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Legal aspects of international cooperation in combating organised crime

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■ **Abstract.** In the context of intensification of globalisation processes, researchers' attention is drawn to organised forms of crime, which are substantially more difficult to counteract if criminal offences have transnational features. Considering this, it is vital to investigate the content of international treaties aimed at combating transnational organised crime. Thus, the purpose of this study was to identify certain legal features of international cooperation in combating organised crime for further implementation of promising provisions in the work of law enforcement agencies in this area. The methodological framework of the study was formed by both general scientific and special methods of scientific cognition. The study also employed systemic, informational and functional approaches, as well as terminological, systemic-structural, formal-logical, and comparative legal methods of scientific cognition. The study confirmed that organised crime does not recognise the existing borders of states and constantly crosses them. At the same time, law enforcement agencies are quite limited in their actions by these borders, which substantially affects their ability to combat crime, especially organised crime. It was found that the legal framework for international cooperation in combating crime, including organised crime, is gradually being formed, but this process is influenced by the concept of primacy of national law over international law. The study proved that the current terminology of international treaties may not correspond to the terminology used in the national legislation of modern countries, but unification of legislation is reasonably necessary for effective crime prevention. The practical value of the findings obtained is that they can be used to further improve the legal framework for international cooperation

■ **Keywords:** interaction; responsibility; Europol; Interpol; international treaty; police; law enforcement agencies

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■ Introduction

The modern world is increasingly characterised by globalisation processes that affect a wide range of human relationships. Criminals are quite successful in crossing state borders, but law enforcement agencies are usually quite limited in their ability to conduct investigations in other countries, as well as to search for and prosecute persons hiding from pre-trial investigation, prosecutors, courts, or from serving their criminal sentences.

However, there exist certain intertwined patterns in this context. According to R. Sadouk (2023), the global arena has observed the emergence of two closely linked trends: firstly, a significant rise in transnational crimes presenting substantial challenges to nations, and secondly, a noticeable uptick in international instruments and avenues to counter them. Nonetheless, the introduction of such mechanisms does not imply the absence of challenges in their implementation.

International cooperation can take place under international treaties that are valid in almost any part of the world, albeit with certain reservations, or it can be valid in a particular part of the globe, i.e., it can be regional in nature. The mechanism of international cooperation in combating crime is still in its infancy, including in the European space. Thus, Y. Tan & S. Yang (2023) note the role of the European Union Agency for Criminal Justice Cooperation (Eurojust) in the work of joint investigation teams, as well as the participation of national authorities in this. Moreover, N. Ilchyshyn *et al.* (2023) underscore the importance of global legal collaboration within the realm of criminal justice, addressing emerging obstacles and strategies to surmount them. They particularly emphasize the diverse array of international cooperation mechanisms facilitated by entities like Interpol, Europol, the Hague Conference on Private International Law, and others.

One of the systemic problems of modern times is the destruction of the stable order in the world and the mechanisms of ensuring security. The main precondition for this situation is armed aggression and active hostilities of high intensity in the geographical centre of Europe. As a result, a considerable number of dangerous war crimes have been committed. Therewith, O. Kaluzhna & O. Shunevych (2022) highlight that scrutinizing potential issues within the criminal procedural framework for prosecuting war crimes stands as a focal point in both Ukrainian law enforcement practice and legal scholarship. Ukraine has encountered unprecedented challenges for its national judicial system regarding the potential utilization of international justice mechanisms to hold accountable military personnel, officers, and officials from the aggressor nation. In March 2022, the Prosecutor of the International Criminal Court initiated an investigation into war crimes committed in Ukraine.

A collaborative investigation team is currently engaged in activities, while Ukrainian pre-trial investigation authorities, facilitated by the Prosecutor General's Office of Ukraine, are establishing cooperation with the aforementioned court.

The problem of international cooperation in combating crime has been the subject of scientific research, although interrelated and focused on various aspects. Thus, the expansion of access to justice through legal aid initiatives has been investigated, including through the international regulatory framework, practical approaches, and some findings from the field (Socher, 2023). V. Kotsur *et al.* (2023) highlighted the concepts of international security institutions and international agreements and how ignoring their requirements affects the global situation in the world. R. García-Llave & L. Perdomo (2022) considered the issues of mutual support under the international law of the sea to combat drug trafficking by sea, specifically, analysing individual agreements, comparing established mechanisms of cooperation, as well as the use of force and firearms.

Nevertheless, there is still a set of issues related to the interaction of law enforcement agencies of different countries in countering modern manifestations of crime. Given the above, the purpose of this study was to identify certain legal provisions governing international cooperation in combating organised crime, and to further implement the most promising of them in the work of law enforcement agencies in this area. The fulfilment of the specified purpose involved completing the following tasks: to consider the legal aspects of international cooperation in combating organised crime, to analyse the specific features of implementation of international treaties into national legislation, and to highlight further prospects for improving the legal framework for combating organised crime.

