice given by one state to another state [Vasylenko, 1976: p. 394]. Conventional crimes, as the most commonly used term in the theory of international and criminal law to characterize a criminal act, the basis of which criminalization served as the norm of an international treaty, are traditionally considered together with international crimes.

In the scientific literature it was proposed to use other concepts that denote criminal offenses, in particular A. Trinin, following the professor at the University of Madrid, Saldan, uses the term “international tort”, under which he understood the encroachment on peaceful relations between states. “Whatever the great social danger of such crimes as trafficking in women, the falsification of money, etc., no matter how useful it is sometimes coordinated with them, these crimes are not an encroachment on peaceful international relations. Consequently, the delicts covered by these conventions are not international delicacies. And vice versa, there are quite imaginative and really there are many delusions that constitute a serious encroachment on the peaceful coexistence of peoples, and therefore international delicacies that remain outside the boundaries of international conventions “[Panov, 1977: p. 99-100]. V. Vasylenko proposed the introduction of the concept of “quasi international tort”, defining it as “a criminal act of an individual, contrary to the requirements of international treaties or customs, as well as formulated on their basis norms of domestic (national) law” [Werle, 2011: p. 171].

In the last century, an Italian lawyer, later a member of the International Law Commission of the United Nations, Roberto Ago, in 1939, for the first time distinguished ordinary internationally unlawful acts and extremely serious violations of international law (international crimes) [1]. Already in the documents of the Conference on the Unification of Criminal Legislation in 1927, whose members approved the list of such crimes on the basis of international conventions, the term “universal crimes” as a kind of delicti jus gentium is singled out.

After the Second World War, a wide range of issues related to the content of international criminal law has been repeatedly addressed by the United Nations and its commissions. Their searches were complemented by the legal practice of the Nuremberg and Tokyo Tribunals, which established important rules on the basis of which the concepts and

features of contemporary violations of international law were formulated. In particular, the Statute of the Nuremberg Tribunal (Article 6) [30] identified three types of unlawful acts against humanity (crimes against peace, against humanity, war crimes) that are recognized by the entire international community as serious international crimes. It is important that any crime that falls within the jurisdiction of the Tribunal has been acknowledged so regardless of whether this act was in violation of the domestic law of the country where it was committed or not. Nuremberg and Tokyo precedents international law has implemented its own design of an international crime by finding the ability to criminalize acts that are not a crime of national law. Consequently, an international crime in a new sense, which had not previously been used in the practice of justice, appeared as a category related to international justice.

The ideas and provisions of the Statute of the Nuremberg Tribunal have been developed and supplemented with the list of crimes in subsequent UN documents, in particular, in the Geneva Conventions on the Protection of Victims of the War of 1949, the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 [18], the Convention on the Prohibition of the Use of Military or Other Hostile Use of Environmental Impact Measures of May 18, 1977 [20], and others. International crimes received clear legal characteristics, which contributed to the development of the doctrine of international criminal law and the concept of international crime. It must be admitted that an international crime or an international crime, *stricto sensu*, is an international-legal crime, is “international” in the form of a criminal prohibition. As N. Zelinska writes, “he is criminalized by international law and potentially falls not only under national but also under international criminal law, which is understood as the jurisdiction of international criminal courts” [Zelinska, 2006: p. 34].

The position that the definition of “international delict” could no longer cover new interstate, national, racial, ethnic, religious phenomena and conflicts has gradually developed. “The term” international offense “seems to us to be more in line with the specifics of international law and international responsibility than the term” delinquency “, which carries the historical burden of civilian construction”, - wrote P. Kuris [Kuris, 1973: p. 72].

However, the concept of “crime” in international criminal law reveals ambiguously, primarily because of the lack of a single codified source. This is a serious violation of international humanitarian law, and crimes under international law [Werle, 2011: p. 38] and grave crimes that threaten the general peace, security and well-being, and international criminal crimes and crimes against the peace and security of mankind, “universal crimes” [Trykoz, Shvets, 2016; Cassesse, 1999], extradition crimes [Bassiouni, 1974: 445] and, finally, international crimes and crimes of an international character (or constitutional crimes) [28]. In this case, for example, crimes against the peace and security of mankind are called by scientists as crimes in the proper sense of the word [Panov, 1997: 211], others - crimes under general international law [Werle, 2011; Lukashuk, Naumov, 1999].

Over time, this variety of definitions at the level of rather generalized provisions contributed to the development of a mechanism for establishing international crime: defined socially dangerous for international peace and security actions that, by distinguishing their features in the relevant rules, are classified as international crimes. However, there is now an urgent need to systematize international crimes and to complete the work of the UN Commission on International Law on the draft Code of Crimes against Peace and Security of Humanity that was launched in 1947.

