Legal Force of International Criminal Law Norms

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Abstract

The article analyzes the concept of the norm of international criminal law, its characteristics, structure. Particular attention is paid to characterizing the legal force of international criminal law. The issue of combating international crime is currently one of the most pressing and vital issues of modern international criminal law. As a branch of international law, international criminal law was formed in the second half of the twentieth century. Overtime has acquired a feature of a recurring character, manifested in the growing number of rules that carry out regulatory action in close connection with other countries' management of international law. The affiliation of a norm to its normative system gives it binding legal force. A significant increase in the number of law rules led to the formation of its own system of sources, which became a form of existence of the practice. Norms have become real, their content has been enriched, and the scope has expanded.

Keywords: Norm of International Criminal Law, Structure of Legal Norm, Legal Force of Norm, Imperative Norms of Jus Cogens, Sources of Law

I. Introduction

In the late 20th – early 21st century, the international community's efforts were aimed at the development and adoption of criminal procedure rules in the field of combating international terrorism, organized crime, and other forms of international danger. To this end, international conventions, resolutions, and recommendations are adopted, international forums and congresses are convened, and international organizations' activities that contribute to the development of international norms to combat international crime are intensified.

Despite a large number of internationally approved conventions (universal and regional), the focus of the United Nations, the Council of Europe, the European

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Union on combating crime, terrorism, corruption, drug trafficking, money laundering, ongoing work on the implementation of International standards of administration of justice, policing, punishment and treatment of offenders, legal regulation of relations in this area are not perfect: international crime is growing rapidly, diversifying the forms and types of offenses and expanding their geographical boundaries. Therefore, the development, systematization, and codification of international legal norms in the field of international criminal relations require special attention from states and international organizations. It also encourages the conceptual study of the concept of international criminal law, its structure, and legal force.

The most important feature of the system of normative regulation of international relations is that it contains a normative basis for creating a mechanism to maintain general peace and security and comprehensive cooperation on a universal basis. Professor I.I. Lukashuk writes: "Social norms are the main regulation instrument. They arise simultaneously with human communication and are present in any group of people, in any social system. This indicates that without norms, the social organism cannot exist. Society does not tolerate a regulatory vacuum. All forms of public consciousness use this tool. They are largely normative in the sense that they affirm the goals, principles, ideas about the proper rules of human behavior, the organization of society, the state, etc.".[2] The diversity of regulations (morals, law, customs, traditions, corporate norms, religious norms) is due to the complexity of its object. According to scholars, the question of the nature and binding force of international law and its norms has been and remains controversial in legal science, which is relevant for international criminal law.[3]

II. Materials and Methods

The author uses a conceptual approach to clarifying the legal force of international criminal law, studies the techniques of scientists to the subject of study, which determines the soundness of theoretical research, and modern principles of scientific methodology.

The article aims to provide theoretical and legal characteristics of the legal force

[2] VSEVOLOD MYTSYK ET AL., INTERNATIONAL PUBLIC LAW: TEXTBOOK: IN 2 VOLUMES. VOL. 1: FUNDAMENTALS OF THEORY 91 (Kharkiv: Pravo 2019).
[3] GRIGORII TUNKIN, INTERNATIONAL LAW 45-48 (M.: Legal literature 1982)

of international criminal law and identify its features, species characteristics, and structural organization.

III. Results

Norms of law belong to the traditional and most common categories (concepts) of law, which embodies one of its most characteristic features and other social regulators — normative. Normative means that norms do not reflect individual life situations, but the most common, repeatedly repeated, typified, and positively evaluated people's actions and associations.

If the state creates the norms of domestic law, the standards of international law are of collaborative nature. Norms of international law and its principles are created not by bodies standing above states and other subjects of international law but by themselves due to decisions based on mutual concessions, and reasonable compromises agreed with positions on specific international issues. When creating a rule of international law, states act as sovereign and equal subjects, and therefore their expression of will is legally equivalent. As subjects of international law, international organizations can adopt legally significant documents based on the relevant statute, which gives them certain rule-making powers. In any case, only subjects of international law can make certain rules of conduct legally binding.