■ Literature Review

The scholarly literature extensively examines global cooperation in preventing and addressing terrorism, particularly focusing on domestic measures and the financing of terrorists and terrorist groups, whether directly or indirectly through other entities. Scholars emphasize that international efforts to combat terrorism encompass not only criminalizing terrorist acts but also criminalizing terrorist financing (Ginting & Talbot, 2023). Moreover, there is a thorough exploration of the potential to enhance the seamless international exchange of information and evidence, alongside an emphasis on bolstering the procedural rights of involved parties (Vermeulen & Kusak, 2023).

V. Zavydniak *et al.* (2022) delved into the primary realms and modalities of international collaboration among nations to counter transnational econom-

ic crimes. Specifically, they explored the interaction between legal frameworks of various countries in regulating international cooperation against such crimes. They also outlined the spectrum of public relations emerging in connection with these endeavors within the scope of public international law, shedding light on key trends in combating transnational economic crime at the global level. Furthermore, O. Omelchuk *et al.* (2022) analysed the efforts of law enforcement agencies in combating crime and corruption offenses. This included an examination of collaboration between law enforcement bodies and governmental authorities, as well as with partner organizations and agencies at regional, national, and international levels. Additionally, they scrutinized the regulations and practices of preventive law enforcement within the European Union concerning joint initiatives of law enforcement agencies and civil society in this domain. The legal aspects of money laundering mechanisms derived from cybercrime were the subject of scientific research. It is noted that cyber-laundering of illegal proceeds has long been a global problem for states around the world. In the area of anti-money laundering, this should be considered through the dissemination of international standards. Furthermore, the existing methods of laundering the proceeds of cybercrime were analysed. Only through active international cooperation can these problems be solved (Nizovtsev *et al.*, 2022).

B. Zhetpisbaeva *et al.* (2022) investigate the problem of modern terrorism, which has already spread to almost the entire world. The researchers analyse a range of political and legal documents that are both international and regional in scope. This helped to propose a range of consolidated measures to combat terrorism more effectively. C. Singh (2022) discusses some of the challenges facing international criminal justice, specifically in relation to the UK's response to terrorism, including how systems respond to and prevent such crimes, and the many legal, political, and policy issues that arise, such as inter-jurisdictional cooperation, policing, and the erosion of civil liberties, including privacy. W. Aloklah (2022) scrutinized global endeavors aimed at investigating severe instances of chemical weapons deployment. This examination encompassed the actions orchestrated by the Organisation for the Prohibition of Chemical Weapons, in collaboration with the United States of America, along with advancements made in dismantling the Syrian chemical weapons program. Concurrently, the international community's response to chemical weapons usage is being evaluated within the framework of international law, highlighting its shortcomings in holding perpetrators accountable and providing restitution to the victim. A nation can be destroyed not only physically but also by depriving it of its cultural heritage. A. Gerecka-Żołyńska &

Z. Branicka (2023) considered forms of cooperation between states on the return of lost cultural property, specifically, comments were made on finding the best model of such cooperation.

The fundamental role and importance of the International Criminal Court in conducting a joint investigation was identified. Specifically, researchers note that this court has a wide range of possibilities to prosecute perpetrators of war crimes and crimes against humanity (Ablamskyi *et al.*, 2023). Various models of international collaboration have been devised to address criminal offenses in the realm of information and communications. These models are available for utilization by competent authorities within the criminal justice domain (Kambarov *et al.*, 2023). Other studies focused on international cooperation and victim protection in cyberspace, in particular under Protocol II of the Budapest Convention on Cybercrime. The discussion of victims of cybercrime was part of a comprehensive analysis of contemporary manifestations of transnational crime. In addition, the study examined the specifics of the activities of European organisations, such as Eurojust and Europol, which have long been working in this area, in particular, assisting national authorities in the fight against cybercrime (Spiezia, 2022). The role of Europol and Eurojust in supporting Member States in their efforts to effectively combat foreign terrorist fighters, including in their cooperation with other partners, is already being discussed (Weyembergh & Theodorakakou, 2023). The cross-border nature of drug-related crimes has forced EU countries to cooperate in criminal prosecutions. Therewith, certain instruments to ensure such cooperation are considered, namely the framework decision on the European Arrest Warrant (Zajac, 2023).

Thus, many academics have addressed the investigation of certain issues related to the interaction of law enforcement agencies of different states in the detection and investigation of criminal offences. At the same time, not all problems of legal support for such work have been the subject of scientific research. Considering the above, there is a need to investigate certain provisions of international law and national legislation to unify the legal framework for international cooperation in combating organised crime to improve the work of authorised law enforcement agencies in this area.

■ Materials and Methods

This study used a systematic approach to investigation of the legal framework of international cooperation in combating crime. This approach helped to analyse the object of the study through the components of the system, as well as their interrelationships within a particular organisational structure. At the same time, the systematic approach helped to

establish the specifics of the legal framework for international cooperation in combating organised crime through the use of the method of systematic analysis of international and national legislation. The study of the essence of the problem in the context of informatisation also involved the use of an information approach capable of presenting the comprehensiveness of the legal support system. Furthermore, given that international cooperation corresponds to the process of synchronising certain actions, statements, and ideas to achieve a goal, it was appropriate to use a functional approach that helped to reflect the dynamics of the object of study, which is implemented in a synchronous context.

