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International legal protection of encroachment on life of representative of foreign state

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Abstract

Through legal hermeneutics, the article analyzes the international legal regulation of the protection of a foreign diplomatic representative, therefore, special attention is paid to the regulation of diplomatic privileges and immunities. The need to use the positive experience of states on the introduction of internal security in diplomatic representations is based, this is the purpose of the article. It is important that, despite several existing international legal acts on the protection of diplomatic representations and their personnel, there is an urgent need to increase their efficiency and effectiveness, in particular for the filling of existing gaps in international diplomatic law through further codification and development of international law and, also, to take measures in accordance with this branch of law against the offending state, strengthening sanctions for violations by states of the provisions on the privileges and immunities of foreign diplomatic representations and their personnel. As a result, we consider it appropriate to take the measures provided for by legislation to effectively implement the rules of criminal law on the punishment of persons who have committed crimes against representatives of a foreign State who enjoy diplomatic immunity.

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Protección jurídica internacional de la vida del representante diplomático de un Estado extranjero

Resumen

Mediante la hermenéutica jurídica, el artículo analiza la regulación legal internacional de la protección de un representante diplomático extranjero, por lo tanto, se presta especial atención a la regulación de los privilegios e inmunidades diplomáticas. Se fundamenta la necesidad del uso de la experiencia positiva de los estados sobre la introducción de la seguridad interna en las representaciones diplomáticas, este es el propósito del artículo. Es importante que, a pesar de varios actos jurídicos internacionales existentes sobre la protección de las representaciones diplomáticas y su personal, existe una necesidad urgente de aumentar su eficiencia y eficacia, en particular, para el allanamiento de las lagunas existentes en el derecho diplomático internacional mediante una mayor codificación y desarrollo del derecho internacional y, también, tomar medidas de acuerdo con esta rama del derecho contra el estado infractor, el fortalecimiento de las sanciones por violaciones por los estados de las disposiciones sobre los privilegios e inmunidades de las representaciones diplomáticas extranjeras y su personal. Como resultado, consideramos apropiado tomar las medidas previstas por la legislación para aplicar efectivamente las normas del derecho penal sobre el castigo de las personas que hayan cometido delitos contra representantes de un estado extranjero que gocen de inmunidad diplomática.

Palabras clave: protección a un representante diplomático; derecho internacional público; ataque contra la vida; misión diplomática; relaciones internacionales.

Introduction

The processes of formation and development of the rule of law are impossible without the formation and development of effective levers of influence on socially dangerous phenomena, which entail the onset of legal consequences. One of such phenomena that the international community has been facing recently is terrorism, military, ethnic and other conflicts, the problems of counteraction of which do not lose relevance in modern conditions.

The need for a criminal law prohibition of the specified crimes is due in modern conditions not so much their prevalence as the extremely high degree of their social danger. The crime, which provides for liability for encroachment on the life of a representative of a foreign state, is defined by the article 438 of Section XX of its Special Part “Crimes against peace, security of mankind and international law and order” of the Criminal Code of Ukraine is not an exception in this list.

However, despite the close attention of the entire world community to the issue of ensuring the security of individuals and institutions enjoying international protection, encroachments continue to occur. Such encroachments are resonant and can seriously undermine international balance and security. Often such illegal actions are used to create obstacles to the development of friendly relations between states. The regions of political instability in the modern world are of particular concern in this regard.

Diplomatic representations play an important role in establishing cooperation between the states they represent and the host states. The effectiveness of their work largely depends on the conditions in which they work in the host state. One of the most important among such conditions is the safety of both the representation and its staff. The problem of their proper protection has long been underestimated due to the sporadic violations of diplomatic privileges and immunities. At the same time, the strong status and guarantees of the activity of such representations and individuals are increasingly subject to illegal influence, and insecurity on the part of the host state does not allow the diplomatic representations and its staff to fully and efficiently implement the tasks that are assigned to them.

To protect the premises of diplomatic representations and their staff, on the one hand, cooperation with the security services of the host country is deepening, and on the other hand, internal security services and other subsidiary bodies, which are not directly related to diplomatic activity and whose status is not regulated by international legal acts, are being set up at the diplomatic representations themselves (Kobylenska, 2019). Solving these and other issues that are related to improving the regulatory framework for the protection of a representative of a foreign state requires in-depth scientific analysis.

