Short Reports

STATE CO-OPERATING WITH THE INTERNATIONAL CRIMINAL COURT

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The short message opened the question about state co-operation with the International criminal court. There are numerous political, legal aspects and difficulties with state co-operating with the International criminal court.

"According to article 5 of the Statute of ICC the court jurisdiction "is limited to the most non-capital offenses causing concern of all international community". Treat them: genocide crime; crimes against humanity; war crimes; aggression crime. The last isn't covered now by ICC jurisdiction as the international agreement containing determination of this crime and determining criteria by which ICC shall be guided in case of implementation of jurisdiction concerning this crime isn't developed yet. It is known that the concept of aggression is determined at the level of the General Assembly resolution of December 14, 1974, but it concerns actions of the states, but not individuals and, therefore, isn't suitable for a situation of consideration of criminal cases in the ICC.

As for genocide crimes, already 133 states, including all permanent members of the UN Security Council, ratified the Convention on warning of a crime of genocide and punishment 1948 for it. First of all serious violations of four Geneva conventions on protection of the victims of war of August 12, 1949 belong to war crimes. By the present moment these conventions ratified all member states of the UN. The additional protocol to the Geneva conventions of 1949 concerning protection of the victims of the international armed conflicts (Protocol I) was ratified by 167 states, and the Additional protocol II – 163 states.

Any of the following acts which are made within large-scale or systematic conscious attack on any civilians belong to crimes against humanity: murder, destruction, deportation, tortures, enforced disappearance of people and so on. These acts are forbidden by the corresponding international conventions, for example, the Convention against tortures and other cruel, inhuman or degrading treatment or punishment of December 10, 1984, the International convention for protection of all persons against enforced disappearances of 2006 and others.

On the basis of all these existing conventions the State Parties undertake obligations to pursue the persons which committed the international crimes, but at the same time many of such states can't be determined with recognition of jurisdiction of ICC which is created as one of effective remedies of legal prosecution and punishment of the persons which committed the most serious international crimes. Besides he acts only when the relevant states aren't able to pursue the persons which committed such crimes on the basis of the national criminal justice system or don't do it properly [1].

If to take for an example the Convention on the prevention of a crime of genocide and punishment for it, then the states agreed that genocide irrespective of, this crime in peace is committed or wartime, is a crime which breaks rules of international law and against which state undertake to apply measures of prevention and to punish for its making. Already more than half a century from the moment of adoption of this Convention there is an unambiguous understanding that genocide where it occurred creates threat of the international security and the attitude towards him shall be intolerant. Such line item of the states should be considered first of all from line items of a new type of the international liabilities which are already acknowledged in the international legal doctrine and practice of UN International court. It is about liabilities of "erga omnes" ("between all").

The UN international court confirmed existence of distinctions between liabilities of the states concerning each other and the liabilities concerning the international community in general following from such regulations as prohibition of aggression, genocide and also from regulations about protection of fundamental human rights. Owing to the nature these liabilities "are care for all states. Taking into account value of the appropriate rights all states can be considered having legal interest in their protection" [2].

In "Responsibility clauses of the states for international and illegal acts" the special head where it is said that "the states shall cooperate lawful means to put an end to any severe violation of" liabilities of this sort" is devoted to violations of such liabilities.

"For accomplishment of the liabilities (further – the Statute of ICC) the State Parties need to determine by the Rome Statute of the International Criminal Court whether it is required to adopt special regulatory legal acts about a cooperation with the International Criminal Court (further – ICC) and whether it is worth making changes to the national legal system. At the same time various approaches of the states to cooperation with the international judicial authorities are possible.

The first approach doesn't assume acceptance of special regulatory legal acts about cooperation in this connection action of separate regulatory legal acts of the state without entering into them

of any amendments extends to certain spheres of cooperation with the international judicial authority.

The second approach is based on a regulation of the main issues of cooperation in one or several regulatory legal acts and distribution on other types of a cooperation of other regulatory legal acts without entering into them of any amendments.

The third approach assumes acceptance of one or several regulatory legal acts which are in details regulating cooperation points of order, and introduction of necessary amendments to other regulatory legal acts" [3].

References

1. Klimova E.A. Procedural aspects of activity of the International Criminal Court. – 2009. – № 4. – P. 16–19.

2. Bogush G.I., Trikoz E.N. International Criminal Court: problems, discussions. – M., 2008. – P. 45–52.

3. Bogush G.I., Trikoz E.N. International Criminal Court: problems, discussions. – M., 2008. – P. 85–99.