Over time, the concept of an international crime evolves, changes, is filled with new content, becomes transnational. As N. Zelinska notes, “international legal crimes constitute only a part of international crime. The second part consists of crimes pertaining to the category of transnational “ [Zelinska, 2006: 105].

The concept of “transnational crime” has no convincing conceptual justification and unambiguous interpretation in the jurisprudence: it is studied from various aspects and in different ways, as indicated by almost all of its researchers (J. Albanez, A. Bossard, N. Boyster, N. Dremin, N. Zelinska, A. Knyazkina, J. Muller). Sometimes, along with the notion

of “transnational”, the term “transboundary” is used, and in the same context [25, p. 10]. In domestic law, both of these terms are used, sometimes as interchangeable concepts, which, based on semantic value, are not entirely correct. Translated from Latin, “trans” means “across, through, for,” ie “movement, penetration, going beyond the established limits.” This generic term combines these terms, while the content of other roots is not identical in meaning.

It seems necessary to use the categories “transnational” and “transboundary” to take into account their semantic differences, based in the first case on the membership of organized crime groups to the citizenship of the state (in some cases, the state), that is, on the person of the offender, on the second - to the place of the crime. At the heart of the term “cross-border” it will be expedient to highlight a territorial feature. According to the theory of criminal law, a crime is committed on the territory of the state, if it is commenced and completed on the territory of the state, if the preparation or encroachment was carried out abroad, and ended (or a criminal result occurred) in the territory of another state. As J. Boister correctly notes, “for transnational criminals involved in cross-border crime, borders are part of business [Boister, 2012: 4]. In practice, far from all crimes, understood as “transnational” in the sense of “transboundary”, really cross borders.

Along with the category “transnational crime”, the concept of a criminal offense of an international character and a conventional crime in coinciding terms are used and often they are identified with transnational (A. Tsvetkov). With the commonality of definitions, characteristic features, properties, the use of international legal acts between them also has a terminological discrepancy.

Criminal offenses of an international character are defined as acts stipulated by an international treaty that are not related to crimes against humanity, peace and security, but encroach upon normal, stable relations between the states, harm to peaceful cooperation in various spheres of relations (economic, social, cultural, property, etc.) , as well as organizations and citizens, who are punished either in accordance with the norms established in international treaties or according to national criminal law in accordance with these treaties. These include: an act against the stability of international relations (terrorism, seizure of hostages, seizure and hijacking of aircraft, etc.); acts that are detrimental to the economic, social and cultural development of the state (falsification of money, illicit drug trafficking, legalization of criminal proceeds, etc.); offenses committed on the high seas; criminal encroachments on personal human rights (slave trade, etc.), a number of others. Concerning the conventions, I. Lukashuk stresses that “these crimes, the composition of which is defined by international conventions, which oblige the States parties to introduce appropriate rules in their criminal law” [Lukashuk, 2007: 433]. M. Bassiouni characterizes transnational crimes as private or non-governmental crimes, emphasizing that they are solved by natural or legal persons, such as companies, may be carried out by officials who carry out actions of a private nature [Bassiouni, 1974: 421].

In the documents, the standard definition of a transnational crime was given in the Report on the results of the United Nations Fourth Survey on Crime Trends and the Functioning of Criminal Justice Systems [7]. It focuses on the transnational nature of criminal activity and consists in the following: “Offense involving - in aspects related to planning, implementation and / or direct and indirect effects - more than one country.” National in character of the criminal law, such crimes are international in characterizing criminal activities and / or entities involved in it, which makes them subject to the jurisdiction of more than one state.

In connection with this interpretation of a transnational crime, there is a question that has become controversial, is it enough to recognize a crime as a transnational criminal prohibition of one country, or it isn't? Position of Dzh.M. Martina, A.T. Romano boils down to the fact that recognition of the behavior of perpetrators as a violation of a criminal law, that is a crime, is sufficient in at least one of the countries involved [Martin, Romano, 1992: 16].

Any act that violates a national criminal law can be considered a crime. Consequently, if an act with a sign of transnationality is prohibited by the criminal law of at least one country, it is both “transnational” and “a crime”.

A. Bossard (former Secretary-General of Interpol), who calls the following conditions for the recognition of an international crime transnational, expressed the objection in this regard. First, a transnational crime involves the crossing of borders by people (criminals - in the process of committing a crime or after its implementation in order to avoid justice, victims in the case of hostage-taking, trafficking in human beings, etc.); moving objects (firearms, drugs, things, obtained by criminal means) or money (money laundering, theft through a computer network), etc. Second, nationally, according to the principle of “*nullum crimen, null poena sine lege*”, anti-social behavior can be considered a transnational crime only if it is considered as a criminal offense in the laws of at least two states or is supposed to be criminal multilateral international agreements [Bossard, 1990: 5]. Thus, according to A. Bossard, a transnational crime may be an act prohibited by a criminal law of at least two states.