1. Materials and methods

The research methods are chosen considering the purpose and tasks that are set in the article, its object and subject. The methodological basis of the work is a comprehensive approach to the consideration of international legal protection of encroachment on the life of a representative of a

foreign state. During the study we used, first, the general provisions of materialist dialectics and the theory of knowledge; secondly, the provisions of international humanitarian law and the development of criminal law doctrine.

The application of an interdisciplinary approach allowed to form the idea of encroaching on the life of a representative of a foreign state, as a multifaceted phenomenon that has acquired various forms of manifestations in the modern conditions. The formal-dogmatic method that is based on the use of the rules of formal logic for the knowledge of law, served to analyze the provisions of criminal and international humanitarian legislation in the part of protection of the rights and legitimate interests of individuals, which have diplomatic immunity, provide for responsibility for the relevant illegal acts. The method of induction contributed to the definition of the substantive features of the concepts of “diplomatic immunity” and “diplomatic representation”. The method of system analysis has been used in the research of the provisions of international and national legislation as a kind of system, as well as to determine strategic directions of its improvement.

The comparative law method was used to research the provisions of international humanitarian law, which made it possible to formulate several suggestions regarding the further improvement of legislation of Ukraine in this area. The logical-semantic method was used to distinguish and clarify concepts and terms, to analyze the substantive meaning of certain legal categories, which are basic in this area of counteraction – extremism, representative of a foreign state, and diplomatic immunity.

2. Analysis of recent research

Some aspects of the problem of criminal-legal counteraction to the encroachment on the life of a representative of a foreign state were covered in the works of such lawyers as: M.G. Andryukhin, O.F. Bantyshev, I.P. Blyshchenko, M.V. Buromenskyi, A.D. Guliyev, R.M. Dmytrenko, Yu.M. Kolosov, A.I. Muzyka, V.M. Repetskyi, K.K. Sandrovskyi, L.G. Falayeyeva, N.I. Shapovalov, M.O. Baimuratov, T.I. Byrkovych, O.S. Konoplianyk and others. At the same time, it should be noted that in the modern science of international humanitarian law there is a certain deficit of comprehensive researches on this topic, and the problem of improving the legal regulation of ensuring the rights and legitimate interests of the representative of a foreign state remains insufficiently studied, which does not reflect the needs of today, when there is an urgent need to develop effective legal mechanisms of protection of the lives of representatives of a foreign state, adhering to the principles of functioning of the international security system and norms of international law.

All the above indicates the relevance and importance of the topic that has been chosen for research, whose purpose is to, based on the analysis of theoretical and legal principles, international experience and generalizations of international practice, research the system of international legal regulation and protection of diplomatic privileges and immunities, to determine a set of measures to improvement of the regulatory frameworks of the protection of persons under special international protection.

3. Research and results

General frameworks of international cooperation in the field of ensuring the proper functioning of the institution of representation in international legal relations.

The international community, within the framework of international organizations, aware of the danger of encroachment on persons enjoying international protection, tried to create a legal framework, which would ensure the proper functioning of the institution of representation in the international legal relations. A certain system of such a regulatory framework began to take shape after the Second World War.

Modern international law provides for special rights that the host country grants to diplomatic missions and staff of an accredited state to facilitate the performance of their functions. Such rights are called diplomatic immunities and privileges. In this case, immunity means the removal of a diplomatic mission and its staff from the jurisdiction (criminal, civil, administrative) and coercive action from the side of the host state, and the privileges mean the special advantages of international law and benefits, which have been provided to representations and their staff in comparison to nationals of the host state (Baimuratov, 2001).

Diplomatic privileges and immunities are an important institution of foreign relations law, which is regulated and protected by a significant number of international documents. The most important of these are the Vienna Protocol of 1815 (Vienna rules) on the classes of diplomatic representatives, the Aachen Protocol of 1818, the Havana Convention on consular officials of 1928, Convention on the privileges and immunities of the United Nations, 1946, Convention on the privileges and immunities of the specialized agencies of the United Nations, 1947, Vienna Convention on diplomatic relations 1961, Vienna Convention on consular relations 1963, Vienna Convention on special missions, 1969, Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents, 1973, Vienna Convention on special missions, 1969, Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents,

1973, Vienna Convention on the representation of states in their relations with international organizations of a universal nature, 1975.