Using the terminological method, the study examined concepts related to the legal aspects of international cooperation in combating organised crime. The systemic-structural method was used for a comprehensive scientific analysis of the structure of international treaties and current national legislation related to international cooperation in combating organised crime. The use of the formal-logical method helped to analyse the trends in the development of legal norms governing international cooperation in combating organised crime. The comparative legal method was used as the basis for the analysis of definitions from the legislation. To obtain reliable and valid results, the above methods were applied in a mutual relationship and interdependence.

The regulatory framework for this study was based on international treaties and the national legislation of Ukraine in the field of international cooperation in combating organised crime. The international legal acts in this regard include the United Nations Convention against Transnational Organised Crime (hereinafter – the Convention)¹, as well as its supplementary protocols: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children², Protocol against the Smuggling of Migrants by Land, Sea and Air³, Protocol against the

Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition⁴. The Ukrainian legal act that is the core of the legal framework for combating organised crime and defines the organisational basis of law enforcement in this area is the Law of Ukraine “On the Legal Foundations of Combating Organised Crime”⁵. The importance of analysing the requirements of these documents is substantiated by the fact that the Convention and its Protocols prescribe international legal mechanisms to combat transnational organised crime and are unique international treaties in this area with a scope of application almost all over the world. At the same time, their comparative analysis along with the said Law of Ukraine provides an opportunity to discuss the specific features of implementation of international legal norms into national legislation, which affects the state of cooperation of different countries in the fight against organised crime.

■ Results

Organised crime poses the greatest danger to the state, society and individuals, and the fight against it is much more difficult if the criminal offences committed have transnational characteristics. This is why it is important to publish the results of the analysis of international treaties aimed at combating not only crimes committed by organised groups and organisations, but also when such crimes are transnational in nature. Particular attention in this regard should be paid to the United Nations Convention against Transnational Organised Crime⁶, adopted by UN General Assembly resolution 55/25 of 15 November 2000 and ratified by Ukraine with reservations and declarations on 4 February 2004⁷. The purpose of this Convention is to promote cooperation to prevent and combat transnational organised crime more effectively. It is necessary to analyse certain terms and peculiarities of implementation of the relevant provisions in national legislation on the example of Ukraine.

¹ United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_791#Text.

³ Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_790#Text.

⁴ Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.

⁵ Law of Ukraine No. 2341-III “On the Legal Foundations of Combating Organised Crime”. (1993, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/3341-12#Text>.

⁶ United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

⁷ Law of Ukraine No. 1433-IV “On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it (the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air)”. (2004, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/1433-15#Text>.

Thus, Article 2 of the Convention¹ defines the concept of an organised criminal group, which may consist of three or more persons, and must be structured, acting in concert over a period of time with the purpose of committing at least one or more serious crimes or crimes defined in this Convention for the purpose of obtaining financial or other material gain, either directly or indirectly. Furthermore, another term from an analogous field is used. Thus, a structured group is defined as a group deliberately formed to commit a crime immediately, but which does not necessarily: firstly, have a developed structure; secondly, have a negotiated continuous nature of participation (membership); and thirdly, have formally defined roles for the existing members of such a group. It was found that the national legislation of Ukraine uses several terms of analogous meaning, but which, although similar to these, have quite substantial differences. In Ukraine, the fight against organised crime has a purpose of eliminating the causes and conditions that contribute to the existence of organised crime, localising it, and, if possible, neutralising and eliminating it, as well as establishing control over it, as stated in Article 2 of the Law of Ukraine “On the Legal Foundations for Combating Organised Crime”². At the same time, Article 1 of this Law states that organised crime means a set of criminal offences committed in connection with the creation and operation of organised criminal groups. The types and signs of such criminal offences, as well as criminal law measures against the perpetrators, are established by the Criminal Code of Ukraine³ (hereinafter – the Code).

The Code itself deals with related issues in Article 28. Thus, a criminal offence committed without

prior conspiracy between the perpetrators is considered to be committed by a group of persons if two or more, i.e., several persons, took part in it. At the same time, a criminal offence is considered to have been committed by a group of persons by prior conspiracy if it was jointly committed by two or more persons, i.e., several persons, but they must agree to commit it jointly before it begins, i.e., in advance. Next, the terminology is used that is closer to the concept of an organised criminal group, specifically, a criminal offence is considered to have been committed as part of an organised group if three or more persons who have previously united in a stable association to commit one or more criminal offences with a single plan known to all to commit one or more criminal offences, took part in the preparation for it and/or its commission. A mandatory feature is the distribution of functions among the members of this group aimed at achieving this plan. The specific feature of the national legislation of Ukraine is that there is still a criminal offence that is considered to be committed not just by a group of persons, even an organised group, but also by a criminal organisation. The number of persons involved is not less than five, and their association must be stable and hierarchical, organised by members or structural units for joint activities by prior agreement. The goals of a criminal organisation include ensuring the functioning of its own and other criminal groups, as well as coordinating and/or managing the illegal activities of other persons, liability for which is prescribed by the Criminal Code. Furthermore, the purpose of a criminal organisation may be the direct commission of crimes by its members, but only grave and/or especially grave crimes (Table 1).