All norms regulate only socially significant, internationally significant behavior. The norm is the legal system's primary element, which is only in this capacity have all its properties and can function. This pattern is inherent in international law. The American Professor O. Schechter emphasizes that "ideas and norms come into force when they become part of an interconnected system".[4]

International law can be defined as an ideal behavior model in certain typical circumstances. The norm reflects natural international relations. On the other hand, its function is to actively influence these relations to maintain them following the established model or bring them into line. Scholars note that "international legal norms are expressed in international treaties, international

[4] Verkhovna Rada of Ukraine, *Rome Statute of the International Criminal Court of 17 July 1998, as amended.* The current version of January 16, 2002. Document 995_588. http://zakon0.rada.gov.ua/laws/show/995_588.

customs, acts of international conferences and agreements, documents of international organizations. Norms of international law are created by subjects of international law based on the free will of equal participants in international relations".[5] Created in this way, the norm is a formally defined rule that regulates interstate relations by establishing rights and obligations for entities, provided by a legal mechanism of protection. The formal definition means a distinctive feature of international law, which consists of exceptional clarity and certainty in the accuracy of concepts and structures. The norm of international law is understood as a rule of conduct that is recognized by the subjects of international law as legally binding. In essence, such a legal prescription is a "coordinated will of states," which has a dispositive or imperative character.[6] The fact that the rules of international law are the result of coordination and interdependence of the will of states is different from the limitations of domestic law. Compliance is determined by membership in the world community and is ensured by the means at its disposal.

An international legal norm must meet the following requirements:

- Regulate relations between subjects of international law, which is familiar to all social (not only legal) norms;
- To be obligatory for the subjects of this right, which is understood as the existence of a particular legal force, as non-legal norms also have their binding force;
- Be of a general nature, which means: the legal norm must be calculated for a certain number of cases and not be an individual decision, i.e., have an impersonal nature;
- Contain the rights and obligations of the subjects of international relations.

The norm of international criminal law has the same properties but peculiarities. First, the rights and responsibilities conferred on states and other subjects of international criminal law are the content of the norms of international criminal law. Second, the norm of international criminal law defines the rights and obligations of issues in a more clearly defined form. The degree of generalization

[5] LEGISLATIVE GUIDE TO THE UNIVERSAL LEGAL REGIME. AGAINST TERRORISM *(*New York: United Nations 2008)

[6] Filip Kozhevnikov, *Generally recognized principles and norms of international law,* 12 SSL 17 (1959)

is much lower than in the norms of general international law.[7] Third, the norm of international criminal law is recognized by states and other subjects of international law as legally binding. Fourth, international criminal law provides for the liability of the subjects of these relations for offenses.

A characteristic feature of the norm of international criminal law is its structure. According to the theory of law, the construction of a legal norm traditionally presupposes the presence of three elements in its structure: hypotheses, dispositions, and sanctions[8]. The rule of law must first list the conditions under which it is applicable (hypothesis); then the very rule of conduct (disposition) should be set out; finally, the norm should contain an indication of the consequences of violating this rule (sanction).

It should be borne in mind the characteristic feature that in the regulations of international criminal law, the definition of punishment is the exception rather than the rule. Most international criminal law operates through the provisions of national criminal law indirectly and under domestic law. Sanctions are contained in the national criminal laws of states after their incorporation into domestic law. In general, the application of sanctions is a very weak point in international public law, as in interstate relations, there are no such institutions (identical to the state) that could guarantee compliance with international norms adequate to the internal actions of states. According to the fair remark of Professor M.Sh. Bassiouni, "The question of punishment in the system of international criminal justice is not so much about what punishment to apply, excluding the death penalty and bodily harm, but rather the philosophical and political basis and purpose of punishment for international crimes".[9]

Most norms of international criminal law contain only a disposition and a hypothesis, i.e., they are definitive and regulatory (prohibitive). Indefinite sanctions contained in most international treaties aimed at combating crime are reference in nature, being a kind of element of sanctions of criminal law in

[7] DANIEL O`CONNELL, INTERNATIONAL LAW, VOL. I 950 (London: Stevens and Sons 1970).

[8] Verkhovna Rada of Ukraine, *Vienna Convention on the Law of Treaties of May 23, 1969.* https://zakon.rada.gov.ua/laws/show/995_118#Text; Verkhovna Rada of Ukraine, Vienna *Convention on the Law of Treaties of March 21, 1986*. https://zakon.rada.gov.ua/laws/show/995_118#top.