Certain aspects of the legal status of diplomatic representations and their staff are governed by customary norms, as well as bilateral agreements, the signing of which is provided for in paragraph b of the art. 47 of the Vienna Convention of 1961. This paragraph allows states to both limit and expand diplomatic privileges and immunities in their relations based on the principle of reciprocity (Verkhovna Rada of Ukraine, 1961).

The specified international regulations establish the general principles of international cooperation in the field of preventing and combating encroachment on the life of a representative of a foreign state, as well as impose the obligation to promote public awareness of the existence, cause, seriousness of the specified crimes, the threat, which they pose. The significance of these international legal acts in the system of sources that regulate legal relations that are related to ensuring the security of the diplomatic mission and its staff should be assessed in the light of the article 9 of the Constitution of Ukraine, according to which international agreements, consent to be bound of which has been provided by the Verkhovna Rada of Ukraine, is part of the national legislation of Ukraine.

Article 19 of the Law of Ukraine “On international treaties of Ukraine” states that international treaties are applied in the manner that is prescribed by national law. In addition, if an international treaty of Ukraine establishes other rules than those that provided for in the relevant act of the legislation of Ukraine, the norms of the international treaty are applied. Therefore, acts of anti-terrorist legislation of Ukraine should not contradict the above-mentioned international agreements, and in case of such contradictions, priorities should be given to the provisions of international agreements.

4. Analysis of international legal documents governing legal relations in the field of prevention and counteraction to encroachment on the life of a representative of a foreign state

We consider it appropriate to begin the scientific review of the relevant international instruments with the Convention on the privileges and immunities of the United Nations of 13 February 1946, which determined the special status of United Nations (hereinafter – UN) officials, and which stated that:

Since article 104 of the Charter of the United Nations provides that the Organization enjoys in the territory of each of its members such legal capacity as may be necessary for the performance of its functions and the achievement of its objectives, as well as whereas the article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its members

such privileges and immunities, which are necessary for the achievement of its goals, and that representatives of UN members and its officials also enjoy such privileges and immunities, which are necessary to independently perform their functions that are related to the activities of the Organization (Bondar *et al.*, 2010: 168).

Section 18 of the article V, “Officials” of the present Convention, states that “United Nations officials: a) are not liable for what they have said or written and for all the acts that they have committed as officials; b) are exempted from taxation on salaries and emoluments that are paid to them by the United Nations; c) are released from public service duties; d) are exempted from immigration restrictions and registration of aliens together with their dependent wives and relatives; e) enjoy the same currency exchange privileges as are accorded to officials of the appropriate rank who are members of diplomatic missions that are accredited to the appropriate government; f) enjoy the same repatriation benefits that are enjoyed by diplomats during international crises, with their wives and relatives, who dependent on them; g) have the right to import duty-free their furniture and property during their initial occupation in the relevant country”.

In this case, privileges and immunities are granted to officials in the interests of the United Nations and not for their personal benefit. The Secretary-General shall have the right and the obligation to abandon the immunity that have been accorded to any official, in cases when, in his view, immunity impedes the administration of justice, and it may be abandoned without prejudice to the interests of the United Nations. About the Secretary-General, the right to abandon immunity rests with the Security Council (section 20 of Article V of the Convention) (Verkhovna Rada of Ukraine, 1946).

As a continuation of the specified Convention, on November 21, 1947, the United Nations adopted the Convention on the privileges and immunities of the specialized agencies, to which the Convention referred: International Labor Organization; Food and Agriculture UN; UN on issues of education, science and culture; International civil aviation organization; International Monetary Fund; International Bank for Reconstruction and Development; World Health Organization; Universal Postal Union; The International Telecommunication Union and other agencies that are liaised with the United Nations in accordance with the articles 57 and 63 of the United Nations Charter. The officials of these specialized agencies enjoyed the same privileges and immunities as the officials of the United Nations, however, a separate article VII stipulated cases of abuse of privileges by these officials and measures to respond to such abuses (Yemeljanov *et al.*, 2017; Verkhovna Rada of Ukraine, 1946).

The adoption of the Vienna Convention on Diplomatic Relations of April 18 (1961), made a significant contribution to the improvement of the legislation on diplomatic representation, according to the provisions of which there are two categories of diplomatic immunities and privileges. The first category determines the scope of immunities and privileges, which apply mainly to the premises of diplomatic representations, the second category determines their heads and staff, i.e., personal immunities and privileges.

