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## **IMPLEMENTATION OF INTERNATIONAL LEGAL NORMS OF WAR AS AN OBJECT OF GLOBAL RIGHTS LAW IN UKRAINE**

### **Summary**

This article explores the implementation of international humanitarian law regarding war legislation in Ukraine as an object of global rights, examines some aspects of the implementation of international norms that establish liability for violations of the laws and customs of war into the law of Ukraine.

**Key words:** international humanitarian law, domestic law, implementation of international standards and global rights laws and customs of war.

**Formulation of the problem.** The proclamation of independence in Ukraine, the implementation in practice of the provisions of the Constitution of Ukraine on protection of rights, freedoms and lawful interests of man and citizen, as well as its focus for EU membership set domestic legal science fundamentally new fundamental questions. Ukraine, as a member of the international treaties governing the fight against international crime in accordance with the principle of «Pacta sunt servanda» must conscientiously fulfill their obligations under those treaties. This principle, which was originally formed in the usual right was legally enshrined in the Vienna Convention on the Law of Treaties of 1969. Thus, in accordance with Art. 26 of this Convention "Every treaty in force is binding upon the parties and must be performed in good faith" [2]. The same position is enshrined in Art. 26 of the Vienna Convention on the Law of Treaties between States and international organizations or between international organizations on 21 May 1986 [1]. However, the principle of "Rasta sunt

sehvanda" only records the obligation of good faith and to comply fully with international obligations arising from recognized international treaties.

**Analysis of recent research and publications.** The scope of the legal regulation of these rights as a global object rights not given much attention even dissertations. Investigation of legislative regulation of international norms that establish liability for violations of laws and customs of war in the criminal legislation of Ukraine, devoted their work Mathias Herdehen, M.O. Baymuratov, B.V. Babin, M.V. Buromenskiy, A. Ivanov , Y. Kolosov, V. Kuznetsov and others. However, due to the renovation and extension of states participating in the international arena, the importance of the chosen subject, as mentioned above, some unexplored aspects require special attention and detailed study them.

**The purpose of the article.** The article reveals and justifies the theoretical foundations of the global property rights as the law of war in the legislation of Ukraine.

**Presenting main material.** Internal Criminal Law states directly affects the formation and development of the principles and norms of international law in the fight against international crime, since the entry into certain contractual legal state, first of all guided and obtained from the content of national crime policy and its own legislation [5, 16-17].

That is, the state can not take on the international obligations of the innovations which follows international law, if the latter contradicts the content of the national criminal policy and legislation. Thus any coercion on the part of other subjects of contractual relations does this rule invalid for the government that is forced. This provision is based on the provisions of the Vienna Convention on the Law of Treaties between States and international organizations or between international organizations on 21 May 1986 and the Vienna Convention on the Law of Treaties of 1969. According to Art. 52 of those Conventions "contract is void if its conclusion was the result of the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations." It should be noted that determine how

compliance with international obligations related to exercise state sovereignty and enters the domestic jurisdiction of states themselves. In this regard, we can assume that international law requires that it has been prepared to intrastate law, legislative techniques and the choice of its implementation is the responsibility of the national law states.

The possibility of direct application of international norms sanctioned by national law by means of acts which the State expressed consent to be bound by international treaty (of ratification, accession, approval, etc.). In fact, such acts authorize the implementation of international legal norms, not only in international relations but also within the country. However, the expression of consent to be bound by international treaty state does not change the legal nature of "self-realization" of international law relating to the possibility of direct grant public authorities, businesses and individuals parties to the treaty rights and obligations without additional internal rulemaking. The majority of international humanitarian law is self-realization. The main instruments of international humanitarian law, especially Fourth Geneva Convention of 1949 and Additional Protocols I and II of 1977, contain a fairly accurate and multidimensional rules (600 articles), which, as is often formulated in a very detailed manner suitable for direct use by individuals and the state. However, the right to declare war belongs to elected representatives and therefore this right belongs to the people, that proves a direct link with global rights.