[9] MICHAEL BASSIOUNI, PHILOSOPHY AND PRINCIPLES OF INTERNATIONAL CRIMINAL JUSTICE, INTERNATIONAL CRIMINAL JUSTICE: CONTEMPORARY ISSUES. In G.I. Bogusha, E.N. Tricosis. (Eds.) M.: Institute of Law and Public Policy, 15–23, 21 (2009).

national legal systems. Specific sanctions in case of violation of the disposition may be provided by the rules of special agreements, statutory documents of international courts (tribunals), and domestic law.

Norms of international criminal law provide for the application of sanctions by states individually or collectively and by international organizations – international courts (tribunals), which are endowed with increasing powers in this area. In particular, the Rome Statute of the International Criminal Court provides for the following measures of punishment: imprisonment for a definite term, calculated in the number of years and not exceeding the number of 30 years (Article 77, Part 1, paragraph A); life imprisonment in case of committing an exclusively serious crime and taking into account the individual circumstances of the person found guilty of committing such a crime (Article 77, Part 1, item b); fine (Article 77, part 2, item a); confiscation of income, property, and assets obtained directly or indirectly as a result of the crime, without prejudice to the bona fide rights of third parties (Article 77, Part 2, paragraph b).[10]

The Convention for the Suppression of Bribery of Foreign Public Officials in the Case of International Business Transactions of 1997[11] provides for two types of punishment – imprisonment and confiscation or confiscation. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988[12] obliges the Parties, taking into account the gravity of the offense, to apply the following types of punishment: imprisonment or other forms of imprisonment, penalties, and confiscation. CoE Convention on the Protection of the Environment through Criminal Law 1998[13] several coercive measures are envisaged: imprisonment, fines, confiscation, measures to restore the environment. The actions of states that violate imperative norms are qualified as a gross violation of international law, as aggression, which results in the most severe international

[10] Verkhovna Rada of Ukraine, *Rome Statute of the International Criminal Court of 17 July 1998, as amended.* The current version of January 16, 2002. Document 995_588. http://zakon0.rada.gov.ua/laws/show/995_588

[11] Verkhovna Rada of Ukraine, *Convention for the Suppression of Bribery of Foreign Public Officials in the Case of International Business Transactions of 21 November 1997.* https://zakon.rada.gov.ua/laws/show/998_154.

[12] Verkhovna Rada of Ukraine, *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988*. https://zakon.rada.gov.ua/laws/show/995_096

[13] Verkhovna Rada of Ukraine, *Convention for the Protection of the Environment using Criminal Law of 4 November 1998 (ECR № 172).* https://zakon.rada.gov.ua/laws/show/994_560

sanctions, up to the suppression of the aggressor by force under Art. 42 of the UN Charter.

A feature of international criminal law is the complex structure of the rule, in particular, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[14] contains obligations of states to criminalize certain types of transnational crime and more than previous conventions in the field of combating drug trafficking, the degree of specificity formulate the composition of crimes. In addition, the rules of international criminal law are present in several international treaties with a broader subject of legal regulation. Thus, the 1982 UN Convention on the Law of the Sea[15] provides for the obligation of member states to establish criminal liability for piracy, transportation of enslaved people and drugs, unauthorized radio and television broadcasting from the high seas, etc.

Norms of international criminal law are heterogeneous; their classification according to numerous criteria is complex, multifaceted, and not exhaustive. It is worth noting the type of norms in the context of these problems by the method (method) of legal regulation – dispositive and imperative. The bulk of norms in international law is dispositive norms, while in international criminal law, the share of imperative norms is growing significantly. Dispositive is a rule within which subjects of international law can independently determine the rules of their conduct and mutual rights and obligations in international relations, taking into account specific circumstances. For example, under Art. 5 paragraph 1 of the UN Convention against Corruption 2003, "Each State Party, by their principles of its legal system, develops and implements or implements an effective coordinated anti-corruption policy that promotes public participation and reflects the principles of law and order, proper management of public affairs and state property, honesty and integrity, transparency and accountability".[16] Dispositive norms have full legal force. Unless the subjects have agreed otherwise, they are

[14] Verkhovna Rada of Ukraine, *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988*. https://zakon.rada.gov.ua/laws/show/995_096
[15] Verkhovna Rada of Ukraine, *UN Convention on the Law of the Sea of December 10, 1982.* https://zakon.rada.gov.ua/laws/show/995_057
[16] VSEVOLOD MYTSYK ET AL., INTERNATIONAL PUBLIC LAW: TEXTBOOK: IN 2 VOLUMES. VOL. 1: FUNDAMENTALS OF THEORY 91 (Kharkiv: Pravo 2019).

obliged to comply with the dispositive norm and are responsible in case of its violation.