There are some differences in the legal status, privileges, and immunities of the permanent missions of states to international organizations and diplomatic missions at the level of embassies and missions that are accredited in other states. However, in any case, the object of the violation is the generally recognized in international communication privileges and immunities of these representations and their staff, which are protected by both international law and domestic law of states.

The most important of these are: the inviolability of diplomatic missions and diplomatic staff; inviolability of archives, correspondence; immunity from jurisdiction and possible criminal prosecution of a diplomat; exemption from certain types of taxes; benefits during customs and border control, etc.

In addition, this Convention sets out the basic terms relating to diplomatic representation it defines such officials of the diplomatic corps as the “head of the representation”, “staff of the representation”, “members of the staff of the representation”, “members of the diplomatic staff”, “diplomatic agent”, etc. (article 1 of the Vienna Convention on diplomatic relations).

The Vienna Convention on diplomatic relations defines the functions of a diplomatic representation, which include: in the representation of the accrediting state in the host state; in the protection in the host state of the interests of the accrediting state and its citizens within that are permitted by international law; in negotiations with the government of the host state; in clarifying by all legal means the conditions and events in the host state and notifying them to the government of the accrediting state; in the promotion of friendly relations between the accrediting state and the host state and in the development of their relations in the field of economy, culture and science (part 1 of the article 3 of the Convention on diplomatic relations). Thus, in the part 2 of article 3 of the Convention states that “none of the provisions of this Convention shall be construed as impeding the performance of consular functions by a diplomatic representation”.

In view of the theme of the research, the provisions of the article 29 of the Vienna Convention on diplomatic relations, in which it is proclaimed that “the person of a diplomatic agent is inviolable. He shall not be liable

to arrest or detention in any form. The host state should treat him with due respect and take all necessary measures to prevent any encroachments on his person, will or dignity”. Similarly, according to the article 30 of the Vienna Convention on diplomatic relations: “The private residence of a diplomatic agent uses the same inviolability and protection as the premises of the representation” (Verkhovna Rada of Ukraine, 1946).

The Vienna Convention on consular relations of 24 April 1963 defines such terms as “consular official”, “consular officer”, “consular staff” (article 1 of the Convention on consular relations). In addition, the Convention on consular relations also provided for a wide range of consular functions, the main of which is the protection in the host state of the interests of the accrediting state and its citizens (individuals and legal entities) within the limits permitted by international law (article 5 of the Convention on consular relations).

The article 41 of the Vienna Convention on consular relations defines the guarantees of personal inviolability of consular officials, according to which “consular officials are not subject to arrest or pre-trial detention, other than based on decisions of the competent judicial authority in the case of committing serious crimes. Except as provided in paragraph 1 of this article, consular officers may not be detained or subject to any other forms of restriction of personal liberty, except for the execution of judgments which have entered into force”. In addition, the article 31 of the Vienna Convention on consular relations provides guarantees of the inviolability of consular posts (Verkhovna Rada of Ukraine, 1963).

The next important step in the systematization of legislation on international representation was the Convention on special missions of December 8, 1969, which defines the special regime of such special state missions. The specified Convention defines such important concepts as “special mission”, “permanent diplomatic representation”, “head of a special mission”, “representative of the addressing state in a special mission”, “members of a special mission”, “members of the staff of a special mission”, “members of a diplomatic personnel” (the article 1 of the Convention on special missions).

Guarantees of the inviolability of a person who is a member of a special mission that is provided for in the article 29 of the Convention on special missions, where it is stated that “the identity of the representatives of the sending state in the special mission, as well as the identity of members of the diplomatic staff of the mission is inviolable. They shall not be liable to arrest or detention in any form” (Verkhovna Rada of Ukraine, 1969).

A special place in a number of these acts is occupied by the “Convention for the prevention and punishment of crimes against persons under international protection, including diplomatic agents”, December 14, 1973,

which was approved by UN General Assembly Resolution 3166 (XXVIII) and created a basis for liability for crimes that are aimed against foreign representations and their staff. The significance of this document lies primarily in the fact that the article 1 of this Convention outlines in general terms the concept of “person, who is enjoying the international protection”, thus determining the range of potential victims.

