

International Jurisdiction on Fighting Against Corruption

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ABSTRACT

The urgency of the article is stipulated by the importance to form international legal institutes aiming at fighting against corruption and the problem related to implementing international regulations of the anti-corruption purposefulness in national legal systems. The use of formal legal methods allowed to research the following groups of the most important anti-corruption regulators: international anti-corruption standards and principles, international and legal mechanisms of monitoring the fulfillment of anti-corruption conventions, and international legal measures to prevent corruption. Empiric data show that the lack of the system counteraction to corruption as a negative social and legal phenomenon causes the erosion of legal institutes, and finally, their full non-operability. It is necessary to further integrate international cooperation in this area. It must result in the formation of the standard unanimity of institutes of national jurisdiction in fighting against corruption.

Keywords: fights against corruption, national legal systems, international anti-corruption standards and principles, international organizations

Global and regional interaction in international processes affects not only modern states, but also various structures and organizations, such as political and economic communities. Such multi-purpose and multi-vector institutions quite harmoniously coexist and interact thanks to integration processes, which is the essence of the modern world order. The concept of “integration” cannot be used in any particular aspect without taking into account all the components of globalization as a process of hyperintegration. In this case, it is difficult to distinguish the absolute dominants of this process, they change depending on the permanent determinants of objective and subjective conditionality. Particularly noteworthy is the process of internationalization and the negative integration of illegal phenomena that are characteristic of almost all national-social and international innovation events that do not have historical experience and the established methodology for their implementation. At the same time, it is necessary to admit that the integration of international organizations with different goals successfully counteracts threats to global security, including in combating corruption.

Today, it is difficult to find more controversial issues in international legal practice than determining the regularities of forms of corruption, methods to legitimize combating corruption, fixing the conceptual apparatus, and more. First of all, this is due to conflicts in the correlation of collective interests and individual state needs, determined by national and economical mental features, the level of national self-identification of each state with unconditionally emotional and propaganda overestimation, and sometimes exclusion of their role in certain events and processes of international character.

For the first time, the problem of corruption and the need to counter it became the subject of consideration at the international level at the V United Nations Congress on the prevention of crime and the treatment of offenders (Geneva, 1975). According to S.A. Loshakova, corruption in the 1970–80s was considered more as a national problem than a transnational one.¹ But the global, transnational nature of corruption began to be noted in the 1990s, with the intensification of integration processes in the global economy began. At the modern stage, research is focused on international anti-corruption standards² — a new form of global regulation in the field of combating corruption, which “go beyond the boundaries of a single state” and aimed at establishing certain compliance rules designed to systematize the activities of cross-border companies in the context of business ethics.³

¹ Loshakova S. A. International Legal Cooperation of States When Fighting against Corruption as a Factor of Providing Safety in Europe [Mezhdunarodno-pravovoe sotrudnichestvo gosudarstv v bor'be s korruptsiei kak faktor obespecheniya bezopasnosti v Evrope] // Business security [Bezopasnost' biznesa]. 2014. No. 4. P. 36. (In rus)

² Cherepanova V. A. International Anti-Corruption Standards: Classification, Performance Evaluation, Further Development Prospects [Mezhdunarodnye antikorrupsionnye standarty: klassifikatsiya, otsenka ehfektivnosti, dal'neishie perspektivy razvitiya] // Auditor. 2017. No. 9. P. 48. (In rus)

³ Molchanova M. A. International Anti-Corruption Standards in Transnational Companies: Key Development Vectors [Mezhdunarodnye antikorrupsionnye standarty v transnatsional'nykh kompaniyakh: osnovnye vektory razvitiya] // International Criminal Law and International Justice [Mezhdunarodnoe ugolovnoe pravo i mezhdunarodnaya yustitsiya]. 2018. No. 6. P. 27. (In rus)

Resolution VIII of the UN Congress on Corruption in Public Administration noted that “the problems of corruption in public administration are universal and that although they have a particularly detrimental effect on countries with vulnerable economies, this effect is felt all over the world”.

The UN development programme defines corruption as a threat to the stability and security of society, undermining democratic institutions and values, ethical values and justice, and damaging sustainable development and the rule of law.

