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## International legal regulation of liability for corruption offences

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## Abstract

**Relevance.** Among the currently critical challenges that have long-term implications, the problem of combating corruption remains particularly important. Corruption is ceaselessly acquiring new properties and qualities, penetrating into all spheres of life and causing damage to states. The close interrelation of corruption and organised crime is also extremely dangerous. Entering into symbiosis, these phenomena complement each other, which considerably increases the stability and debugging of the mechanism of their activity. This problem has not escaped the attention of the world community, as evidenced by the numerous discussions at international forums. As a result, international standards for the definition of this term were adopted, as well as the mechanisms for combating corruption. However, in numerous cases, the fight against corruption is carried out at the local as well as the national level since the integration of states in the international arena is very slow. In some cases, the lack of unification of legislation on liability for corruption also plays its part, becoming another serious obstacle.

**Purpose.** The purpose of this study is to analyse the available international standards and methods of international cooperation in the fight against corruption, to subsequently formulate practical recommendations for the implementation of numerous provisions in the national legislation of a particular state.

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**Methodology.** This study employed general scientific methods, as well as several special methods, which include methods of deduction and induction, event analysis, and content analysis. The research materials have been supplemented by historical analysis and a systematic approach.

**Results/Conclusions.** The study analysed the types of international cooperation in the field of combating corruption, including organisational and procedural, also in the form of cooperation on the prevention and scientific cooperation of representatives of all Member States.

**Keywords:** world community; United Nations; cooperation standards; legislation; government institutions.

## **Introduction**

At present, international cooperation in the fight against the threats that are a consequence of the commission of corruption offences can be conditionally divided into several areas. First, the struggle is waged through the participation of transnational players, which include many international organisations, for example, the United Nations (UN), and a mechanism for cooperation in this area between individual states has also been established. Notably, the solution to the problem of corruption through the efforts of individual states, including those in which corruption is currently a means of exercising power, given the lack of reliance on the support of society, is not possible [1]. In many countries, corruption offences, unfortunately, have become a systemic phenomenon and have infiltrated the state mechanism, mass consciousness, and culture, and many issues of public life are resolved precisely through corruption. The phenomenon considered within the framework of this study has transformed not so much into a source of illegal enrichment, but into a generator of destructive processes in numerous spheres of public life, including mass consciousness, as well as historically established state institutions. The fight against corruption is a matter not only of the state and society in general, but also of each individual civil servant and citizen [2].

This study uses a fairly extensive source of materials directly related to corruption offences as a theoretical foundation. First, these include international regulations, such as the UN General Assembly Resolutions adopted over the past three decades (since the mid-1990s), which directly raised both the subject of corruption and the problem of developing and implementing measures aimed at counteracting corruption offences by the world community [3]. In addition, there is a broad reliance in this study, both on the studies of Russian and American researchers. However, some researchers, whose publications directly form the basis of this paper, have only focused on the analysis of certain aspects of the problem under consideration. Therewith, previous studies did not provide a more holistic picture that would describe the phenomenon of corruption, on the one hand, in the context of combating it at the international level, on the other hand, in the context of further prospects for combating this phenomenon at the international level. Within the framework of this study, pursuing the formation of a more holistic view of the methods and practices of combating corruption internationally, the main emphasis is placed on the historical analysis of modern ideas about corruption offences, on the consideration of the available international legal framework for combating corruption offences, as well as on the proposal of particular measures arising from world practice, aimed at mitigating corruption in a particular state. Particular emphasis is placed on the

analysis of the phenomenon of corruption offences in the context of the regional characteristics of individual regions. In particular, cases of partial legalisation, as well as decriminalisation of corruption are considered to introduce it into the legal field of the state and, as a consequence, establish more careful control over these processes. Furthermore, the study considers the corruption mechanisms currently functioning in individual countries, which are directly related to the mechanisms for the implementation of powers. In several developing countries, due to their economic indicators (in particular, this refers to the states of Africa and South America) [4], corruption, as a kind of social consensus, exists, *de facto*, as an economic mechanism that replaces legal and lawful mechanisms [5] of the economic sphere (for example, when doing business) [6; 7]. Such cases will be considered within the framework of this study.