One of the characteristic features of modern international criminal law is the presence in it of a set of imperative norms (jus cogens – imperative law), which have special legal force. The latter is the inadmissibility of deviations from the norms in the relations of individual states, even though their agreement.

IV. Imperative *Jus Cogens* Norms

Imperative norms set specific boundaries for certain behaviors; these are norms from which deviation from the interstate community recognizes as inadmissible.[17] Professor I.I. Lukashuk emphasizes: "one of the characteristic features of modern international law is a fairly large array of imperative norms, jus cogens, which are endowed with special legal force. In the doctrine and materials of the International Law Commission, the terms "imperative norms" and "jus cogens" are often used interchangeably. The same applies to the Vienna Convention on the Law of Treaties of 1969 (Article 53). Meanwhile, "jus cogens" means rather a set of imperative norms, imperative law".[18]

A custom or contract that contradicts the mandatory rule will be invalid. The new imperative norm invalidates the existing norms that contradict it. It is believed that imperative norms are a new phenomenon. I don't think so. International relations of the past could not do without imperative regulation. The principle of *pacta sunt servada* (treaties must be observed) was imperative, without which there is no international law. Prohibitions on piracy and the slave trade, as well as some rules of warfare, were imperative. The novelty is that today the imperative norms form a whole complex that determines the nature of international law, its goals and principles, the main content. In addition, the imperative norms have received official recognition.

[17] EVGEN KOZIUBRY (ED.), GENERAL THEORY OF LAW 129, 392 (Waite 2015).
[18] IGOR LUKASHUK, NORMS OF INTERNATIONAL LAW IN THE INTERNATIONAL NORMATIVE SYSTEM. In Kachanov V.A. (Ed,) Spark, 322, 161 (1997)

Prerequisites for the formation of imperative law were created by the UN Charter.[19] It is often suggested that imperative norms emerged after the formation of the United Nations.[20] World War II showed that the current world order could put humanity on the brink of disaster. The need to change it became obvious. The UN Charter enshrines the overriding force of its obligations over the obligations of its members under some other international agreement (Article 103). It was also found that the UN respects the principles of the Organization even by non-member States, as this may be necessary to maintain international peace and security (Article 2, paragraph 6). All this was a significant contribution to the formation of imperative law. According to scholars, "the basic principles of international law have the highest legal force and are binding on all states."

Further development of mandatory law is associated with the adoption of the Vienna Conventions on the Law of Treaties of 1969 and 1986, according to which the mandatory rule is the one that is "accepted and recognized by the international community as a whole as a rule only the next norm of general international law, which would be of the same nature" (Article 53 "Obligations that have force under international law, regardless of the treaty").[21] Fifty-three states that a treaty is irrelevant if it contradicts the mandatory norm of general international law at its conclusion. If there is a new compulsory rule of general international law, then any existing treaty, which conflicts with this rule, becomes invalid and terminated (Article 64).

The nature of imperative norms has been thoroughly considered in the International Law Commission.[22] In the Commentary to Art. 37 of the draft articles on the law of international treaties, the International Law Commission noted that the emergence of norms that have the character of "jus cogens" is a

[19] Verkhovna Rada of Ukraine, *The Charter of the United Nations and the Charter of the International Court of Justice.* International document dated on June 26, 1945. http://zakon5.rada.gov.ua/laws/show/995_010

[20] SHABTAI ROSENNE, PRACTICE AND METHODS OF INTERNATIONAL LAW 19 (New York: Oceana Publications, Inc., 1984).

[21] Verkhovna Rada of Ukraine, *Vienna Convention on the Law of Treaties of May 23, 1969.* https://zakon.rada.gov.ua/laws/show/995_118#Text; Verkhovna Rada of Ukraine, Vienna *Convention on the Law of Treaties of March 21, 1986*. https://zakon.rada.gov.ua/laws/show/995_118#top.

