

THEORETICAL AND LEGAL FOUNDATIONS OF IMPLEMENTING INTERNATIONAL STANDARDS IN THE FIELD OF OFFENCE PREVENTION INTO THE NATIONAL LEGAL SYSTEM

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Abstract. This article analyses the concept of international standards in the field of offence prevention and the theory and practice of implementing them into national legal systems. It examines the guidelines on crime prevention adopted by the Economic and Social Council of the United Nations (ECOSOC), the Doha and Kyoto Declarations, and the monist and dualist theories of implementation together with the methods of transformation, incorporation and reception. A comparative analysis is conducted of the national legislation of the Republic of Uzbekistan, in particular the Law on the Prevention of Offences and the provisions of the Constitution relating to international law; the strengths and weaknesses of the national system are identified; and proposals for the further improvement of this field are developed.

Keywords: offence prevention, international standard, implementation, transformation, incorporation, ECOSOC, Doha Declaration, Kyoto Declaration, national legal system, crime prevention.

The most effective means of ensuring legal order and social stability in society consists in preventing crime and other offences, and the improvement of the system of offence prevention constitutes one of the priority directions of State policy in this respect. Because of such factors as the processes of globalisation, the growth of cross-border crime and the transformation of information technologies into instruments of offending, no State is any longer able to resolve this problem by national measures alone. There accordingly arises a need to introduce into the national legal system, in a rational and consistent manner, the standards, recommendations and guidelines developed by the international community on the basis of many years of experience. This in turn requires a thorough study of the theoretical and legal foundations of implementation, because in practice a certain divergence always exists between the formal recognition of an international obligation and its actual application.

If the historical roots of the topic are considered, the tradition of international cooperation in combating crime dates back to the end of the nineteenth century. In particular, from 1872 onwards international conferences were held once every five years within the framework of the International Prison Commission (later renamed the International Penal and Penitentiary Commission). After the establishment of the United Nations this tradition was continued, and the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Geneva in 1955 (United Nations Office on Drugs and Crime [UNODC], n.d.-c). Held every five years since that time, these congresses have occupied a central place in the formation and development of international standards in the field of crime prevention. The continuity and intensification of this historical process show that the question of studying international standards and adapting them to the national system has not lost its relevance with the passage of time but has, on the contrary, become a matter requiring ever deeper scholarly analysis.

A further factor determining the need to study this topic is that the question of the relationship between international law and national law has long been a subject of debate in legal scholarship. As certain researchers emphasise, the fact that rules on the implementation of international legal norms have been laid down in a State's national legal system does not yet mean that those norms are correctly applied in practice: this requires, in particular, that the judicial bodies study

international law thoroughly and be capable of interpreting it correctly (“Issues of the Application of International Law Norms,” n.d.). Alongside the resolution of the question of implementation in purely normative terms, there thus arises a need to investigate its institutional and law-application mechanisms as well. It is precisely this aspect that determines the theoretical and methodological basis of the present article.

As regards the concept of an international standard, in the field of offence prevention it denotes the aggregate of norms, principles, recommendations and guidelines that are recognised by the United Nations and other international organisations and that, although lacking binding legal force, have a guiding significance in shaping the national policy and legislation of States. In the Guidelines for the Prevention of Crime approved in the annex to Resolution 2002/13 of the Economic and Social Council of the United Nations (ECOSOC) of 24 July 2002, the concept of crime prevention is defined as the aggregate of strategies and measures directed at reducing the risk of crimes occurring and their potentially harmful consequences for individuals and society, including the fear of crime, by acting upon the multiple causes of crime (ECOSOC, 2002). The United Nations Office on Drugs and Crime likewise emphasises that crime prevention is a multisectoral, multidisciplinary and complex activity whose effectiveness can be secured only through systematically planned measures (UNODC, n.d.-a). An international standard must therefore be understood not merely as a legal norm but as a complex guiding instrument encompassing State policy, institutional structure and public participation.

