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DOI <https://doi.org/10.32849/2663-5313/2022.1.18>**Olesia Trebina,***Postgraduate student at the Department of International Law, Yaroslav Mudryi National Law University, 77, Pushkinska street, Kharkiv, Ukraine, postal code 61024, olesyatrebina@gmail.com***ORCID:** orcid.org/0000-0002-1985-9646Trebina, Olesia (2022). The control mechanism of the international treaty: essence and components. *Entrepreneurship, Economy and Law*, 1, 114–120, doi: <https://doi.org/10.32849/2663-5313/2022.1.18>

THE CONTROL MECHANISM OF THE INTERNATIONAL TREATY: ESSENCE AND COMPONENTS

Abstract. *The purpose* of the work is to clarify the essence and main components of the control mechanism to ensure the implementation of international agreements. **Research methods.** Methodologically, the work is based on a systematic approach in the analysis of international legal relations and international treaties, on the formal-logical and comparative methods of interpretation of international law used at both theoretical and empirical levels, content analysis of international treaties. **Results.** It has been proven that international monitoring as a means of securing international obligations is becoming increasingly important, becoming the norm and a necessary condition for the functioning of international law. It is substantiated that, like any legal relationship, international control legal relations have the necessary elements: object, subjects and content. The object of international control is the fulfillment of obligations under an international treaty. The subjects of control activities may be international organizations and their bodies, specially created control bodies and states. The content of the legal relationship of international control includes the mutual rights and obligations of the subjects, although the main and general obligation in any control legal relationship is the need to comply with generally accepted principles and norms of international law. It is determined that based on the structure of international legal relations, we can identify three components in the control mechanism of international agreement: 1) the contractual component related to the object of legal relations, 2) the institutional component related to the subject (subjects) of international legal relations and 3) the substantive component related to the whole spectrum of ensuring the requirements of international agreements (principles, norms, forms, methods, means of control activities, etc.). **Conclusions.** The study of the phenomenon of international control over the observance of international treaties is of great practical importance, directly affecting the quality and degree of development of provisions on the control mechanism of international treaties. An effective control mechanism, in turn, makes a significant contribution to ensuring proper compliance with international treaty obligations, which ultimately affects the state of compliance with international law and improving the effectiveness of international law in general.

Key words: international treaty (convention), international monitoring, control mechanism of an agreement (convention), subject of international law, international legal relations.

Introduction

International monitoring as means of securing international obligations in the modern world is becoming increasingly important. In international treaties concluded in the second half of the XX century, considerable attention has been given to the implementation of international monitoring. This tool is increasingly used in international treaty practice. There are a large number of treaty norms of international law, which more or less clearly regulate the issues of international monitoring over their observance. It is very important among this conglomerate of norms to identify general guidelines, patterns and trends that reflect

the specifics of the regulatory impact of international law on modern interstate relations, that consists of international monitoring activities over compliance with international treaties in various areas of international cooperation. Monitoring the implementation of international treaties (conventions) today has become the norm and a necessary condition for the functioning of international law. The study of theoretical and practical aspects of international monitoring of compliance with international treaties is currently of great importance for both the doctrine of international law and international practice. International monitoring is more or less inherent in all branches of inter-

national law, the study of various mechanisms of international monitoring over the observance of obligations by states is of considerable scientific interest and meets the requirements of time.

Both Ukrainian and foreign scholars in the field of international law have studied the problems of international monitoring and the observance by states of their obligations under international treaties: D. Abbakumova, T. Antsupova, S. Cocan, M. Cremona, W.H. von Heinegg, R. Valeev, A. Goltyaev, I. Kotlyarov, S. rochkin, N. Onishchenko, M. Pejčinović Burić, K. Pieragostini, J. Rikhof, M.N. Schmitt, O. Serdiuk, N. Simonova, S. Suniehin, A. Thies, O. Tiunov, I. Yakovyuk, R.A. Wesse, etc (Medvedieva, 2012; Onishchenko, Suniehin, 2021; Pieragostini, 1986; Rikhof, Cocan, 2019; Schmitt, von Heinegg, 2012, et al.). Some foreign scholars have studied the control mechanism of the international agreements implementation (Cremona, Thies, Wesse, 2017; Li, Qi, Bian, 2020, et al.), unfortunately, Ukrainian lawyers are not very active in defining the essence, distinguishing the main components of the control mechanism for ensuring the implementation of international agreements. Given the above, the purpose of the article is to clarify the essence and main components of the control mechanism to ensure the implementation of international agreements.

2. International monitoring: basic approaches to understanding

At present, in the practice of international relations and the doctrine of international law there is no single approach to defining and understanding the essence of the phenomenon of international monitoring and the mechanism for ensuring the implementation of treaty obligations, although international monitoring is today the most important means of ensuring the implementation of international treaties and the international legal institution established after World War II (Trebina, 2022).

According to the American scientist Karl Pieragostini, the purpose of international control is to identify serious mistakes, misunderstandings and miscalculations in the implementation of the international treaty and thus encourage the parties to long-term rational cooperation. If a state becomes a party to a treaty to pursue its interests, according to Pieragostini, it will remain a party to that treaty as long as the treaty norms are able to protect the aforementioned interests. Accordingly, a party to the treaty will not knowingly violate an international treaty, as it acts in favor of that party (Pieragostini, 1986, p. 424-425). Another American scholar, William Jackson, believes that an international treaty is designed to assess equally the risks and benefits to international

security, as well as the political risks and benefits for each party involved in the treaty. In this approach, international control should be perceived not only as an assessment of the activities of the parties to the agreement in relation to possible violations, but also have a deeper meaning (Jackson, 1982, p. 345). International control, according to the author, should be considered not only from a technical but also from a political point of view: "measures of international control, which are properly understood, can also be a measure to strengthen trust" (Jackson, 1982, p. 346).