[22] UN, *Yearbook of the International Law Commission.* DOCUMENTS OF THE FIFTEENTH SESSION INCLUDING THE REPORT OF THE COMMISSION TO THE GENERAL ASSEMBLY 1, 1963, 52

relatively new phenomenon.[23] In discussing this article, most participants pointed out that the imperative norms express the common interests of states and the world community as a whole.[24] The same view was emphasized in the responses of several governments and expressed during the discussion of the draft articles in the Sixth Committee of the General Assembly. This fact was noted by the Austrian scientist A. Ferdross, who said that it is about the interests of all humanity.[25] On this basis, it was concluded that the articles on the law of treaties should take into account the existence of certain norms and principles from which states cannot deviate on the basis of bilateral and regional treaties.[26] However, some participants in the discussion were skeptical about this idea. As a result, the article on imperative norms was adopted with 87 votes; against – 8; abstained – 12.[27] Over time, the application of mandatory rules has gained ground in the practice of international courts; in particular, the International Court of Justice was one of the first to refer to the mandatory law in deciding the case of US diplomatic and consular personnel in Tehran. In the Order on Preliminary Measures in the case, the Court qualified the violation of immunity as a violation of mandatory rules.[28]

An imperative norm is a norm that is expressed in categorical prescriptions and operates independently of the subjects of international law. International law issues are not entitled to voluntarily change the scope and content of rights and obligations established by mandatory rules. It can be assumed that imperative norms (jus cogens) form the basis of all international law and international relations in general, the base of the entire international legal order and world political stability. Imperative norms have the highest legal force; any other norms of international law must comply with the norms of jus cogens. The norms of jus cogens are the basic norms-principles of international law, including those enshrined in the UN Charter. Their content is disclosed and supplemented by the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation between States under the UN Charter of 24 October 1970 and

[23] UN, Yearbook of the International Law Commission. SUMMARY RECORDS OF THE EIGHTEENTH SESSION 4 May – 19 July, 1966, Vol. 1, 39
[24] ANTONIO CASSESE, INTERNATIONAL LAW. (2ND ED.) (Oxford University Press 2003)
[25] Verkhovna Rada of Ukraine, *Vienna Convention on the Law of Treaties of May 23, 1969*
[26] UN, YEARBOOK OF THE INTERNATIONAL LAW COMMISSION II (N.Y. 1967)
[27] Verkhovna Rada of Ukraine, *UN Conference on the Law of Treaties*. Second session 107 (2003)
[28] ICJ Reports 1993. 20

the Final Act of the Conference on Security and Cooperation in Europe (CSCE) of 1 August 1975; they also include the principles of observance of the laws and customs of war.

V. Legal Force of International Criminal Law Norms

Norms of international criminal law are created by its subjects, first of all by the states using the agreement in which maintenance is the agreed will of the parties. Arguments for this position are, first, the lack of supreme power in the international system as a source of rule-making.[29] Unlike national law, international law is not inherent in the supreme power; it is not associated with any higher authority than the state. Secondly, the number of subjects adopting an international normative act is limited; sometimes, it is a minimal number of states.

When creating a rule of international criminal law, two agreements are reached: one on the content of the rule, the other – on giving it legally binding force. Recognition of binding force under international law is determined by the needs of the life of the international community, the fundamental interests of states. Nevertheless, legal regulation of international relations is an absolute necessity, and, therefore, giving international law binding legal force is inevitable. There is no alternative to this.

The source of the legally binding force of international criminal law is states' agreement. The legal force of universally recognized norms of international criminal law is generated by the consent of states, the consent of the international community as a whole, which is embodied in the principle of conscientious fulfillment of obligations under international law. The provision according to which the agreement is a source of the binding force of international criminal law and international law, in general, is reflected in international practice, including judicial. Scholars note that "the objective social reality and the current state of development of the IP show that the source of the legally binding force of international law is the agreement, the will of the states, and the general agreement

[29] GRIGORII TUNKIN, INTERNATIONAL LAW 45-48 (M.: Legal literature 1982)

of the international community with the basic imperative principle of the ICJ. *Sunt servanda* is confirmed in international practice, including the judiciary".[30]

Recognition of binding force under international criminal law is determined by the needs of the life of the international community and, the fundamental interests of states, the need to combat international crime. Legal regulation of relations in the field of combating international crime is necessary. Consequently, the provision of binding legal force to the norms of international criminal law is inevitable and dictated by the needs of the international community.

Legal force can distinguish imperfect and dispositive norms of international criminal law. At once, we will make a reservation that here the first group of norms dominates over the second. For international criminal law, the category of "dispositiveness" is considered atypical and rarely used. Most of the provisions in international criminal law are imperative, and most often, they are rules of jus cogens, from which the subjects of international law cannot deviate even by mutual agreement. The provisions of the Vienna Conventions also apply to international criminal law in terms of the status of mandatory norms.