The question of how international legal norms enter the national legal system is traditionally explained in legal theory on the basis of the concepts of monism and dualism. Adherents of monist theory regard international and national law as two parts of a single legal system, whereas adherents of dualist theory view them as mutually independent and separate legal systems, for which reason a special domestic act, namely an implementing law, is required in order for an international norm to operate within internal law (“Transformation, Implementation, Incorporation,” n.d.). The method characteristic of States following the dualist approach is incorporation, that is, giving force to an international treaty or custom within the territory of the State by means of a special law; incorporation may in turn be effected in the forms of reception (the verbatim

transfer of the content of a treaty without alteration) and transformation (the reworking of treaty norms with adaptation to the requirements of national legislation) (“Classification of Constitutional Methods,” n.d.). In addition, the legal literature describes such further methods as automatic incorporation, renvoi, individual incorporation, adaptation and legitimation, which demonstrates the diversity of the implementation mechanism and the need to take account of the distinctive features of each national legal system.

The scholarly work of national researchers is of considerable importance in disclosing the content of the concept of implementation. In particular, the research of Professor A. H. Saidov examines in detail the implementation of international labour standards into the national legal system of Uzbekistan and substantiates the proposition that the process of implementation must encompass not only the formal adoption of a norm but also the mechanisms for its practical application (Saidov, n.d.). A similar approach is observable in studies devoted to the implementation of international human rights treaties into national legislation, which emphasise the need to improve the implementation mechanism, that is, to specify in which cases the method of transformation and in which cases the method of incorporation should be used, as well as the need to conduct a regular inventory of the extent to which the international treaties acceded to by the country have been absorbed into national legislation (“Certain Aspects of Implementing,” n.d.). These views show that implementation is not a single act but a long-term process requiring continuous monitoring and refinement.

In examining the normative basis of international standards in the field of offence prevention, it is necessary first of all to consider the relevant ECOSOC resolutions. The Guidelines approved by Resolution 2002/13 establish as fundamental principles the need to create and maintain an institutional framework for effective prevention at all levels of government leadership, the requirement that socio-economic development and social integration be harmonised with prevention policy, and the necessity of cooperation among State bodies, civil society, the private sector and citizens (ECOSOC, 2002). Subsequently, by Resolution 2003/26 of 2003, ECOSOC developed a distinct line of work on the prevention of crime in urbanised areas and called upon Member States to make use of the Guidelines annexed to Resolution 2002/13 in developing and evaluating urban crime prevention programmes (ECOSOC, 2003); and in 2008, by Resolution 2008/24,

the need for national policy against crime and violence to combine criminal-law measures with preventive measures in a balanced manner was further consolidated (ECOSOC, 2008). This body of instruments shows that the international normative base in the field of crime prevention has developed in an evolutionary manner and is acquiring an increasingly complex character.

The Doha Declaration (document A/CONF.222/L.6), adopted within the framework of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice held in Doha, Qatar, from 12 to 19 April 2015, was adopted as a political document directed at integrating crime prevention and criminal justice into the wider United Nations agenda, including the sustainable development agenda (United Nations, 2015). The Declaration recognised the sixty-year historical legacy of the United Nations congresses, and the participating States assumed an obligation to apply a comprehensive and holistic approach to all manifestations of crime, violence, corruption and terrorism and to implement measures in this field in a consistent and coordinated manner (United Nations Information Service [UNIS], 2015). In particular, within the framework of the Declaration, States accepted such specific commitments as the adoption of comprehensive and inclusive national crime prevention and criminal justice policies and programmes, the guarantee of everyone's right to a fair trial without undue delay, the review and reform of legal aid policy, the mainstreaming of gender and youth issues into the criminal justice system, and the combating of corruption and the increase of transparency in public administration (UNIS, 2015). As the head of the United Nations Office on Drugs and Crime emphasised at the close of the congress, the most important task was to translate the Declaration into practical action, that is, to secure its real implementation at the national level ("Doha: UN Conference Ends," 2015).

The Doha Congress was, moreover, convened on the basis of General Assembly Resolution 65/230, and in the course of its preparation the organisational and substantive matters of the congress were finalised through ECOSOC Resolution 2014/154 (UNODC, n.d.-c). This circumstance shows that major international forums on crime prevention are formed and developed not as isolated events but as constituent parts of a continuous institutional process within the United Nations system.