## **Materials and Methods**

In the process of considering the current system of political and legal counteraction to corruption crimes on the part of the world community, the study employed numerous general scientific and special research methods. As a result of using a set of methods, the study identified the key stages in the development of an up-to-date regulatory framework, based on which states create mechanisms incorporated in national legal systems aimed at both preventing and combating corruption crimes. In addition, lines of effort were formed aimed at reducing the crime situation in states in the field of corruption offences and recommended for implementation in national legal systems. Thus, for example, the deduction method allowed compiling a description of the mechanisms existing in several states for merging corruption mechanisms with public authorities, including cases when legal methods of doing business are replaced (due to inefficiency and disadvantage) by illegal methods which are not opposed because of the weakness of state power. The use of the induction method allowed generalising the available array of information to describe the key features of the anti-corruption policy developed by the world community, as well as concluding on the degree of influence of both global and regional processes on counteracting the types of offences considered in this study. Historical research methods allowed identifying the key prerequisites and stages in the development of a modern understanding of the world community regarding these offences, and recreating a chronologically determined picture of the development of a legal framework for combating corruption. In addition, this study used such research methods as content analysis and event analysis. Thus, for example, the use of content analysis allowed outlining the essential conclusions concerning the future prospects of

combating corruption at the global level, with the basis provided by the systematisation of extensive material. The event analysis helped identify numerous elements of the political processes, which include the historically determined features of the implemented policy of the world community in the sphere considered in the study.

The generalisation of the methodology used in this study allowed creating a holistic picture, which, firstly, states the most relevant (at the beginning of the 2020s) state of the world anti-corruption practice, and secondly, allows drawing conclusions about the most effective methods of combating corruption on the international level. The research was performed in three stages. At the first stage, guided by both scientific literature and the provisions of international law and international legislation, the concept of corruption, its specific features, as well as its main features were formulated. At the second stage, using content and event analysis, a descriptive characteristic of the current activities of universal and regional mechanisms to combat corruption is created. In addition, international documents in the field of combating corruption are analysed, and the main types of international cooperation are reviewed, considering current and available international treaties. The third stage characterises the current norms of international standards of the world international legal framework, which is aimed at combating corruption offences. In addition, there is a place for the development of specific measures that, if implemented in national legal institutions, can help reduce the crime situation in the area under consideration.

## Results and Discussion

In many states, corruption poses a threat to both established state institutions and democratic procedures, as well as economic development. It arises as a result of the process of exercising power and the exchange of material values between the subjects. For example, in a situation where a capable person takes (or does not take) certain actions due to various shortcomings in the functioning of state institutions, current national policy, as well as public institutions whose activities are aimed at controlling and limiting corruption processes. In the modern world, the fight against corruption seems to be critical, which is quite sensibly assessed by all countries and is expressed in their concern about this social phenomenon [8]. Corruption acts as a springboard for uncontrolled criminal activity, which, in turn, undermines social stability and creates a “shadow” sector of the economy and interferes with the sound functioning of state institutions. As a consequence, this entails threats to a number of essential social institutions, to which the state belongs, thereby contributing to the emergence of discord, anarchy, as well as widespread violations of human rights [9-11]. The legal definition of corruption has been known since ancient times, although it could differ from modern definitions. For example, in Roman law, the term “*corrumpere*” meant any illegal action that was taken against a judge. In a later period, namely the Renaissance, such a phenomenon as corruption also attracted attention, which was recorded in the works of political philosophers and thinkers of that time. For example, Niccolò Machiavelli [12] perceived corruption as the use of public opportunities (which a person is endowed with by virtue of their occupation of a particular position)

in their personal interests. In his work “The Prince,” he noted: “There is one sure-fire way to find out what an assistant is worth. If he cares more about himself than about the prince, and in every matter seeks his benefit, he will never be a good servant to the prince, and the latter will never be able to rely on him”. Currently, the world community has already duly assessed the adverse consequences (for example, undermining trust in the authorities, causing significant harm to individuals in particular and to society in general, increasing the activity of organised crime, reducing the professional level of employees, as well as the level of legal awareness and, consequentially, legal nihilism), which corruption brings to society [13-15]. While targeted anti-corruption measures taken by individual countries can produce short-term results, all countries must act as a whole and coordinate their actions to achieve considerable positive results [16; 17].