Table 1. Terms related to the commission of a criminal offence by a group of persons in international treaties and national legislation of Ukraine

| United Nations Convention against Transnational Organised Crime, Article 2 ⁴ | Law of Ukraine “On the Legal Foundations for Combating Organised Crime”, Article 1 ⁵ | Criminal Code of Ukraine, Article 28 ⁶ |
|---|--|--|
| <ul style="list-style-type: none"> • a structured group; • an organised criminal group. | <ul style="list-style-type: none"> • organised crime; • an organised criminal association. | <ul style="list-style-type: none"> • a group of persons; • a group of persons by prior agreement; • an organised group; • criminal organisation. |

Source: developed by the author of this study based on the analysis of certain legal provisions of the current legislation of Ukraine and international treaties

¹ United Nations Convention Against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

² Law of Ukraine No. 2341-III “On the Legal Foundations of Combating Organised Crime”. (1993, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/3341-12#Text>.

³ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁴ United Nations Convention Against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

⁵ Law of Ukraine No. 2341-III “On the Legal Foundations of Combating Organised Crime”. (1993, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/3341-12#Text>.

⁶ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

There are a range of terms in the Convention that require analysis of the specific features of their use. These include a serious crime, which means a crime that is punishable by imprisonment for a maximum term of at least four years or a more severe penalty. It was found that the national legislation of Ukraine does not use this term, but when the Convention was ratified, it was determined that in criminal law this concept corresponds to the concepts of a grave crime and an especially grave crime. At the same time, when ratified, the Law¹ stipulates that a crime is considered grave if it is punishable only by imprisonment for a term of 5-10 years, i.e., not less than five and not more than ten years, and especially grave if it is punishable

by life imprisonment or imprisonment for a term of more than 10 years, i.e., above ten years. Therewith, according to Article 12 of the Criminal Code of Ukraine², a grave crime is an act or inaction, i.e., an act for which the sanction is the main punishment, firstly, in the form of no more than 10 years of imprisonment or, secondly, a fine that may not exceed twenty-five thousand (25,000) tax-free minimum incomes. At the same time, an act or inaction is considered an especially grave crime, i.e., an act for which the sanction is the most basic punishment in the form of, firstly, life imprisonment or, secondly, imprisonment for more than 10 years, and, thirdly, a fine of more than twenty-five thousand (25,000) tax-free minimum incomes (Table 2).

Table 2. Terms related to the classification of criminal offences in international treaties and national legislation of Ukraine

| United Nations Convention against Transnational Organised Crime, Article 2 ³ | The Law of Ukraine “On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it...”, Article 1 ⁴ | Criminal Code of Ukraine, Article 12 ⁵ |
|---|--|--|
| A serious crime is an offence for which imprisonment for a maximum term of at least four years or a more severe punishment is prescribed. | A grave crime is an offence punishable only by imprisonment for a term of not less than five and not more than ten (5–10) years An especially grave crime is an offence punishable by, firstly, imprisonment for a term exceeding ten (10) years or, secondly, life imprisonment. | A grave crime is an act stipulated by this Criminal Code, i.e., an act or inaction for which the most basic punishment is, firstly, a fine of not more than twenty-five thousand (25,000) tax-free minimum incomes or, secondly, imprisonment for a term not exceeding ten years. An especially grave crime is an act stipulated in the Criminal Code, i.e., an act or inaction for which the most basic punishment is prescribed in the form of, firstly, a fine in excess of twenty-five thousand (25,000) tax-free minimum incomes, and, secondly, imprisonment for a term exceeding ten years or, thirdly, life imprisonment. |

Source: developed by the author of this study based on the analysis of certain legal provisions of the current legislation of Ukraine and international treaties.

On 15 November 2000, the UN General Assembly adopted and signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention by

¹ Law of Ukraine No. 1433-IV “On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it (the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air)”. (2004, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/1433-15#Text>.

² Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³ United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

⁴ Law of Ukraine No. 1433-IV “On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it (the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air)”. (2004, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/1433-15#Text>.