There is no hierarchy of rules of law in international criminal law, which is observed in national law, in particular in the law of the continental legal family. However, we note the status of the basic principles of international criminal law, which cannot be implemented without more specific treaties or customary rules, such as mandatory rules, jus cogens. The main distinctive qualities of mandatory norms in international criminal law are the highest legal force, which in some cases is retroactive, and a unique mechanism to ensure their implementation.[31]

By the nature of their action in international criminal law, mandatory rules of international law can be divided into those that have a direct effect. They may not be included in domestic law and those that have an indirect effect. Such rules must be included in the peculiarities of international criminal law in comparison with the rules of national law. They are intended to be applied in relations between two or more specific subjects. They cannot be extended to other participants in international communication except generally accepted principles and norms of

[30] VSEVOLOD MYTSYK ET AL., INTERNATIONAL PUBLIC LAW: TEXTBOOK: IN 2 VOLUMES. VOL. 1: FUNDAMENTALS OF THEORY 91 (Kharkiv: Pravo 2019).
[31] OSCAR SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 22 (Dordrecht, The Netherlands; Boston: M. Nijhoff Publishers; Norwell, MA, U.S.A.: Sold and distributed in the U.S.A. and Canada by Kluwer Academic Publishers 1991).

international law. Still, their share is small in the normative system of international law.

The statutes of international organizations (UN, International Court of Justice, International Criminal Court) and international tribunals (Nuremberg, Tokyo, International Tribunal for the Former Yugoslavia and Rwanda) are imperative in international criminal law. The creation of the last two tribunals by the UN Security Council has become a unique case of the direct creation of norms and institutions of international criminal law – and the peculiarity of such tribunals was not in the contractual nature but in "tacit recognition of their states".[32] "Of particular importance in the development of the legal force of international criminal law o law and international criminal law in general, has the establishment of the International Criminal Court in 1998 with the adoption of its Statute".[33] The legal force of the Rome Statute, which ensures the implementation of international criminal law, is beyond doubt. At the end of the twentieth century. Italian scholar A. Cassese wrote: "While national criminal law is based on the generally accepted principle of formal certainty, international criminal law contains numerous rules that do not detail the essential elements of the crime.[34] The Rome Statute largely overcame the shortcoming, and each definition is clearly articulated to reflect the current rules of international criminal law and meet the requirements of certainty in criminal law and developed by the Preparatory Commission of the International Criminal Court under Art. 9 of the Statute of the Elements of Crimes assist the Court in interpreting and applying the articles governing its substantive jurisdiction.[35]

The imperative norms of international criminal law include the main goals and principles of international criminal law; principles and norms that consolidate the achieved level of humanity (on the rights of human beings, peoples, national minorities, the protection of victims of war, on the prohibition of the use of certain

[32] IGOR LUKASHUK, & ANATOLII NAUMOV, INTERNATIONAL CRIMINAL LAW 15-16 (Moscow: Spark 1999).
[33] Nataliia Zelinskaya & Nataliia Dremina-Volok, *The concept of crimes under general international law in the context of the problem of retroactive application of international criminal law* 189-210 ALM INT LAW 2 (2012).
[34] Antonio Cassese, *The Statute of the International Criminal Court: Some Preliminary Reflections*, 10 EUR J IL, 148–149 (1999)
[35] International Criminal Court. Assembly of States Parties to the Rome Statute of the International Criminal Court. First session. New York, September 3–10, 2002 Official Records elements of the crime. Doc. ICC-FSP/1/3/.

weapons, on the crime of piracy, slavery, etc.); norms prohibiting aggression, interference in internal affairs, colonial and other foreign domination; norms prohibiting crimes against humanity: genocide, apartheid, slavery, etc. Imperative norms are also contained in numerous anti-criminal conventions adopted to combat crimes of an international nature (transnational crimes): the UN Convention against Transnational Organized Crime of 15 November 2000, the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime. 1990, Council of Europe Convention on Cybercrime of 23 November 2001, Council of Europe Convention on the Prevention of Terrorism of 16 May 2005

Thus, the highest legal force in international criminal law is endowed with norms-principles and imperative norms contained in treaties (conventions, agreements, statutes, declarations), and they are provided by implementation in public relations. At the same time, the question arises of recognizing the legal force of acts of international organizations in international criminal law. The significant increase in resolutions adopted annually by international organizations reaches many thousands; they can relate to various aspects of global life, depending on the subject of the Organization. Among them, there is the vast majority of resolutions-recommendations.