Clause 52 of the outcome document of the UN Summit on the “Millennium Development Goals”, which was held as part of the 65th session of the General Assembly, notes that “priority should be given to the fight against corruption both at the international and national levels. This is because corruption significantly hinders the effective mobilization and distribution of resources and diverts them from activities that are essential for eradicating poverty and fighting hunger and ensuring sustainable development.”⁴

Almost all international anti-corruption legal acts contain a large number of administrative law norms that determine the organizational and managerial aspects of the implementation of these conventions. Particular provisions of the UN Convention Against Corruption deserve the most attention. Article 12 establishes the obligation of participating states to take measures to prevent corruption in the private sector and establish responsibility for non-compliance with such measures. This Article also obliges states to adopt rules aimed at preventing conflicts of interest. As a result, such norms have been incorporated into state legislation, as well as into codes of business ethics and anti-corruption policies of companies.

Currently, the identification of founders and managers is mandatory when registering legal entities in the states-members to the convention. Restrictions on the professional activities of former public officials are a requirement of the Convention. These provisions are implemented in the Russian Federation laws by the adoption of the Federal Law No. 273-FZ of December 25, 2008 “On Combating Corruption”.⁵

The Organization for International Development and Cooperation (OIDC), its Development Center, and the Development Support Committee (DSC) play a significant active role in developing anti-corruption mechanisms. In cooperation, these structures, each in its competence, carry out a comprehensive impact on the problem of corruption by creating their own anti-corruption standards in order to implement their provisions in their national legislation.⁶

The fight against corruption reached its peak in 1999 with the adoption of the Convention Against Corruption by foreign government officials in the implementation of international transactions. This document is the result of a long and routine process, the engine of which was the activity of the Organization for International Development and Cooperation Working group on corruption in international trade transactions. The working group prepared a package of anti-corruption documents, among which were recommendations developed in 1994, 1996 and 1997, and the convention itself. The purpose of the adoption of these documents is for the countries of the world, as subjects of international law, to recognize the fact of bribery of foreign public officials as a criminal offense, and to develop the necessary asymmetric measures aimed at countering corruption in the implementation of transactions in international trade. The Development Support Committee has focused its efforts on combating corruption schemes in various financial projects implemented by donor countries in third-world and developing countries. Supervision of the distribution of funds is the key to effective economic assistance, which has clearly become clear as a result of the work of various international organizations with the countries of the former Soviet Union. The high percentage of corruption of the national elites of these states has shown the need to use special anti-corruption measures in bilateral supervision of the distribution of financial assistance from both the donor and the recipient. The adopted recommendations of 1996 expanded the field of activity of the member countries of the Development Support Committee in the fight against the corruption component in the system of international economic cooperation. This was reflected in the desire of the countries-members of the Development Support Committee to submit their legislative anti-corruption proposals for the legal supervision of the distribution of economic and financial assistance.

Currently, the priority directions in the activities of the Organization for International Development and Cooperation and the Development Center are global measures and the development of a unified policy to neutralize corruption in the system of economic activity and the formation of public institutions in order to accelerate the integration of countries with the transition economy into the global world economy. Monitoring of the impact of corruption on the economic development of Senegal, Mali and

⁴ UN Resolution A/65/1, 2010. Available at: <https://www.un.org/ru/ga/65/docs/65res1.shtml> (accessed 10.02.2019).

⁵ Federal Law No. 273-FZ of December 25, 2008 “On Combating Corruption” // Collection of Legislative Acts of the Russian Federation. 29.12.2008, No. 52 (part 1), article 6228.

⁶ Klyukovskaya I. N., Galstyan I. S., Lauta O. N., Mayboroda E. T., Cherkashin E. Y. International Organizations on Fighting against Corruption: Legal Means and Methods of their Implementation in National Legal Systems // Journal of Advanced Research in Law and Economics. 2016. No. 7. P. 1737.

Mozambique,⁷ analysis of the Hong Kong anti-corruption campaign have formed an understanding of the futility of using the template method for all countries.

The US Agency for International Development (USAID) oversees non-military assistance to other countries that are part of the segment of “US national interests” in the following areas: support for trade, agriculture, economic growth and its monitoring, healthcare.⁸ Since 1989, USAID has been involved in anti-corruption activities to prepare a special project aimed at creating transparent and controlled territories in the zone of vital interests of the United States for the implementation of various business projects by the American financial elite.

To do this, USAID worked hard to create “free” media, to create a so-called civil society in a particular country, a legal framework within which it would be possible to carry out its economic activities.