⁵ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

Resolution 55/25¹, which was ratified in Ukraine on 4 February 2004. The aim is to prevent and combat human trafficking, with specific attention directed towards women and children. Therewith, the objectives also include support and protection of victims of trafficking in persons, while respecting human rights, and, to achieve these objectives, the promotion of international cooperation among the States Parties to the Convention. Notably, this Protocol is interpreted in conjunction with the Convention. The provisions of the Convention shall apply *mutatis mutandis* to this Protocol, except as otherwise provided therein. It is important that simultaneously with this Protocol, the Protocol Against the Smuggling of Migrants by Land, Sea and Air² was adopted and signed, and subsequently ratified by the same UN General Assembly Resolution, which also complements the Convention. Preventing and combating the smuggling of migrants

is stated as its objective, but with the rights of smuggled migrants being protected. Furthermore, cooperation between States Parties is encouraged to achieve this objective. This Protocol shall also be interpreted together with the Convention, and the provisions of the Convention shall also apply *mutatis mutandis*. Later, on 31 May 2001, UN General Assembly Resolution 55/255 approved another Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition³, which also supplemented the Convention, and which Ukraine joined on 2 April 2013⁴. Preventing, combating, and eradicating the illicit trafficking in and manufacture of firearms, ammunition, their components and parts, and combating such trafficking is the purpose of this Protocol, as well as strengthening cooperation between States Parties to that end, and facilitating and promoting it (Table 3).

Table 3. Chronology of the adoption of certain international treaties and Ukraine’s accession to them

| Convention ⁵ | Protocol supplementing the Convention | Date of adoption (UN General Assembly resolution) | Date of ratification (accession) by Ukraine |
|---|--|---|---|
| UN Convention Against Transnational Organised Crime | – | 15 November 2000 | 4 February 2004 |
| | Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ⁶ | 15 November 2000 | 4 February 2004 |
| | Protocol Against the Smuggling of Migrants by Land, Sea and Air ⁷ | 15 November 2000 | 4 February 2004 ⁸ |
| | Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition ⁹ | 31 May 2001 | 2 April 2013 ¹⁰ |

Source: developed by the author of this study based on the analysis of certain legal provisions of the current legislation of Ukraine and international treaties

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_791#Text.

² Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_790#Text.

³ Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.

⁴ Law of Ukraine No. 159-VII “On the Accession of Ukraine to the Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organised Crime”. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/159-18#n2>.

⁵ United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_791#Text.

⁷ Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_790#Text.

⁸ Law of Ukraine No. 1433-IV “On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it (the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air)”. (2004, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/1433-15#Text>.

⁹ Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.

¹⁰ Law of Ukraine No. 159-VII “On the Accession of Ukraine to the Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organised Crime”. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/159-18#n2>.

The process of establishing the legal framework for international cooperation in combating crime should not be considered complete, because, firstly, there is potential for its improvement to adequately respond to organised crime, which is increasingly becoming transnational, and, secondly, the world is constantly changing and, accordingly, the work of law enforcement agencies must respond dynamically to these changes, and for this purpose there must be an appropriate legal framework.

■ Discussion

Many scholars have addressed various aspects of the organisation and establishment of the legal framework for international cooperation in combating crime. It is worth noting the principal areas of research they conduct. Today, there is a strong link between corruption and other serious and dangerous types of crime that successfully cross the borders of modern states. Thus, R. Arifin *et al.* (2023) investigated the transformation of corruption into a transnational problem and collective efforts to combat it, emphasising the significance of international cooperation in the recovery of misappropriated assets. R. Orlovskiy (2023) discussed the legalisation of the proceeds of crime committed by organised criminal groups in the context of European and Ukrainian standards. It was noted that the phenomenon of money laundering obtained by criminal groups is a negative factor for the global development of the international community. The growing scale of such unlawful acts, as well as the imperfection of legal mechanisms and the weakness of organisational measures to combat them indicate the urgency of this problem, which threatens both the security of the state and society and law and order. The issue of combating corruption and money laundering is one aspect of the overall problem of combating organised crime, and therefore the cited research complements the present study.

A. Masyhar *et al.* (2023) and S. San (2022) investigated the specific features of combating transnational threats such as international cyberterrorism, as well as the role of Interpol in this regard. The latter examined transnational policing from a human rights perspective in interaction with national political regimes, specifically, the functioning of the Red Notice system of the International Criminal Police Organisation INTERPOL. S. San focuses on the factors that strengthen international police cooperation between authoritarian and democratic countries. Firstly, this refers to forced cooperation to minimise the threats associated with planning and committing transnational crimes. Secondly, international cooperation between countries with different ideological and national views is facilitated by the principle of depoliticising international

policing to the extent possible. Thirdly, professional culture also has a substantial impact, as it separates the police from various manifestations of national rivalries and promotes solidarity and professional police mutual support. V. Rohalska *et al.* (2022) studied the institution of extradition in criminal procedural legislation and European standards. G. Heyer (2022) explored the role of international police liaison officers and their operational strategies within international police cooperation. It was highlighted that since the early 1970s, these officers have played a pivotal role in fostering and nurturing relationships as well as cooperation among police forces and other law enforcement entities. The studies reviewed above examine various aspects of interaction between the authorised bodies of equal states in the fight against crime, but the solution to the problem is not limited to this; therefore, in combating organised crime, the identification of certain legal features of international cooperation for further implementation of promising provisions in the work of law enforcement agencies in this regard is a promising continuation of these studies.