At the close of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Kyoto, Japan, from 7 to 12 March 2021 after a postponement of one year occasioned by the COVID-19 pandemic, the Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development was adopted by consensus (United Nations, 2021). The Declaration notes that crime is acquiring an increasingly transnational, organised and complex character and that offenders are making use of new technologies for unlawful purposes, which is giving rise to new forms of unlawful conduct in cyberspace (United Nations, 2021). As the Secretary-General of the United Nations emphasised in his address at the opening of the congress, restoring trust in institutions and strengthening the rule of law are essential in order to prevent corruption, to halt illicit financial flows and to protect vulnerable populations from organised crime, violence and human trafficking (United Nations Secretary-General, 2021).

The Kyoto Declaration also places particular emphasis on the urgency of combating crime in the conditions of the COVID-19 pandemic and identifies the need to strengthen inter-State cooperation and to enhance the capacity of the law-enforcement and criminal justice institutions of developing States (United Nations, 2021). In May 2021, the United Nations Commission on Crime Prevention and Criminal Justice, at its thirtieth session, adopted a decision by consensus formally endorsing the Kyoto Declaration (“Kyoto Crime Congress Opens,” 2021; UNODC, n.d.-b), and in October 2021 the General Assembly gave the Declaration its final approval by the corresponding resolution, Resolution 2021/20 (United Nations General Assembly, 2021). The Doha and Kyoto Declarations, together with the ECOSOC Guidelines contained in Resolution 2002/13, thus constitute at the present time the normative and conceptual core of international standards in the field of crime prevention.

Generalising the content of the theoretical approaches and international instruments examined above, several principal models of implementing international standards in the field of offence prevention into the national system may be distinguished. The first is the direct, or monist, model, under which an international instrument becomes a constituent part of the national legal system after ratification and without further transformation. The second is the

transformational model, under which the content of an international norm is rewritten into the text of a national law in adapted form. The third is the mixed, or hybrid, model, under which direct operation is chosen in certain fields while the adoption of a separate implementing law is chosen in others. Practice shows that the majority of States, including Uzbekistan, incline precisely towards the mixed model, which makes it possible to maintain fidelity to international obligations on the one hand and to preserve national legal traditions on the other.

The constitutional basis for implementing international standards is firmly established in the national legal system of the Republic of Uzbekistan. In particular, the new version of the Constitution of the Republic of Uzbekistan, adopted by national referendum on 30 April 2023, provides that the international treaties of the Republic of Uzbekistan, together with the generally recognised principles and norms of international law, form a constituent part of the legal system of the country, and further provides that the foreign policy of the country is based, alongside such principles as the sovereign equality of States, the non-use of force and the inviolability of frontiers, on the other generally recognised principles and norms of international law as well (Constitution of the Republic of Uzbekistan, 2023). In substance, this constitutional provision envisages a mixed model that is close to the monist approach but that does not at the same time exclude adaptation to national legislation.

At the sectoral level, the Law of the Republic of Uzbekistan on the Prevention of Offences (No. ZRU-371), adopted on 14 May 2014, is of central importance; it defines the principal tasks, principles and subjects of offence prevention (Law No. ZRU-371, 2014). That Law establishes such principles as legality, humanism, systemic character, the primacy of the method of persuasion, the differentiation of measures of influence and an individualised approach, which in substance are consonant with the multisectoral and complex approach laid down in the ECOSOC Guidelines contained in Resolution 2002/13 (ECOSOC, 2002; “Content and Essence of the Law,” n.d.). At the same time, the Law expands the list of bodies responsible for ensuring offence prevention, which corresponds to the international recommendation concerning the creation of an institutional framework at all levels of government leadership. Applied research, including scholarly work devoted to improving offence prevention through the example of the activity of the internal affairs bodies, likewise emphasises that this Law serves

as the principal benchmark for reform (“Improving the Prevention of Offences,” n.d.; “Topical Issues,” n.d.).