Other rules of international humanitarian law are the standards the implementation of which depends on the promotion of national law and appropriate organizational measures by the state - party treaty. This principle is especially underlined in Article 1 common to the four Geneva Conventions for the protection of war victims 1949, which includes provisions that the High Contracting Parties undertake under any circumstances comply and make comply with the Convention.

In this connection, it should be the Law of Ukraine "On international agreements of Ukraine", adopted June 29, 2004, establishing the procedure for the conclusion, performance and termination of international treaties of Ukraine and exercising national interests, the implementation of goals, objectives and principles of foreign

Ukraine policy enshrined in the Constitution of Ukraine and laws of Ukraine [4]. According to Art. 1 of the Act, it applies to all international treaties of Ukraine governed by international law and concluded in accordance with the Constitution of Ukraine and requirements of this law.

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Proposals for the conclusion on behalf of Ukraine, the Government of Ukraine of international treaties of Ukraine submitted under the President of Ukraine or the Cabinet of Ministers of Ukraine (ch. 1, Art. 4). Proposals for the conclusion of international agreements of Ukraine submitted by the Ministry of Foreign Affairs of Ukraine. Other ministries and central bodies of executive power and the Supreme Court of Ukraine, the National Bank of Ukraine, the Prosecutor General of Ukraine shall submit proposals to conclude international agreements of Ukraine and the Ministry of Foreign Affairs of Ukraine. Council of Ministers of Crimea, oblast state administrations submit proposals to conclude international agreements of Ukraine through the Ministry of Foreign Affairs of Ukraine and other central executive body authorized to issue offered to settle an international agreement (ch. 3, Art. 4). Required articles of this law fully regulate the ratification of international treaties (Art. 9) or approval (Art. 12), Ukraine's accession to international agreements or their decision (Art. 13), the entry of force (Art. 14), compliance (Article . 15) and the implementation of international agreements of Ukraine (Art. 16), the overall supervision of their implementation (Art. 17), the effect of international treaties of Ukraine on the territory of Ukraine (Art. 19), monitor the implementation of this Law and international treaties of Ukraine (Art. 28), etc. [3]. Thus, based on the analysis of the above provisions can be noted that the implementation of international norms that establish liability for violations of laws and customs of war in the criminal law of Ukraine - it is the actual implementation of Ukraine's international obligations domestically, carried out by the relevant internationally reception law national criminal law.

In general, Ukraine acceded to these international instruments governing laws and customs of war: St. Petersburg Declaration on the Prohibition of the Use in War of explosive and incendiary bullets on 29 November (11 December) 1868 Hague Convention and Declaration 1899 Hague Convention 1907 Hague Declaration of 1907

banning the throwing of projectiles and explosives from balloons Havana Convention on Maritime Neutrality of 20 February 1928, the Convention on the Prevention of the Crime of Genocide and Punishment of 9 December 1948, the Fourth Geneva Convention 12 August 1949 and the Additional Protocols thereto of 1977, the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949, the European Convention on Human Rights of 4 November 1950 Hague Convention for the Protection of Cultural Property in the event of armed conflict on May 14, 1954 and the Second Additional Protocol of 26 March 1999, the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, the Convention on the Prohibition of Military or any other hostile use of environmental impact from 18 May 1968 g., Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 10 October 1980, Protocols to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects of 10 October 1981, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction in 1997 and so on.