H. De Vries (2023) investigated the development of the structure of international criminal law, specifically in the vertical mode of interaction, which includes horizontal cooperation between states and vertical cooperation with the International Criminal Court. W. Kühn (2023) provided an overview of the powers of the newly established European Public Prosecutor's Office as a supranational body investigating criminal offences affecting the financial interests of the European Union. R. García (2023) discussed the European Arrest Warrant, the procedures for its issuance and the protection of the constitutional order of the EU Member States, namely, the reasons for their non-execution, the mistakes made by the public authorities of individual countries and how these mistakes affect the deterioration of mutual trust between the EU Member States. Notably, it is advisable to continue investigating the capabilities of certain legal institutions in the international fight against crime, specifically, in terms of determining certain legal features of international cooperation in combating organised crime, which substantiates the logic of supplementing the scientific developments under consideration with the present study.

The problem of combating organised crime at the international level has not been fully considered, although this is probably not possible within the framework of individual research papers, given its global scale. Despite the well-founded conclusions and proposals to address certain aspects of the problem, there are still issues that need to be addressed. Therefore, the published findings of the study on identifying certain legal provisions governing international cooperation in combating organised crime

for further implementation of the most promising ones in the work of law enforcement agencies in this area do not contradict the conceptual results of scientific achievements of other researchers, but complement them, occupying a niche of their own in the establishment of the legal framework for international cooperation in combating organised crime.

The conducted study related to the organisation and legal framework for combating various manifestations of crime will underlie further analysis of the essence of the problems that are still to be resolved, which will help to improve the relevant cooperative work of law enforcement agencies of different countries and international institutions in combating criminal offences.

■ Conclusions

The study of the legal aspects of international cooperation in combating organised crime allows drawing certain conclusions. The danger of crimes increases considerably if they are committed by groups of people, especially by prior conspiracy. However, the threat to the protected interests of an individual, the state and society increases even more if criminal offences are committed as part of organised groups and criminal organisations. It was found that organised crime does not recognise the borders of modern states and successfully overcomes them. Therewith, law enforcement agencies are quite limited by these same borders, which substantially affects their ability to combat organised crime. The internationalisation of crime is becoming more pronounced. Organised criminal groups operate on a global scale, using innovative technologies and international networks to further their goals. This requires an in-depth analysis of the legal framework and mechanisms of international cooperation to effectively combat this

■ References

- [1] Ablamskyi, S., Tchobo, D., Romaniuk, V., Šimić, G., & Ilchyshyn, N. (2023). Assessing the responsibilities of the international criminal court in the investigation of war crimes in Ukraine. *Novum Jus*, 17(2), 353-374. [doi: 10.14718/NovumJus.2023.17.2.14](https://doi.org/10.14718/NovumJus.2023.17.2.14).
- [2] Alokiah, W. (2022). International efforts against impunity for the use of chemical weapons in Syria. *Journal of International Criminal Justice*, 20(3), 541-569. [doi: 10.1093/jicj/mqac023](https://doi.org/10.1093/jicj/mqac023).
- [3] Arifin, R., Riyanto, S., & Putra, A. (2023). Collaborative efforts in ASEAN for global asset recovery frameworks to combat corruption in the digital era. *Legality: Jurnal Ilmiah Hukum*, 31(2), 329-343. [doi: 10.22219/ljih.v31i2.29381](https://doi.org/10.22219/ljih.v31i2.29381).
- [4] De Vries, H. (2023). Vertical cooperation in international criminal law. A mode of structure formation in world society. *Journal of the Sociology of Law*, 43(2), 247-278. [doi: 10.1515/zfrs-2023-2014](https://doi.org/10.1515/zfrs-2023-2014).
- [5] García, R. (2023). European arrest warrant and the surrender procedures and defense of the constitutional order of the EU member States. *Araucaria*, 25(53), 359-381. [doi: 10.12795/araucaria.2023.i53.14](https://doi.org/10.12795/araucaria.2023.i53.14).
- [6] García-Llave, R., & Perdomo, L. (2022). Mutual assistance in the framework of the international law of the sea against illicit drug trafficking by sea: The case of Spain and Colombia. *Revista Electronica de Estudios Internacionales*, 43. [doi: 10.17103/reei.43.14](https://doi.org/10.17103/reei.43.14).
- [7] Gerecka-Żołyńska, A., & Branicka, Z. (2023). Forms of cooperation between states to recover lost cultural goods – comments on the search for an optimal model. *Santander Art and Culture Law Review*, 9(1), 37-54. [doi: 10.4467/2450050XSNR.23.004.18116](https://doi.org/10.4467/2450050XSNR.23.004.18116).

threat. Law enforcement agencies need support and coordination with other countries to successfully fight organised crime.

In response to modern challenges, legal frameworks for international cooperation in combating organised crime are gradually being developed, but each state, considering the principle of sovereignty, independently decides whether to accede to certain international treaties and with or without reservations. The study found that the key role here is played by the concept of supremacy, i.e., primacy, of national law over international law. This means that the primacy of national law is recognised, and international treaties and their provisions should be applied only when they do not contradict national law. It was proved that, considering the above, the terminology of international treaties may not correspond to that used in national legislation. Thus, by analysing certain provisions of international legal acts and Ukrainian legislation, the study proved that certain terms are used differently to define analogous events, namely, such as “structured group”, “organised criminal group”, “organised crime”, “organised criminal association”, “group of persons”, “group of persons by prior conspiracy”, “organised group”, “criminal organisation”, “serious crime”, “grave crime”, “especially grave crime”.