An insurmountable obstacle to the creation of unified global market governance mechanisms is the corruption of national governments of countries to which various international organizations, including American ones, have allocated money for economic reforms. To monitor the situation with corruption in public authorities, law enforcement agencies, and economic activities, USAID holds conferences on fraud and corruption, one of which was funded through the project to improve regional financial management in Latin America and the Agency’s Caribbean office. Regular workshops were held in Panama, Nicaragua, and Haiti to analyze vulnerabilities in the work of the General Auditor’s office in the fight against corruption.

The priority area for the USAID is the Latin American region, Central and Eastern Europe, and the CIS. In this regard, the Bureau of Latin American Countries, An important component of the World Bank (hereinafter — the “Bank”) is the promotion of innovative development of states and regions in order to achieve sustainable economic growth, with the ability to solve social, economic and environmental problems. The ultimate goal of the Bank’s strategy to help countries address the effects of corruption is not to completely eradicate corruption (which seems utopian in modern conditions of the world), but to support these countries in breaking from systematic corruption to creating optimal governance conditions that would minimize the negative effect of corruption on social development. The Bank’s strategy is based on three directions:

- implementation of reforms in the economic sphere;
- the strengthening of civil society institutions;
- international activity.

The Council of Europe’s interdisciplinary group on corruption proposed the following definition: “Corruption is bribery and any other behavior of persons who are entrusted with the fulfillment of certain duties in the public or private sector, which leads to the violation of obligations imposed by the status of a public official, private employee, independent agent, or other kind of relationship and is aimed to obtain any illegal benefits for the person itself and other persons”.⁹

The UN Convention against transnational organized crime (2000) laid the modern foundations for understanding corruption as not just a negative, but a criminal phenomenon.¹⁰

The UN Global Compact, which is based on the principle that “business communities must resist all forms of corruption”, should be considered as generally accepted international standards for combating corruption.¹¹ By 2018, more than 9 thousand companies and 4 thousand non-profit organizations joined it, including more than 50 of the largest Russian organizations (Vnesheconombank, Rosneft, Russian Railways, Lukoil and others).¹²

⁷ Collection of reports at a joint conference of the Asian Development Bank — Organization for Economic Cooperation “Combating Corruption in the Asian and Pacific region”. Available at: <http://www.adb.org> (accessed 10.02.2019).

⁸ Artemyev M. A. How America Works [Kak rabotaet Amerika] M.: Liberal Mission Foundation [Fond «Liberal’naya missiya»], 2009. P. 28. (In rus)

⁹ Frolova O. E. On Negative Information as Exemplified by the Word “Corruption” [Ob otritsatel’noi informatsii na primere slova «korruptsiya»] // Expert-Criminalist [Ehkspert-kriminalist]. 2015. No. 4. P.13.

¹⁰ Kibalnik A. G. Difficulties in Understanding Crimes against Management Procedure [Slozhnosti v ponimanii prestuplenii protiv poryadka upravleniya] // Criminological Journal of the Baikal State University of Economics and Law [Kriminologicheskii zhurnal Baikalskogo gosudarstvennogo universiteta ehkonomiki i prava]. 2005. Vol. 9. No. 3. P. 475. (In rus)

¹¹ Official website of the UN Global Compact. Available at: <http://www.globalcompact.ru/> 10-princzipov. html (accessed 10.02.2019).

¹² Molchanova M. A. International Anti-Corruption Standards in Transnational Companies: Key Development Vectors [Mezhdunarodnye antikorrupcionnye standarty v transnatsional’nykh kompaniyakh: osnovnye vektory razvitiya] // International Criminal Law and International Justice [Mezhdunarodnoe ugolovnoe pravo i mezhdunarodnaya yustitsiya]. 2018. No. 6. P. 29. (In rus)

The most important prerequisites for the success of international cooperation in the field of combating corruption are the following areas:

- law enforcement cooperation in the procedural and forensic fields (for example, Interpol);
- its scientific validity (for example, the coordinating activity of the United Nations Interregional Crime and Justice Research Institute — UNICRI);
- activities of non-governmental organizations (in particular, Transparency International).

Use of the comparative legal approach and the methods of legal comparative analysis included in it made it possible to compare international anti-corruption conventions adopted both under the auspices of the international universal organization — the United Nations, and at the level of a number of international regional organizations: Council of Europe, European Union. Empiric data show that the lack of the system counteraction to corruption as a negative social and legal phenomenon causes the erosion of legal institutes, and finally, their full non-operability. The legally present, but actually not functioning social and legal institutions are an element of its constant destabilization. It is necessary to further integrate international cooperation in this area. It must result in the formation of the standard unanimity of institutes of national jurisdiction in fighting against corruption.

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