Thus, the preamble to the United Nations Convention against Corruption (adopted by the UN General Assembly at the 51st plenary meeting on October 31, 2003) [18] notes that “corruption is no longer a local problem, but has become a transnational phenomenon affecting society and the economy of all countries, which makes international cooperation of the utmost importance in the field of preventing and combating corruption...”. In the international legal sense, corruption is the abuse of entrusted power for personal gain. While the concept of corruption has long been established internationally, there is still no single definition of this phenomenon in the national legislation of some states. Nevertheless, the legislative consolidation of the concept of corruption is not a guarantee of success in the fight against it. Thus, for example, in the legislation of Denmark and Finland there is no provision that would be consolidating in the definition of corruption. Many states have established a legal definition of corruption. Thus, for example, the Federal Law of the Russian Federation No. 273-FZ “On Combating Corruption” [19] established that corruption constitutes “an abuse of office, giving a bribe, accepting a bribe, abuse of authority, commercial bribery or other illegal use of official position by an individual contrary to the legitimate interests of society and the state to obtain benefits in the form of money, valuables, other property or services of a property nature, other property rights for oneself or for third parties, or illegal provision of such benefits to the specified person by other individuals; as well as the commission of these acts on behalf or in the interests of a legal entity”.

It cannot be said that corruption is always illegal, as it can exist within the legal framework. Thus, at present, corruption includes not only bribery and embezzlement, but also other varieties that are legal in many countries. For example, the term “lobbying”, which exists in the United States of America, comprises sponsoring politicians, public organisations, and the press to perform actions beneficial to a particular circle of people. According to the definition given in the article “Lobbying: Basic Approaches to Understanding” by A. Suchkova, a graduate student of Tula State University [20], lobbying should be interpreted as the activity of a system of professional organisations (lobbyist firms), as the activity of social groups that defend their special interests, or as a system of

representation of the interests of society in government bodies, as well as a mechanism for interaction between society and the state within the framework of the democratic process. Therewith, the legislative framework for this activity is the first amendment to the US Constitution, which stipulates the right to freedom of speech and the ability to appeal to Congress. In summary, corruption is a criminal (except for several precedents discussed above) act that violates both legislatively established and moral and ethical standards by a person who, by virtue of their occupation of a certain position, have been entrusted with certain rights to represent the authorities to a certain extent, and aimed at obtaining personal gain. Having considered the various definitions, the attributes of corruption should be pointed out as follows:

1. Corruption is a social phenomenon.
2. Has a destructive quality relating to historically established social institutions.
3. May be illegal or partially legal.
4. Interferes with the normal functioning of the authorities.
5. The purpose is to obtain benefits by a private (natural) or legal entity.
6. Causes violations of human rights (or is itself the result of a violation of human rights).

Notably, corruption is a complex social phenomenon that manifests itself in the actions or inaction of people in a certain situation to obtain benefits, which leads to violations of human rights [21]. Furthermore, it is necessary to note the existing regional specifics in case of corruption violations [22]. In certain cases, corruption is rather positive or is an “inevitable” violation of the law. Thus, for example, in some African states the prices for products, which are set by the country's leadership, are much lower than the global ones. In this case, the peasants sell their crops at discounted prices to regional bodies, trade councils, which resell the produce at market prices. This is accompanied by bribes (from the peasantry) to local officials to illegally export their products outside the state, and then sell them at a more favourable price. A similar situation is observed in some states of South America, which experience objective difficulties with the functioning of the overwhelming number of small businesses, where firms operate “off the books”, that is, without state registration, which inevitably leads to bribery, aimed at representatives of state bodies exercising appropriate control [23-25]. For an effective fight against corruption, it is necessary to provide a systematic approach to its implementation, using the world experience, as well as the principles and norms developed by the world community, which will be described in detail in the next section.