Further unification of the terminology used in the legal regulation of international cooperation in general and in the fight against organised crime specifically should be considered promising.

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■ Conflict of Interest

None.

- [8] Ginting, J., & Talbot, P. (2023). Fundraising aspect of international terrorism organization in ASEAN: Legal and political aspects. *Lex Scientia Law Review*, 7(1), 1-30. doi: [10.15294/lesrev.v7i1.60074](https://doi.org/10.15294/lesrev.v7i1.60074).
- [9] Heyer, G. (2022). International police liaison officers: An examination of the experiences of New Zealand Police International Liaison Officers. *Policing (Oxford)*, 16(1), 29-43. doi: [10.1093/police/paab051](https://doi.org/10.1093/police/paab051).
- [10] Ilchyshyn, N., Brusakova, O., Krykun, V., & Myroshnychenko, Y. (2023). [International legal cooperation in the field of criminal justice: New challenges and ways to overcome them](https://doi.org/10.1080/10704965.2023.2241111). *Journal of Law and Sustainable Development*, 11, article number e0767.
- [11] Kaluzhna, O., & Shunevych, K. (2022). Evidence In the international criminal court – the role of forensic experts: The Ukrainian context. *Access to Justice in Eastern Europe*, 5, 52-65. doi: [10.33327/AJEE-18-5.4-a000435](https://doi.org/10.33327/AJEE-18-5.4-a000435).
- [12] Kambarov, A., Karazhanov, M., Smagulov, A., & Kumisbekov, S. (2023). Topical issues in the fight against criminal offences in the field of informatisation and communications. *Law, State and Telecommunications Review*, 15(1), 177-190. doi: [10.26512/lstr.v15i1.44728](https://doi.org/10.26512/lstr.v15i1.44728).
- [13] Kotsur, V., Kuprii, T., Semenets-Orlova, I., Skliar, N., Drakokhrust, T., & Berezovska-Chmil, O. (2023). Security issues on the european continent in conditions of Russia's aggression against Ukraine. *Revista de Gestao Social e Ambiental*, 17(6), article number e03578. doi: [10.24857/rgsa.v17n6-026](https://doi.org/10.24857/rgsa.v17n6-026).
- [14] Kühn, W. (2023). The European Public Prosecutor's Office – the protection of the EU's financial interests as supranational integration project. *Journal for European Law Studies: ZEuS*, 26(2), 151-188. doi: [10.5771/1435-439X-2023-2-151](https://doi.org/10.5771/1435-439X-2023-2-151).
- [15] Masyhar, A., Utari, I., & Usman, S.A. (2023). Legal challenges of combating international cyberterrorism: The NCB Interpol Indonesia and global cooperation. *Legality: Jurnal Ilmiah Hukum*, 31(2), 344-366. doi: [10.22219/ljih.v31i2.29668](https://doi.org/10.22219/ljih.v31i2.29668).
- [16] Nizovtsev, Y., Parfyo, O., Barabash, O., Kyrenko, S., & Smetanina, N. (2022). Mechanisms of money laundering obtained from cybercrime: The legal aspect. *Journal of Money Laundering Control*, 25(2), 297-305. doi: [10.1108/JMLC-02-2021-0015](https://doi.org/10.1108/JMLC-02-2021-0015).
- [17] Omelchuk, O., Haiur, I., Kozyt'ska, O., Prysiazhna, A., & Khmelevska, N. (2022). Analysis of the activities of law enforcement authorities in the field of combating crime and corruption offences. *Journal of Money Laundering Control*, 25(3), 700-716. doi: [10.1108/JMLC-07-2021-0073](https://doi.org/10.1108/JMLC-07-2021-0073).
- [18] Orlovskiy, R. (2023). Legalization of criminally obtained property committed by organized criminal groups: European and Ukrainian standards. *Juridicas CUC*, 19(1), 197-230. doi: [10.17981/juridcuc.19.1.2023.07](https://doi.org/10.17981/juridcuc.19.1.2023.07).
- [19] Rohalska, V., Bronevytska, O., & Buciuinas, G. (2022). Extradition in the criminal procedural legislation of Ukraine: Compliance with the European standards. *Journal of Liberty and International Affairs*, 8(1), 138-152. doi: [10.47305/JLIA2281138r](https://doi.org/10.47305/JLIA2281138r).
- [20] Sadouk, R. (2023). International cooperation, criminal justice and human rights: The missing link. *International Annals of Criminology*, 61(2), 103-130. doi: [10.1017/cri.2023.18](https://doi.org/10.1017/cri.2023.18).
- [21] San, S. (2022). Transnational policing between national political regimes and human rights norms: The case of the Interpol Red Notice system. *Theoretical Criminology*, 26(4), 601-619. doi: [10.1177/13624806221105280](https://doi.org/10.1177/13624806221105280).
- [22] Singh, C. (2022). The Panoply of challenges facing international criminal justice: The United Kingdom's response to defining and responding to terrorism. *Global Jurist*, 22(2), 307-349. doi: [10.1515/gj-2021-0036](https://doi.org/10.1515/gj-2021-0036).
- [23] Socher, J. (2023). Enhancing access to justice through donor-led legal aid initiatives: International normative framework, practical approaches, and some findings from the field. *Law and Development Review*, 16(1), 1-22. doi: [10.1515/ldr-2021-0144](https://doi.org/10.1515/ldr-2021-0144).
- [24] Spiezia, F. (2022). International cooperation and protection of victims in cyberspace: Welcoming Protocol II to the Budapest Convention on Cybercrime. *ERA Forum*, 23(1), 101-108. doi: [10.1007/s12027-022-00707-8](https://doi.org/10.1007/s12027-022-00707-8).
- [25] Tan, Y., & Yang, S. (2023). The Joint Investigation Team in Ukraine: An opportunity for the International Criminal Court? *Chinese Journal of International Law*, 22(1), 103-119. doi: [10.1093/chinesejil/jmad005](https://doi.org/10.1093/chinesejil/jmad005).
- [26] Vermeulen, G., & Kusak, M. (2023). Unblurring the fuzzy line between specialty and data protection in EU mutual legal assistance after the european investigation order. *European Journal on Criminal Policy and Research*, 29(4), 647-667. doi: [10.1007/s10610-023-09539-9](https://doi.org/10.1007/s10610-023-09539-9).
- [27] Weyembergh, A., & Theodorakakou, G. (2023). The role of Europol and Eurojust in countering the threat of FTFs: An evolving mandate. *New Journal of European Criminal Law*, 14(2), 157-182. doi: [10.1177/20322844231166359](https://doi.org/10.1177/20322844231166359).