Such a person is defined by the 1973 UN Convention: “a) the head of state, including any member of a collegial body acting as head of state in accordance with the constitution of the state concerned, the head of government or the foreign minister who is in a foreign country, as well as accompanying members of his family; b) any representative or official of the state, or any official or other agent of an intergovernmental international organization, when a crime has been committed against him, his official premises, his dwelling or his vehicles, has the right under international law to special protection against any attack on his person, liberty and dignity, as well as members of his family, who are living with him”.

The paragraph 1 of the article 2 of the 1973 UN Convention contains the general elements of a crime against a person enjoying international protection: “The deliberate commitment: a) the killing, abduction or other assault on the person or liberty of a person enjoying international protection; b) a violent attack on the official premises, accommodation or vehicles of a person enjoying international protection which may endanger the person or liberty of the latter; c) the threat of any attack; d) attempt of any attack; e) the acts, as an accomplice to any such attack, are regarded as an offence under its domestic law by each state party.”

The provision of the paragraph 2 of article 2 of the 1973 UN Convention, which establishes that “Each state party provides for appropriate penalties for such crimes, taking into account their grave nature”, has also the fundamental importance. In this way, the world community demands that states be held accountable for the above actions (Verkhovna Rada of Ukraine, 1973).

In our view, the provisions of the article 2 of the 1973 UN Convention cover various but interrelated issues: first, the definition of the sphere of the actions of the Convention by establishing the crimes to which it applies; secondly, the determination of the competence of the state’s parties regarding the criminal prosecution and punishment for such encroachments.

An indisputable positive moment is that in 1973, the legal components of such crimes were determined in paragraph 1 of the art. 2 of the Convention on the prevention and punishment of crimes against persons, who enjoy international protection, including diplomatic agents. These include: killings, abductions or other attacks against a person or the freedom of a person enjoying international protection; forcible attack on the official

premises, accommodation or vehicles of a person enjoying international protection, which may endanger a person or his freedom; threats of any such attack; attempts at any such attack; acting as an accomplice to any such attack.

This article also defines that the subjective side of the crime is characterized only by direct intent. In this connection, it should be recalled that the provision "... regardless of the motive" has been included to the draft of the Convention by the UN Commission on International Law, however, these words have been removed from the final version, which in some cases may allow the subject of the crime to avoid liability for failure to prove the existence of the *corpus delicti*, its subjective features.

It is important to bear in mind that the signing of the 1973 Convention obliges states parties to include in criminal codes uniformly worded articles with similar sanctions, which, of course, ensures the coordination of the activity of states in the fight against these crimes, which must at the same time be considered as a crime by each state party in accordance with its domestic law.

Finally, non-participation in the 1961 Convention and the 1973 Convention does not exempt a State from the compliance with proper conduct regarding foreign diplomats, at least in the light of norms of customary international law. After all, such actions, violating the norms of diplomatic law have been recognized in international communication, contradict the basic principles of modern international law in general (Verkhovna Rada of Ukraine, 1975; Verkhovna Rada of Ukraine, 1973).

At the same time, despite the important role in the mechanism of ensuring the safety of persons, which have diplomatic immunity, the content of the 1973 UN Convention should highlight several shortcomings, which are rightly noted in the special literature. Thus, for example, scientists have noted that in the general crime, which is provided for in paragraph 1 of the article 2 of the 1973 UN Convention, there is no indication of the organization of a violent attack on the victim. In addition, the said international act does not contain a direct reference to the non-application of the limitation period, which can significantly reduce the effectiveness of criminal counteraction to such crimes (Blishchenko, 1990).

Unfortunately, the UN Convention of 1973 does not require member states to criminalize at the level of national law such acts as desecration of the official symbols of a foreign state or international organization, as well as the insult of a person, who enjoy international protection. At the same time, the insulting actions against these symbols and the victims undoubtedly harm the interests of international communication and cooperation. In this regard, we share the position of N.V. Akulova, to improvement of the criminal law protection of international representative activity, issues of

responsibility for desecration of the official symbols of foreign states and international organizations, as well as for encroaching on the honor and dignity of foreign representatives, are relevant and require the independent research (Wood, 1974).

It is ambiguous in scientific circles that the text of the 1973 UN Convention does not indicate the relationship between the encroachment and the activity of the victim, with his official status. After all, in the process of adopting the UN Convention of 1973, the representatives of individual states defended the position about recognition to be insufficient of establishment of the fact of the perpetrator's awareness of the special international legal status of the victim, suggesting extending the Convention action only to cases where there is at least some relationship between the motive for the crime and the status of the victim.