A. Bossard's point of view has found reasoned support in legal literature, in particular, N. Zelinska considers his point of view justified [Zelinska, 2006: 197]. Indeed, in order for an act to qualify as a “crime”, it is sufficient to have a criminal prohibition of one state. However, for the international legal characterization of a transnational crime in the context of international cooperation in the application of criminal repression, at least, double criminality is required, which involves coincidence of the positions of the interacting states with respect to the crime of such an act.

The Report on Crime and Justice, prepared for the United Nations Center for the Prevention of International Crime, states: “The most common feature of a transnational crime is that it involves crossing borders or the jurisdiction of States. The crossing of borders itself can mean both active and potential criminals who cross borders while conducting their activities (crossing borders for the commission of acts of terror or violence, for example) or trying to avoid justice - it is illegal goods or proceeds from illegal activity. Moreover, it can also include the transmission of information that is, in essence, “virtually” in contrast to the physical crossing of the border. There is also some uncertainty about the crimes themselves. Finally, different legal systems criminalize various acts and provide for different punishments for them. Whatever the case, a large number of acts are subject to international conventions, without which it would be almost impossible to administer justice with any result in international affairs. These conventions - the most known of them, perhaps the UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Drugs 1988 - reflect the understanding shared by the states that certain acts should be regulated, forbidden or criminalized” [7].

The UN Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000 [19], which describes the transnationality, criminalization of criminal acts (money laundering, corruption, etc.), is of great importance for the formation of the concept of a transnational crime; measures to be taken to combat these crimes are determined; issues of jurisdiction, confiscation, arrest, extradition, protection of witnesses, international cooperation of states in the field of mutual legal assistance in the investigation, prosecution and trial of transnational crimes are regulated.

Note that the concept of transnational crime as a category of international criminal law is based on the following important postulates.

A transnational crime is an act (action or inaction) committed by a subject of a crime with a “foreign element” (an act committed on a foreign territory, there are foreigners, accomplices, etc.), which jeopardizes important social relations (human life and health, security, freedom, nature, property, money, etc.) or harms the relationship. It should be borne in mind that the criminal consequences, as a rule, occur more than for one state. The United Nations Convention against Transnational Organized Crime provides a list of features that characterize the “foreign element” of a transnational crime (Article 3, paragraph 2).

The crime of a transnational criminal act must be established by sources of international law and national law, which is especially important in today's conditions of accelerating globalization, which is accompanied by the transformation of national crime into transnational international forms. A. Bossard pointed to the national character of the transnational crime, bearing in mind that crossing the border, the crime becomes international, but the domestic law establishes a list of acts regarded as a crime and provides for sanctions for their implementation. State sovereignty is violated in this case, since a transnational crime has no borders, and criminals are not much concerned about considerations of compliance with state sovereignty. In this sense, an international crime is national [Bossard, 1990: 5]. As N. Zelinskaya notes, "to avoid an externally paradoxical, albeit veritable in essence, phrase" international national crime "allows the term" transnational crime" [Zelinska, 2006: 196]. National by the nature of the criminal prohibition, these crimes are international in terms of the characteristics of criminal activity and actors involved in it, which is why they are subject to the jurisdiction of more than one state.

The defining feature of a transnational crime is its transnational character. The above indication should be interpreted in accordance with the United Nations Convention against Transnational Organized Crime. According to Art. 3, paragraph 2, a transnational crime is considered as an act committed in more than one state; or the crime is committed in one state, but a substantial part of its preparation, planning, guidance or control takes place in another state; or it has been committed in one state, but with the participation of an organized criminal group that engages in criminal activities in more than one state; or it has been committed in one state, but its substantive consequences have taken place in another state.

In this regard, Professor G. Werle states: "The act is subject to transnational criminal law, if it meets the three conditions. First, it should entail an individual responsibility and be criminal. Secondly, the norm establishing such liability should be included in the system of international law. Third, the act must be punished, regardless of whether it is included in national law or not [Werle, 2011: 38-39].