The Geneva Conventions of 1949 for the Protection of War Victims provides mechanism for international control of humanitarian organizations and third countries intended to impartially and effectively protect the interests of the parties participating in the conflict, promote compliance with the standards of international humanitarian law regarding persons displaced during the armed conflict under the authority of a another state. WARNING Ukrainian SSR to Article 10 of the Geneva Convention relative to the Treatment of Prisoners of War, Article 10 of the Geneva Convention for the Amelioration of the Wounded and Sick in Armies, Article 11 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, Article 10 of the Geneva Convention for the Amelioration of the Wounded, Sick and persons shipwrecked, of the armed forces at sea determined prerequisite renovation features international supervision of compliance with international humanitarian law regarding

prisoners individuals consent of the governments of the countries of which they are. Reservations to Article 12 of the Geneva Convention relative to the Treatment of Prisoners of War, Article 45 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War was supposed denial of the principle of continuity of State responsibility for the execution of prescriptions Conventions in connection with the transfer of detained persons. Reservations to Article 85 of the Geneva Convention relative to the Treatment of Prisoners of War persons convicted of committing war crimes, lost the opportunity to enjoy treaty protection, in particular, the right to address a complaint to the competent authorities in the country they vtrymuvalysya and representatives of third countries concerning fixed for them mode stay (Article 78), free visits by the Contracting Parties and international humanitarian organizations include the retention of such persons (Article 126) bans collective punishment and whatever it was torture (Article 87) and others.

It should be noted that this law aims at establishing the legal regime of detention of prisoners of war according to international standards for the protection of human and civil rights and obligations of Ukraine as a member of the Council of Europe. Also, it should be and the Rome Statute of the International Criminal Court, the idea of a permanent international criminal court has repeatedly considered in UN after the Second World War. In 1993 and 1994 the UN created two special tribunals to punish serious violations of international humanitarian law .. Since 1994, conducted negotiations on the establishment of a permanent criminal court that would have jurisdiction over serious international crimes. As a result, in 1998, as already mentioned was adopted by the Rome Statute of the International Criminal Court. Under the jurisdiction of the ICC are subject to the following crimes: war crimes, genocide, crimes against humanity, aggression. To date, 139 States have signed the Statute of peace and ratified by 92 states. Ukraine signed the Rome Statute on Jan. 20, 2000, however, Ukraine has not yet completed the process of ratification. As you know, Ukraine began the process of ratification, but it was terminated in June 2001, when the Constitutional Court ruled the conclusion that it is necessary to amend the Constitution to ratify the Rome Statute. So, for the full implementation of international

Ukraine, in order to bring it into compliance with the applicable rules of international law Ukraine, in our opinion, above all, must ratify the Rome Statute of the International Criminal Court of 17 July 1998, which was signed by Ukraine 20 January, 2000.

**Conclusions.** Thus, the presence of internal mechanism of implementation of international law, including humanitarian, allows for complete, comprehensive and timely implementation of international commitments taken by Ukraine. From the efficiency of national mechanism implementation depends largely on the image of the state, the efficiency of the legal system, the possibility of protection of human rights in armed conflicts, including warfare, both international and international character. However, the right to declare war belongs to elected representatives and therefore this right belongs to the people, that proves a direct link with global rights.

Although according to the Constitution of Ukraine "human life and health is the highest social value" and that is why the coordination of all the contradictions of international politics is a major challenge as the implementation of international humanitarian law into national law and diplomacy.

### *List of references*

1. Віденська конвенція про право договорів між державами й міжнародними організаціями або між міжнародними організаціями від 21 травня 1986 р. [Електронний ресурс] // Закон. – 2007. – Режим доступу: <http://zakon1.rada.gov.ua/>
2. Гаазька конвенція про захист культурних цінностей у випадку збройних конфліктів 1954 року [Електронний ресурс] // Закон. – 2007. – Режим доступу: <http://zakon.rada.gov.ua/>
3. Гусейнов Л. Г.-оглы. Ответственность государств за международные экологические правонарушения : дис. ... канд. юрид. наук / Л. Г.-оглы Гусейнов ; Ин-т междунар. отношений Киев. нац. ун-та им. Тараса Шевченко. – К., 1994. – 205 с.

4. Про міжнародні договори України : Закон України від 29 червня 2004 р. // Відомості Верховної Ради України. – 2004. – № 50. – Ст. 540.
5. Панов В. П. Международное уголовное право : учеб. пособие / В. П. Панов. – М. : ИНФРА-М, 1997. – 320 с.