As for international standards for combating corruption offences, first, it should be noted that since 1995, every five years, the UN has been holding thematic conferences aimed at preventing corruption crimes [26]. Within the framework of the conferences, the issues of crime prevention were analysed, and mechanisms corresponding to these actions were developed. At the VIII Congress, held in Havana in 1990, many issues were considered, and 35 resolutions were adopted. One of them reflected the guidelines established by the United Nations Secretariat

entitled “Practical Measures to Combat Corruption” [27]. This document recommends that all states consider the effectiveness of the current procedural rules of the criminal legislation of the countries involved, that is, consider whether there are mechanisms to counteract all types of manifestations of corruption, also formulate preventive, proactive measures to ensure against corruption and regulate the prosecution of officials convicted of such offences. Furthermore, this document also calls for the establishment of rules for the confiscation of funds obtained as a result of committing corruption crimes, and insists on acting against companies suspected of such crimes. The problem of corruption was also raised at the IX UN General Assembly held in 1995 in Cairo, Egypt, as well as at subsequent meetings. In 1996, the United Nations General Assembly adopted a resolution “Combating Corruption” [28], which pays special attention to the problems of corruption at the international level. Therewith, the focus of attention is on organisations in the economic sphere. Resolution of the UN General Assembly of December 12, 1996 N 51/59 [28] consolidated the fundamental moral and ethical provisions for officials, according to which a public office is a position that requires the trust of the population. This means that officials are obliged to act in the interests of their state. Thus, officials must demonstrate absolute loyalty to national, state interests, which, in an institutional form, are represented by historically established democratic institutions. This document (a detailed consideration of which is conditioned upon the fundamental importance that it has for the creation of working mechanisms for the prevention and counteraction of corruption offences) establishes certain requirements for officials, namely:

1. Waiver of malpractice for personal gain.
2. Refusal to take part in transactions that are incompatible with the position held or the powers granted.
3. The need to report on their activities, which is the main factual material for resolving possible conflicts of interest.
4. The obligation to provide guarantees for the non-use of public funds, property, and information entrusted to a person for the performance of official duties, for personal purposes.
5. Refusal to abuse power after resignation.
6. Provision of information on personal assets, as well as, if possible, report on assets owned by relatives.
7. If civil servants express a desire to take part in the political life of the state, then this activity should not be related to their official duties.

The next step was the publication of the “World Programme against Corruption” in 1999, which was developed by the United Nations Centre for International Crime Prevention and the United Nations Interregional Research Institute. This article provides a global overview of trends in corruption. Therewith, special attention was paid to the counteraction and prevention of corruption crimes, the importance of publicity and coverage of such precedents was emphasised, the return of illegally obtained funds to the true owner was stipulated, and monitoring and evaluation methods were analysed. All the above documents are advisory in nature and represent the first attempt to formulate universal international anti-corruption standards. The next essential step is the adoption of the

United Nations Convention against Transnational Organised Crime in 2000, which is binding on most countries in the world [29]. This convention constitutes the response of the international community to the active growth of criminal activity. The document reflects the way of coordinating actions in the fight against international criminal structures. The convention was designed to combat the increasing prevalence of organised crime and corruption. The document recognises that corruption is a transnational crime. Bribery of foreign officials to coerce them into taking actions aimed at obtaining benefits is considered a manifestation of transnational corruption. Furthermore, the agreement stipulates liability for the involvement in the so-called “money laundering”. The Convention also defines the terms “public official”, “foreign public official”, “official of a public international organisation”, and other terms. This became a progressive step in the fight against corruption due to the consolidation of these terms in the legal framework. In addition, giving and receiving a bribe was made a criminal offence [30].