Opponents of this approach rightly noted possible problems in the process of proving the motive, as well as the fact that this will reduce the effectiveness of the analyzed international document. As a result, it is possible to consider as a convective one almost any crime against a person, who enjoys international protection, which, according to many scholars, considers to be unacceptable (Sukharev, 2003).

It should be emphasized that the specified encroachment may cause significant damage not only to the international but also to the domestic national interests of the participating states. The specified international conventions oblige states to guarantee special privileges to persons and institutions, which enjoy international protection, as well as to ensure their security. If the state, having accepted the relevant obligations, does not care about their implementation, any of the specified encroachments undermines the authority of its government and deals a serious blow to the international prestige of the state.

A significant step in defining beneficiaries of international protection has been taken in the Vienna Convention on the representation of states in their relations with international organizations of a universal nature, that was adopted by the UN on March 14, 1975. The term "international organization of a universal character" includes "the United Nations, its specialized agencies, the International Atomic Energy Agency and any similar organization whose membership and responsibility has wide international nature" in the preamble to this Convention. This means that, if desired, any regional or subregional organization in its relations with member states may, with their consent, apply the provisions of the 1975 UN Convention.

The 1975 UN Convention treats the institution of permanent representation as "a mission of a permanent nature, which is sent to represent it in this organization." Thus, as well as embassies, permanent

representations to international organizations are part of the system of foreign bodies of foreign relations and are part of the diplomatic service of the state. After all, they have such a fundamental feature as a representative character in their foreign activity.

In accordance with the article 28 of the Convention, the person of the head of the representation and members of the diplomatic staff of the representation are inviolable. They shall not be liable to arrest or detention in any form. The host state should treat them with due respect and take all necessary measures to prevent any encroachments on their person, will or dignity, as well as prosecute and punish those who have committed such encroachments (Verkhovna Rada of Ukraine, 1975).

Due to the growing number of casualties and injuries as a result of deliberate attacks on UN personnel and related personnel, considering that attacks or other encroachments on personnel, who acts on behalf of the United Nations cannot be justified and are unacceptable, no matter who commits them, as well as that UN operations are conducted in the general interest of the international community, the Convention on the protection of United Nations personnel and related personnel was adopted on December 9, 1994.

The main grounds for the adoption of this Convention became: an increase in the number of victims and injuries as a result of deliberate attacks on UN personnel and related personnel; the impossibility of justifying and not accepting attacks or other encroachments on personnel acting on behalf of the UN, by whomever they were carried out; significant contribution of UN personnel and related personnel to the spheres of preventive diplomacy, peacekeeping and humanitarian and other operations; existing arrangements in the field of providing security of UN personnel and related personnel, including steps that were taken in this direction by major UN bodies; insufficiency of existing measures regarding the protection of UN and related personnel; the need to provide comprehensive support to facilitate the conduction and implementation of the mandate of UN operations; the need to immediate take appropriate and effective measures to prevent attacks on UN and related personnel and to punish those who have carried out such attacks (Aldanov *et al.*, 2003).

In the context of the 1994 UN Convention, UN personnel include: 1) persons, who are recruited or sent by the Secretary-General of the United Nations as members of the military, police, or civilian components of a UN operation; 2) other officials and experts, who are seconded by the United Nations or its specialized agencies, or by the International Atomic Energy Agency, who are present in official status in the area of the UN operation. "Personnel related with it" means persons: 1) sent by a government or intergovernmental organization with the consent of the competent UN body; 2) involved by the Secretary-General of the United Nations or a specialized

institution or the International Atomic Energy Agency; 3) persons, who are sent by a humanitarian non-governmental organization or humanitarian institution in accordance with an agreement with the UN Secretary-General or with a specialized institution or the International Atomic Energy Agency to carry out activity in support of the implementation of the mandate of a UN operation.

The 1994 UN Convention defines such crimes against UN personnel and related personnel as intentional implementation: “a) the killing, abduction or other assault that is directed against a person or the liberty of any United Nations and related personnel; b) a violent attack on the offices, accommodation or vehicles of any United Nations and related personnel which may endanger the person or liberty of such personnel; c) the threats of any such attack with a view to compelling a natural or legal person to commit or refrain from taking any action; d) the attempts of any such attack; and e) the acts, which constitute as complicity in, or attempt to commit, such an attack, or the organization or issuance of an order to commit such an attack, are criminalized by each state party in accordance with its national legislation” (part 1 of the article 9 of the 1994 UN Convention).