- [28] Zając, D. (2023). The European arrest warrant in designer drugs cases. With or without verification of double criminality? *European Journal on Criminal Policy and Research*, 29(2), 247-261. doi: [10.1007/s10610-021-09487-2](https://doi.org/10.1007/s10610-021-09487-2).
- [29] Zavydniak, V., Zavydniak, I., Omelchuk, L., Polunina Lilia, V., & Suprun-Kovalchuk, T. (2022). States' main directions and forms of international cooperation against transnational economic crimes. *Revista Científica General Jose Maria Cordova*, 20(38), 323-339. doi: [10.21830/19006586.904](https://doi.org/10.21830/19006586.904).
- [30] Zhetpisbaeva, B., Taitorina, B., Nukusheva, A., Baisalova, G., & Ayupova, Z. (2022). The age of terror: How to combine efforts for counteraction at the level of international and national law? *Security Journal*, 35(4), 1006-1022. doi: [10.1057/s41284-021-00310-5](https://doi.org/10.1057/s41284-021-00310-5).

Правові аспекти міжнародного співробітництва в протидії організованій злочинності

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■ **Анотація.** В умовах інтенсифікації глобалізаційних процесів увагу дослідників привертають організовані форми злочинності, протидія яким істотно ускладнюється, якщо кримінальним правопорушенням властиві транснаціональні ознаки. З огляду на це, актуальним є вивчення змісту міжнародних договорів, спрямованих на боротьбу з транснаціональною організованою злочинністю. Цим обумовлена мета публікації щодо визначення окремих правових особливостей міжнародного співробітництва в протидії організованій злочинності для подальшої імплементації перспективних положень у роботу правоохоронних органів у цій сфері. Методологічну основу дослідження становлять як загальнонаукові, так і спеціальні методи наукового пізнання: термінологічний, системно-структурний, формально-логічний, порівняльно-правовий. Крім того, використано системний, інформаційний та функціональний підходи, а також термінологічний, системно-структурний, формально-логічний і порівняльно-правовий методи наукового пізнання. У межах дослідження підтверджено, що організована злочинність не визнає наявних кордонів держав і постійно їх долає. Водночас правоохоронні органи доволі обмежені у своїх діях цими кордонами, що істотно позначається на можливостях протидії злочинності, передусім організованій. Встановлено, що поступово утворюється правове забезпечення міжнародного співробітництва в протидії злочинності, зокрема організованій, однак на цей процес впливає концепція примату національного права над міжнародним. Доведено, що актуальна термінологія міжнародних договорів може не відповідати тій, яку використовують у національному законодавстві сучасних країн, проте уніфікація законодавства є обґрунтовано необхідною для ефективної протидії злочинності. Практична цінність одержаних результатів полягає в тому, що їх можна використати для подальшого вдосконалення правових засад міжнародного співробітництва

■ **Ключові слова:** взаємодія; відповідальність; Європол; Інтерпол; міжнародний договір; поліція; правоохоронні органи