Furthermore, the National Strategy of the Republic of Uzbekistan on Human Rights, approved by Decree No. PF-6012 of the President of the Republic of Uzbekistan of 22 June 2020, specifically emphasises that systematic work is being carried out to strengthen the legislative and organisational-legal base for the protection of human rights, including the implementation of international human rights standards into national legislation and the fulfilment of international obligations (Decree No. PF-6012, 2020). This shows that the process of implementation in the field of offence prevention is being considered as a constituent part of a broader nationwide strategy for the protection of human rights and the strengthening of the rule of law. Studies devoted to the examination of foreign experience likewise place particular emphasis on the need to draw upon international experience in developing offence-prevention services (“Foreign Experience,” n.d.).

Turning to an analysis of the strengths of the national system of Uzbekistan, first, the recognition at the constitutional level of international treaties as a constituent part of the national legal system creates a firm constitutional and legal basis for implementation. Second, the adoption of the special law of 2014 established offence prevention as a distinct institutional field and broadened the range of subjects of prevention. Third, the national strategies adopted in recent years, including Decree No. PF-6012, are directed at introducing mechanisms for the regular monitoring of the fulfilment of international obligations. Fourth, the legislation on normative legal acts establishes a requirement that international experience be studied in the preparation of a draft normative act, which constitutes a procedural guarantee ensuring that international standards are taken into account in law-making.

At the same time, the national system also has its weaknesses. First, as is emphasised in the scholarly literature, the existence at the normative level of rules on the implementation of international legal norms does not yet guarantee their correct and consistent application in practice, particularly in judicial and law-enforcement activity (“Issues of the Application of International Law Norms,” n.d.), which points to the need to raise the qualifications of law-applying subjects in respect of international standards. Second, it is noted that clear criteria have not

been sufficiently elaborated as to the situations in which the method of transformation and those in which the method of incorporation should be used, and that a mechanism for the systematic inventory of the extent to which the international instruments acceded to by the country have been absorbed into national legislation has not been sufficiently formed (“Certain Aspects of Implementing,” n.d.). Third, since the adoption of the 2014 Law in the field of offence prevention, new forms of crime, including offences committed in cyberspace, have become widespread, and it is therefore noticeable that special norms and mechanisms fully covering the new technological threats identified in the Kyoto Declaration have not been sufficiently developed in national legislation (United Nations, 2021). Fourth, cooperation among the subjects of prevention, and in particular cooperation among State bodies, civil society institutions and the private sector, often remains formal in practice, whereas international standards regard such cooperation as a necessary condition of complex prevention (ECOSOC, 2002).

On the basis of the analysis set out above, the following proposals may be advanced with a view to increasing the effectiveness of implementing international standards in the field of offence prevention into the national legal system. First, to develop a clear road map for adapting the declarations of the United Nations congresses, including the Doha and Kyoto Declarations, and the ECOSOC Guidelines to national legislation, and to update that road map regularly. Second, to establish a special legal monitoring mechanism for assessing the extent to which international standards have been absorbed into national legislation, that is, to institutionalise the activity of a dedicated responsible body or of an interdepartmental commission in this field. Third, to introduce regular professional development programmes for judges, prosecutors and staff of law-enforcement bodies on the correct interpretation and application of international standards. Fourth, to introduce the relevant additions and amendments into the Law on the Prevention of Offences with a view to strengthening preventive measures against offences committed in cyberspace and against transnational organised crime. Fifth, to develop institutional mechanisms, for example public councils and cooperation agreements, that ensure the practical participation of the subjects of prevention, including civil society institutions and the private sector.

In conclusion, the implementation of international standards in the field of offence prevention into the national legal system is a multifaceted and continuous process that encompasses not only the formal recognition of international instruments but also their practical application, monitoring and refinement. International instruments such as the ECOSOC Guidelines contained in Resolution 2002/13 and the Doha and Kyoto Declarations constitute the normative and conceptual foundation of contemporary international standards in the field of crime prevention (ECOSOC, 2002; United Nations, 2015, 2021). Although the national system of the Republic of Uzbekistan rests upon a comparatively firm foundation from the standpoint of recognising the primacy of international law at the constitutional level and of possessing special sectoral legislation, it retains substantial potential in respect of further specifying implementation mechanisms, improving law-application practice and adapting to threats of a new kind. The continuation of theoretical and legal research in this field and the application of its results in practice therefore remain matters of pressing importance.

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