Currently, transnational corruption is defined as a type of corruption that crosses national borders, but is not limited to them, which also includes companies and officials in the above activities, and uses multidimensional plans to extract national wealth from its rightful owners — the citizens of the country [31; 32]. Corruption in international economic cooperation is manifested in the creation of enterprises involving foreign capital, their implementation of investment projects, the privatisation of national property, as well as in resolving the issues of segmentation of the sales market. On October 31, 2003, the 58th General Assembly of the United Nations adopted the UN Convention “Against Corruption” [18], which is a universally binding special document on combating corruption. The objectives of the Convention include the development of effective measures in the field of preventing corruption offences, the implementation of mechanisms of international cooperation in the fight against corruption, the adoption of measures to ensure the return of assets to the rightful owner, as well as ensuring the rational use of public property, which the official is allowed to manage by virtue of the position entrusted to him or her. The Convention also indicates that the prosecutor's office and police officers should regularly engage in comprehensive preventive measures to increase punishment for the above crimes in the form of imprisonment, conduct anti-corruption propaganda among the population and officials, organise actions, processions, and demonstrations that should be aimed at combating corruption, etc. [30]. The information background formed in this way can have a positive effect on the crime situation in general, which is expressed in a decrease in the scale of the problem under study. Adhering to this “road map” can yield positive results, and increase citizens' confidence in the state in general, in state institutions, as well as the level of protection of their rights and freedoms. Proceeding from the above, the United Nations, through its documents exemplified above, is the central link providing the legal framework for the fight against corruption in the international arena. Another positive point is that the significance of these documents is very high due to their universality, since the Conventions apply to almost all countries that make up the world community.

It is an indisputable fact that corruption should be perceived as a complex and multidimensional phenomenon, and it still causes controversy regarding methods for its prevention and counteraction to this phenomenon. Having analysed the main international documents, one can record the existence of a very broad regulatory framework for international cooperation in the fight against corruption. The world community seeks to achieve a global international anti-corruption consensus, as well as to unify the principles of combating corruption. These actions have been confirmed through the establishment of the regulatory framework discussed above. Nevertheless, one of the main difficulties in the development of international anti-corruption cooperation is the partial, incomplete implementation of the provisions of international documents [33-35]. Untimely and unfair implementation of these rules is conditioned not so much upon social, cultural, and economic prerequisites for hindrances in cooperation, but upon the lack of political will on the part of national leaders to implement a comprehensive multifactorial fight against corruption that can improve the situation in the state. During the implementation of anti-corruption policy, differences in the means and methods of struggle are obvious, which cause many serious problems that prevent the state from effectively fighting corruption [36; 37]. These include, among others, the lack of an objective approach to the definition of corruption, the difficulty of identifying it, as well as difficulties in obtaining reliable confirmation of the commitment of the participating states to the fight against corruption and their (states') interest in this. In this regard, the following, very promising areas for the modernisation of international anti-corruption policy can be mentioned:

1. Limiting political corruption. Political corruption can be described as corruption at the highest level. This subtype of crime is dangerous because political corruption leads to the adoption of laws, regulations (in some cases, constitutions), as well as basic legal rules. Political corruption occurs when state and public resources are used to achieve political goals. This type of corruption exists in almost all countries of the world, and the components of this type are very specific and mainly applicable to countries with economies in transition. However, in democratically developed countries, it is necessary to constantly analyse both the order and the principles of the development and functioning of state institutions

2. Improvement of electoral legislation. It is necessary to reconcile the amount of admissible electoral funds with the factual cost of campaigning events; to form an electoral fund to collect donations as soon as possible.

3. Enhancing the current role of current state institutions. For example, strengthen the role of parliament, which can be done by introducing a system of parliamentary investigations, as well as creating a mechanism for a more effective mechanism of parliamentary accountability on the part of the government.

4. Establishing effective control over budget allocation and other expenditures. Budget funds can act as the basis for corruption opportunities. Thus, effective control of budgetary allocations and expenditures is the most pragmatic area because it is close to the possibility of real corruption. Furthermore, this part of corruption is also one

of the most harmful, since manipulations with budget funds primarily cause obvious damage to the social functions of the country, and therefore damage the most socially unprotected strata of population.