The state party in whose territory the crimes have been committed, which are provided in the article 9 of the Convention on the protection of United Nations and related personnel, in accordance with the conditions that are laid down in its national law, in case if it has reason to believe that the “estimated” perpetrator has left its territory, informs the Secretary-General of the United Nations and directly or through the Secretary-General to the state or states concerned of all facts that are related to the committed crime, as well as provides all available information regarding the identity of the “estimated” perpetrator.

Each state party that has information about the victims and the circumstances of the commitment of crime, works to provide it in full and without delay, in the conditions, which are provided for in its national legislation, to the Secretary-General of the United Nations and the concerned state or states. The state party in whose territory the “estimated” perpetrator is located, if it does not extradite him, refers the case without exception and without undue delay to its competent authorities for the purpose of prosecuting in accordance with procedures, that have been established by the legislation of that state (the article 14 of the UN Convention on the protection of personnel) (Verkhovna Rada of Ukraine, 1994; Kalganova, 2009).

In summary, we note that in modern conditions, the provisions of the Convention on the prevention and punishment of crimes against persons, who enjoy international protection, as well as other international legal acts, are essential for the international community in view of maintaining friendly relations between state entities. However, the issue of improving the

effectiveness of combating encroachments on the lives of persons, who have diplomatic privileges and immunities, for which we see the need for more decisive and concerted action by the international community, through mutual interstate legal assistance in connection with criminal proceedings that have been committed in respect of crimes that are provided by the Convention.

Prospects of improving the fight against encroachments on the lives of persons with diplomatic privileges and immunities at the national level. In general, attacks by individuals or groups on diplomatic representations and acts of violence regarding their staff, whatever their motives, are common crimes within the sphere of the action of national criminal jurisdiction. However, such acts usually pose a threat not only to the cooperation of states, but also to the international legal order, peace, security of humankind, i.e., they acquire the character of a crime of international significance.

They are called crimes of an international nature, which should be understood as the actions of an individual who encroaches on the rights and interests of two or more states, international organizations, individuals, and legal entities in the modern international practice (Baimutarov, 2001).

Against the background of the adopted international legal acts, to which Ukraine became a party, and in connection with the proclamation of Ukraine as an independent democratic state and for the purpose of legal protection of its sovereignty, constitutional order, internal and external security by the Law of Ukraine of June 17, 1992, the article, which provided for criminal liability for a terrorist act against a representative of a foreign state in order to provoke war or international complications, was changed to article, which established liability for encroachment on the life of a representative of a foreign state that committed in order to cause international complications.

The Criminal Code of Ukraine that was adopted by the Verkhovna Rada of Ukraine on April 5, 2001, which replaced the Criminal Code of Ukraine of 1960, provided for the liability for encroachment on the life of a representative of a foreign state by the article 443, which, along with the articles 437 “Planning, preparing, unleashing and waging an aggressive war”, 444 “Crimes against persons and institutions with international protection”, 445 “Illegal use of the symbols of the Red Cross, Red Crescent, Red Crystal” is included in Chapter XX of the Special Part of the Criminal Code of Ukraine “Crimes against peace, security of humankind and international law and order” (Verkhovna Rada of Ukraine, 2001).

Speaking about the object of crimes of Chapter XX of the Special Part of the Criminal Code of Ukraine, it should be noted that first time the UN Commission on International Law distinguished between ordinary international illegal actions (“public torts”) and extremely serious violations of international law “international crimes” in the middle of the last century.

Since the early 1990s, the formation of such a branch of international and national law as international substantive criminal law has begun. Namely, serious international crimes have become the main subject of its regulation: crimes against peace, crimes against humanity and military crimes. It is accepted to call international criminal law in such a narrow sense universal in the science (Zelinskaya, 2003; Abashidze *et al.*, 2016).

As a generic object of crimes under the articles 443-446 of the Criminal Code of Ukraine, we suggest considering the system and order of public relations that are protected by international law, which ensure the peaceful coexistence of states, compliance with the rules of international communication, conduct and resolution of armed conflicts, as well as international guarantees of security of national, ethnic, racial, religious groups, and humanity. The specific object for the specified crimes should be considered the international legal order as a state of international legal relations, which ensures the sustainable development of peaceful coexistence of states and peoples, productive interstate and interethnic cooperation that is based on the principles and norms of international law.