Legal acts of international organizations are a practical form of expression of the will of the states by which they are adopted and have a recommendatory character. Unlike a treaty, in which the intention of states is clear and definite, acts of international organizations are usually a step leading to the completion of forming a compact or custom. However, the international Organization may adopt resolutions binding on states.[36] This right is enshrined in the Organization's charter and does not arise from its own decisions. For the first time, this problem was most acute in connection with the adoption by the UN General Assembly in 1950 of the Resolution "Unity for Peace", and was resolved in favor of compliance with the statutory powers of the Organization. The statutes of international organizations usually contain severe restrictions on the adoption by its bodies of acts binding on states. For example, the UN Security Council may take such decisions only in the event of threats to peace, violations of peace, and

[36] Ruben Kalamkarian & Yuriy Migachev, *The international normative system as an institutional and legal component of the modern world order,* 6 STATE AND LAW, 62–70 (2015)

acts of aggression and in compliance with special procedural requirements (Chapter VII of the UN Charter).[37] The Security Council exercised this power by adopting Resolution 827 of 25 May 1993 to establish an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia since 1991. Later, on 8 November 1994, the Security Council Resolution 955 established the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in Rwanda and Rwanda Citizens Responsible for Genocide and Other Similar Violations. J. Brownlee and A. Cassese noted that the norms that provide for international criminal responsibility for genocide, crimes against humanity, and war crimes are imperative.[38]

Documents of the Security Council were adopted based on Chapter VII of the UN Charter, which empowers this body to adopt resolutions that are legally binding on all UN member states. Of particular importance are the Security Council's anti-terrorism resolutions, in particular those aimed at countering terrorist organizations such as the Taliban and Al Qaeda (Resolution 1267 (1999) of 15 October 1999, Resolution 1333 (2000) of 19 December 2000), Resolution 1363 (2001) of 30 July 2001, Resolution 1373 (2001) of 28 September 2001), which prohibited states from financing and providing any other support to terrorist organizations. Thus, UN Security Council Resolution 1373 (2001) of 28 September 2001[39] called on States to take several measures to strengthen their legal and institutional capacity in the fight against terrorism, including by establishing criminal liability for active and passive assistance, a specified illegal act. UN Security Council resolutions note the close link between international terrorism and drug trafficking, money laundering, arms trafficking, and other

[37] UN GENERAL ASSEMBLY, *Resolution 377 (V) of 3 November 1950 gave the Assembly the right to take action in the event of the inability of the UN Security Council to act due to a vote against one of its permanent members if there are grounds for perceiving a threat to peace, peace or aggression* 1950The Assembly may immediately consider this matter in order to provide members with the necessary recommendations for collective action to maintain or restore international peace and security

[38] JOHN BROWNLLE, INTERNATIONAL LAW 489 (Oxford University Press 2005); JOHN BROWNLLE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 535 (Oxford 1966); ANTONIO CASSESE, INTERNATIONAL LAW. (2ND ED.) (Oxford University Press 2003)

[39] Verkhovna Rada of Ukraine, *Convention for the Protection of the Environment using Criminal Law of 4 November 1998 (ECR № 172).* https://zakon.rada.gov.ua/laws/show/994_560

transnational crime and oblige states to develop a national strategy to combat terrorism and other crimes and criminalize specific actions. The UN Security Council also adopted several unprecedented resolutions to combat piracy and robbery off the coast of Somalia ("anti-piracy resolutions"): Resolution 1816 (2008) on 2 June 2008, Resolution 1950 (2010) on 23 November 2010, Resolution 1976 (2011) on 11 April 2011.

Even though the binding nature of resolutions has been repeatedly emphasized in UN documents, Security Council resolutions are adopted in specific situations on certain aspects of criminal activity. In particular, the Guidelines for Legislators on the Universal Legal Regime against Terrorism, prepared by the United Nations Office on Drugs and Crime in 2008, stated that Security Council resolutions on terrorism, many of which were adopted under Chapter VII of the Charter of the United Nations "The United Nations, which gives the Security Council the right to adopt resolutions that are binding on all Member States of the United Nations, is considered one of the key components of the global legal framework for combating terrorism".[40]