Therewith, special attention should be paid to the modernisation of the legal system. Strengthening justice involves some measures, which include introducing new institutions into the justice system, restructuring the justice system, and changing the legal consciousness of the justice system, as well as rooting out legal nihilism among the general population to nurture a society with a developed legal consciousness [36]. Developing the theme of further work on anti-corruption education and anti-corruption world-view, it is necessary to design and implement educational programmes and campaigns aimed at creating a negative public perception of corruption offences that act as a threat to national security. It is necessary to constantly disseminate information about the real scale of corruption, about the damage that corruption causes to society and the country, as well as about other adverse consequences of corruption and its causes [38-40]. Undoubtedly, all the above measures cannot completely exclude the possibility of emergence of violators and criminals in the state and public organism; however, this roadmap opens up the prospect of minimising the corruption of society and the state.

## Conclusions

Ultimately, and proceeding from the array of investigated and analysed material, several relevant provisions can be noted. The problem of corruption considered within the framework of this study has numerous adverse consequences, which include the undermining of trust in the official power structures, as well as considerably harming the individuals in particular and society in general. Furthermore, due to insufficient struggle at the level of individual states, one can note an increasingly vigorous activity of organised criminal groups, a qualitative decline in the professional level of law

enforcement officials, as well as a kind of ideological sabotage, namely a decrease in the legal awareness among the broad masses of the population. An inevitable consequence of these processes is the emergence of legal nihilism among the population. These factors must be considered when building relationships with those states that are largely subject to the harmful influences that the types of offences considered in this study are. Moreover, this factor must be considered upon implementing various military, political, social, and economic projects on the territory of these states, as well as various other programmes.

Within the framework of this study, corruption has been described as a phenomenon that decomposes historically established institutions ensuring the implementation of power in the state, and as a destructive phenomenon. The material presented in this paper may arouse interest among specialists in legal counteraction to corruption offences at the international level. Furthermore, it will also be of interest to political consultants, who, due to the nature of their positions, directly influence the adoption of certain decisions (within the scope of the field of activity considered in this study). Notably, a number of questions and issues arose in the course of this study. Thus, for example, researchers of this problem should pay attention to a more thorough and detailed theoretical study of specific measures to be implemented at the level of national legislation to reduce the level of corruption offences. First and foremost, it is necessary to consider the regional characteristics of the perception of corruption offences, as well as the development of methods that would allow building a holistic picture of their perception in the so-called “developing countries”.

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## Conflict of Interest

None.

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## **Анотація**

**Актуальність.** Серед актуальних викликів сьогодення, що мають довгострокові наслідки, проблема боротьби з корупцією залишається особливо важливою. Корупція невпинно набуває нових властивостей і якостей, проникає в усі сфери життя і завдає шкоди державам. Надзвичайно небезпечним є також тісний взаємозв'язок корупції та організованої злочинності. Вступаючи в симбіоз, ці явища доповнюють одне одного, що значно підвищує стійкість і налагодженість механізму їх діяльності. Ця проблема не залишилася поза увагою світової спільноти, про що свідчать численні дискусії на міжнародних форумах. В результаті були прийняті міжнародні стандарти визначення цього терміну, а також механізми боротьби з корупцією. Однак у багатьох випадках боротьба з корупцією ведеться як на місцевому, так і на національному рівні, оскільки інтеграція держав на міжнародній арені відбувається дуже повільно. У деяких випадках відсутність уніфікації законодавства про відповідальність за корупцію також відіграє свою роль, стаючи ще однією серйозною перешкодою.

**Мета.** Метою цього дослідження є аналіз наявних міжнародних стандартів та методів міжнародного співробітництва у сфері боротьби з корупцією, для подальшого формулювання практичних рекомендацій щодо імплементації численних положень у національне законодавство конкретної держави.

**Методологія.** У дослідженні використано загальнонаукові методи, а також низку спеціальних методів, серед яких методи дедукції та індукції, івент-аналізу, контент-аналізу. Матеріали дослідження були доповнені історичним аналізом та системним підходом.

**Результати/висновки.** У дослідженні проаналізовано види міжнародного співробітництва у сфері протидії корупції, зокрема організаційно-процедурне, а також у формі співробітництва з питань запобігання та наукового співробітництва представників усіх держав-членів.

**Ключові слова:** світова спільнота; Організація Об'єднаних Націй; стандарти співробітництва; законодавство, державні інституції.