The above allows us to formulate the main tasks of international institutions that ensure international order: maintaining peace and stability in the world, raising the socio-economic standards of living of all humankind, humanizing the activity of international and national powerful institutions, protecting the subjects of international law from unlawful encroachments.

Persons, who have committed any acts of seizure of diplomatic representations or consular institutions and violence against persons, who are under special protection of international law should be prosecuted, regardless of the motives for committing the crime and the reasons to which they refer.

Some adjustment is required to determine which officials may be victims of the crime, which is provided by the article 443 of the Criminal Code of Ukraine, the disposition of which defines two categories of such persons: a representative of a foreign state or another person, who have international protection. A representative of a foreign state in the person of heads of foreign states, heads of parliament and government delegations, persons, who are included in parliamentary and governmental delegations of foreign states as their members, and who are in the territory of the third party to participate in interstate negotiations, international conferences and meetings or with other official assignments, heads of diplomatic representations, heads of consular institutions are also persons who are under special international protection in the performance of their duties.

Therefore, in the right opinion N.V. Akulova, the above categories of victims of crime, which is provided by the article 443 of the Criminal Code

of Ukraine, may be combined into one “persons, who have international protection”, as it has been done in the article 444 of the Criminal Code of Ukraine: “Crimes against persons and institutions, who have international protection” (Akulova, 2018: 34).

Also, in accordance with the Convention on the prevention and punishment of crimes against internationally protected persons, including 1973 diplomatic agents, members of the families of the head of state, the head of government, the minister of foreign affairs who are in a foreign state and accompanying them are under special international protection. In view of this, it seems logical to extend the specified provision to relatives and family members of all authorized persons who have special international protection (both representatives of foreign states and international organizations).

It is a question of inclusion in a circle of victim’s nearest and traditional “close relatives”. We believe that the list of close relatives that is defined by the Criminal Procedure Code of Ukraine can be applied in the theory and practice of international legal relations, which are related to the protection of persons, who have special international protection.

Conclusions

Summing up, we note that the international community within international organizations, aware of the danger of encroachments on persons, who enjoy international protection, created a legal framework to ensure the proper functioning of the institution of representation in international legal relations. A certain system of such a regulatory framework began to take shape in the second half of the XX century. They are the Convention on the privileges and immunities of the United Nations of 13 February 1946, the Vienna Convention on Diplomatic Relations of April 18, 1961, the Vienna Convention on consular relations of 24 April 1963, and the Convention on special missions of December 8, 1969.

It is difficult to overestimate the importance of the listed international legal acts of the Convention on the prevention and punishment of crimes against persons, who enjoy international protection, including diplomatic agents, of 14 December 1973, which created the basis for liability for crimes regarding the foreign representations and their staff. An important step in defining beneficiaries of international protection has been taken in the Vienna Convention on the representation of states in their relations with international organizations of a universal nature, which was adopted by the UN on March 14, 1975. In addition, the Convention for the protection of United Nations and associated personnel was adopted on 9 December 1994, which defined a list of specific actions that were understood as crimes against UN personnel and related personnel.

The Criminal Code of Ukraine, adopted by the Verkhovna Rada of Ukraine on April 5, 2001, stipulates the article 443 liability for encroachment on a life of representative of foreign state in the Section XX of the Special Part of the Criminal Code of Ukraine “Crimes against peace, security of humankind and international law”.

The current dynamic development of international relations convincingly states that the existence of international legal norms in the field of diplomatic immunities and privileges is currently insufficient. Of particular importance is the need to improve the international legal framework in the part of using the positive experience of the practice of states for the introduction of diplomatic representations of internal security.

Despite a number of available international legal acts about the protection of diplomatic representations and their staff, we see an urgent need to increase their efficiency and effectiveness, in particular regarding addressing the available gaps in international diplomatic law through the further codification and progressive development of norms relating to international law; taking measures that are provided by this branch of law regarding the offending state, strengthening sanctions for violations by states of the provisions concerning the privileges and immunities of foreign diplomatic representations and their staff; taking measures that are provided for by national law regarding the effective application of the rules of criminal law relating to the punishment of persons, who have committed crimes against representatives of a foreign state, who enjoy diplomatic immunity.

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