The property of transnationalism as a defining element in relation to a transnational crime also draws attention to N. Zelinska [Zelinska, 2006: 196-198]. A transnational crime is an act recognized as criminal in at least two States under the jurisdiction of which it falls. This characteristic adequately reflects the main quality of transnational crimes - the crossing of national jurisdictions - with the national legal origin of the criminal prohibition, that is, national-legal criminalization. The international nature of such crimes is determined by the objective characteristics of the acts that fall under the jurisdiction of two or more States. They are characterized by a combination of multiple ("double" or more) criminality and multiple ("double" or more) jurisdictions. I. Lukashuk also notes that transnational acts are understood as common criminal offenses falling within the jurisdiction of two or more states [Lukashuk, 2007: 430]. In one case, such crimes are committed in one state, and the consequences are manifested in another. In other cases, a part of the criminal activity is committed in one state, and part of the other, in particular, weapons can be illegally acquired in one state, and illegally sold in another. V. Tsepelev, observing a similar point, notes that such crimes affect the interests of two or more states, but they are usually not covered by conventions [Tsepelev, 2001: 34].

The fact that an act falls within the jurisdiction of two or more States reflects the international prevalence of a transnational crime as an objective feature of criminal activity, and the criminalization of such an act is a formal factor that reflects the source of a criminal offense committed by a crime.

We also note that the transnational nature of any crime increases its social danger, since such an act is detrimental not only to the direct object of the crime, but also to interstate relations. In addition, additional forces and means (such as migration authorities, requests to law enforcement agencies of a foreign state, etc.) are attracted to the mechanism of disclosure of transnational crimes. In this regard, in the domestic law of the countries to the aggravating



circumstances of a criminal offense, it should be added that such an event recognizes the commission of a crime that is knowingly transnational in nature (with a “foreign element”).

International documents attempt to list transnational crimes. In particular, using the predominant motivation for organized crime, the United Nations in 1992, in the framework of the UN Fourth Survey on Crime Trends and the Functioning of Criminal Justice Systems, requested information on fourteen types of transnational organized crime: money laundering, terrorist activities, theft of works of art and culture, theft of intellectual property, illicit arms trafficking, seizure of aircraft, marine piracy, seizure of land vehicles, ahraystvo, computer crime, environmental crime, trafficking, trafficking in human organs, drug trafficking [7]. At the World Organized Crime Conference in Naples in November 1994, this list was complemented by illegal gambling, secret transport of illegal migrants, extortion, illegal trade in radioactive materials, trafficking in endangered species of animals, transnational theft of cars, etc. In this time of globalization of social relations, this list has considerably expanded and almost all crimes provided for by national criminal law may have an international prevalence, so the widely used term “international (transnational) crime” can not be limited to any particular category of offenses defined in an international or national criminal right. Transnational crimes in their formal-legal nature (by “origin”) are heterogeneous. Some of them are enshrined in special international conventions, part of it - only in the sources of domestic criminal law.

**Conclusions.** The concept of a transnational crime is based on the provisions of international acts, in particular the United Nations Convention against Transnational Organized Crime (2000), as well as reflected in the doctrine of international criminal law, and provides for the commission of a socially dangerous act committed deliberately, infringing on important social relations, crime which is established by the norms of international law, and punishment - the norms of international criminal and national legislation.

Transnational crimes are considered as acts committed with “foreign lore”, which jeopardizes important social relations (human life and health, safety, freedom, nature, property, means, etc.), or harms the relationship, the criminal consequences of which occur more than one state. Such acts are classified as criminal within the domestic law of not less than two states under whose jurisdiction they fall. A transnational crime is international in characterizing the criminal activity (transnationality) of subjects involved in it and national in nature of a criminal-legal prohibition (criminalization of an act). Thus, there is a plurality of jurisdictions (two and more).

Transnational crime, despite all the common features, differs from criminal and punishable in national law, from an international crime in all its forms and has certain characteristics. The generic notion of a transnational crime is an international crime, but the unlawfulness of an international crime is of an international legal nature, which makes it possible to bring the perpetrator to criminal responsibility, regardless of the existence of a national criminal law. The transnational nature of the crime requires the necessity of criminalizing the act and criminal law by the relevant criminal-law norms in the national domestic law.

The factor of crossing the state borders by criminals or showing the results of their illegal actions outside the country (places of commission) is considered as one of the obligatory components of the functioning of transnational crime. This crossing can be as physical (terrorism, piracy, etc.), and virtual (cybercrime, fraud, etc.). Transnational criminal acts do not know the territorial limitations, and the criminals have little concern about compliance with the state border. However, the possibility of applying domestic law is limited to the territory of the state, its borders. If activities carried out in the territory of one state cause damage to another country, the question arises of the international obligations of States and the legal basis of these obligations.

The international nature of the transnational crime and the need to criminalize a criminal act and a criminal prohibition in national law represents the main complexity of

combating transnational organized crime, which requires elimination of differences in the legislation of different states, which exists despite the similarity of domestic criminal law. There is also a need for harmonization of criminal law and procedural elements in the systems of law of different states, the ability to interact with each other, as well as with international criminal law.

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