Of great political and legal importance are the resolutions of the General Assembly on cooperation, security, and disarmament, adopted in full compliance with the UN Charter. Back in the middle of the last century, Professor F.I. Kozhevnikov wrote that "the establishment of the General Assembly, this UN body, adopted by him unanimously, goes beyond simple recommendations and acquires legal force".[41] General Assembly resolutions, like other provisions, extend the rules previously formulated by a limited number of States to other non-treaty States. However, as Brownlee noted, "whatever the political or moral force of the General Assembly's recommendations, they are not legally binding." O'Connell supported him. The recommendatory nature of the General Assembly resolutions is noted in Art. 10, 11, 14 of the UN Charter[42]; however, despite all this, we note the great role of the General Assembly in the law-making process and the progressive development of international law, as its establishment has

[40] Legislative Guide to the Universal Legal Regime. (2008) *Against Terrorism.* New York: United Nations

[41] Filip Kozhevnikov, *Generally recognized principles and norms of international law,* 12 SSL 17 (1959)

[42] Verkhovna Rada of Ukraine, *The Charter of the United Nations and the Charter of the International Court of Justice.* International document dated on June 26, 1945. http://zakon5.rada.gov.ua/laws/show/995_010

legal value. Resolutions and other acts of the General Assembly are an aid, certain stages in the general process of rule-making. Still, they do not lead to their completion, i.e., they are not direct sources, but only those ways that may ultimately lead to the rule of international law.

The rules on the criminalization of criminal acts of resolutions of both the UN General Assembly and the Security Council relate to specific situations, are advisory rather than binding, and do not serve as a criminal prohibition but are important in formulating mandatory rules of international criminal law.

VI. Discussion

Based on the study and theoretical generalization of the research topic, the following could be emphasized: the norms of international criminal law are the normative basis for the functioning of the mechanism of universal peace and security and the necessary basis for cooperation between states and international organizations.

The norm of international criminal law must meet specific requirements but has its characteristics, which are manifested in the content, formal definition, level of generalization, structure, and legal force. In modern international criminal law, there is a set of imperative norms (jus cogens – imperative law), which have a special legal power: the inadmissibility of deviations from the norms in the relations of individual states even using their agreement.

Dispositive norms are also legally binding. The source of their binding force is the agreement of the states, which gives legal force not only to a separate treaty but also to international law. Imperative nature is endowed with norms-principles, contractual norms, statutory provisions, and customary rules of conduct. Legally binding force in international criminal relations is determined by compliance with the regulations provided by the system of international legal sanctions.

VII. Conclusion

The norms of international criminal law contain a normative basis for creating a mechanism to maintain general peace and security, as well as comprehensive cooperation between states and international organizations on a universal basis.

A norm is a formally defined rule of conduct that regulates interstate relations by establishing rights and obligations for subjects; it is a legally binding rule recognized by the subjects of international law and provided by a legal mechanism of protection.

The norm of international criminal law must meet certain requirements (formal certainty, regulatory nature, binding nature, understood as the existence of a certain legal force; general, not personalized nature; contain the rights and obligations of subjects of international relations), but must its features. The rights and responsibilities conferred on the subjects of international criminal relations are the content of the norms of international criminal law. Their content is expressed in a more clearly defined form because the degree of generalization is much less than the rules of general international law. The norm of international criminal law is recognized by states and other subjects of international law as legally binding. International criminal law provides for the liability of the subjects of these relations for offenses.

Another feature of the norm of international criminal law is its structure, which provides for the presence of three elements: hypotheses, dispositions, and sanctions. The peculiarity is that in the normative legal acts of international criminal law, the definition of punishment is the exception rather than the rule. Most international criminal law operates indirectly through the provisions of national criminal law and follows domestic law. Sanctions are contained in the federal criminal laws of states after their incorporation into domestic law.

In modern international criminal law, there is a set of imperative norms (jus cogens – imperative law), which have a special legal force: the inadmissibility of deviations from the norms in the relations of individual states using their agreement. Dispositive norms are also legally binding. The source of their binding force is the agreement of the states, which gives legal force not only to a separate treaty but also to international law as a whole. Imperative nature is endowed with norms-principles, contractual norms, statutory provisions, and customary rules of conduct. However, in certain cases, international organizations may adopt resolutions binding on states, such as those of the UN General Assembly and the UN Security Council on peace, cooperation, security, and disarmament, adopted in full compliance with the UN Charter.

Taking into account the peculiarities of international criminal law, its sources, and methods of their formation, the legally binding force of norms in the field of illegal international relations is determined by compliance with the norms provided by the system of international legal sanctions.