Russian international law expert O. Tiunov emphasizes that "international legal monitoring is designed to maintain the relationship regulated by the treaty on certain actions or to refrain from them, to maintain the status quo within the legal regime agreed by the parties. The control is used to determine the fulfillment of the international legal obligation or the departure from it. In the latter case, the state party to the treaty is obliged to eliminate the situation that threatens the implementation of the agreement and to take measures to ensure its strict implementation» (Tiunov, 2012). Ukrainian lawyer M. Medvedieva notes that «the essence of international control is to verify, on the basis of an international treaty, by the subjects of international law or the bodies the bodies of conformity of the activity of the states to the observance established by them in order to ensure their compliance» (Medvedieva, 2012, p. 25).

We propose to consider international control as an activity of subjects of international law based on generally accepted principles of modern international law through established special control mechanisms in order for states to comply with the treaty international legal obligations and take measures to implement them.

Consideration of international control as an institution of international law involves the study of international law, each of which has a specific purpose – to regulate international (interstate) relations. The influence of international law on the conduct of subjects of international law is the reason for the emergence of the relevant legal relationships. Analysis of recent research and publications shows that in foreign and Ukrainian science of international law, the issue of international legal relations has not been comprehensively studied (Zabara, 2016, p. 185). I. Lukashuk defines international legal relations as a specific form of international relations, their special variety, a relatively independent element in the system of international relations (Lukashuk, 1980, p. 109).

In the context of the question of the structure of international legal relations, their elements and connections between them are usually considered. The initial position is that in the legal doctrine, according to Lukashuk, "there is no unity on the structure of legal relations" (Lukashuk, 1980, p. 111). Summarizing the approaches to this problem, I. Zabara notes that "in the vast majority of cases, the position is held that legal relations can be considered as a relationship of subjects – holders of rights and responsibilities, as well as the relationship of rights and responsibilities owned by the subjects" (Zabara, 2016, p. 186). At the same time, quite often, despite the controversial issue, the object of legal relations is among the main elements (Lukashuk, 1980, p. 111). V. Butkevych emphasizes, that "given the long discussion on understanding the nature and essence of international legal relations, the analysis of their features should include research: a) subjects of law, in particular at the level of legal relations, ie participants in the legal relationship; b) the content of legal relationship; a distinction should be made between the substantive content, ie the behavior of the subjects (including "sanctions" in protective legal relations), as well as the legal content, ie subjective legal rights and obligations; c) objects of legal relations" (Butkevych, 2002, p. 447).

When we talk about the control mechanism for ensuring the implementation of international agreements, we must first address the essence of the concept of mechanism. "New dictionary of foreign words" defines "mechanism" from Latin *mechanismus*, from Greek *μηχανή* (*mēkhanē*, "machine") – : 1) a device inside the machine, instrument, apparatus that sets them in motion, 2) an internal structure, system of something, 3) a set of processes that make up any mental, physical or chemical and other phenomenon. (Shevchenko, 2008, p. 383). That is, the mechanism involves the systematic and orderly nature of any activity or process. We believe that this understanding is fully correlated with the need to develop a mechanism to ensure the implementation of obligations under international treaties as a systematic and orderly activity of subjects of international law.

Attempts to define the concept and essence of such mechanism in the science of international law have been made, but it cannot be said that such studies are comprehensive. Thus, M. Medvedieva considers the international convention mechanism for the implementation of international law as one that includes the following components: "lawmaking, interpretation, control and law enforcement." (Medvedieva, 2012, p. 24). In the compendium "Theory and practice of application of the Convention

for the Protection of Human Rights and Fundamental Freedoms" O. Serdiuk emphasizes that "the control mechanism of the ECHR should be considered in three aspects: contractual, substantive, institutional" (Serdiuk, Yakoviuk, 2019, p. 52). S. Marochkin understands the mechanism of ensuring the implementation of international law as a system of means of security (guarantees, control, etc.), each of which is part of a common mechanism (Marochkin, 1988, p. 79). O. Tiunov adheres to the position that the essence of the mechanism for ensuring the implementation of international treaty obligations are international legal means of security. They are understood as a system of measures aimed at the most effective implementation of international obligations agreed upon by the states concerned and enshrined in the form of norms of international law (Tiunov, 1981, p. 27-28). N. Simonova proposes to unite in the concept "mechanism for ensuring the implementation of obligations under international agreements" the following institutional components: 1) institutions of the obligation and integrity of the implementation of international legal obligations; 2) international and domestic means of ensuring the implementation of international treaties (which are separate legal institutions); 3) judicial institutions; 4) institutes of international organizations; 5) the institution of liability for non-fulfillment of obligations under international agreements (Simonova, 2013, p. 63).

Based on the structure of international legal relations, we propose to identify three components in the control mechanism for the implementation of international agreements, namely, contractual component, related to the object of legal relations, the institutional component, related to the subject (subjects) international legal relations and a content component, related to the whole spectrum of ensuring the requirements of international treaties (principles, norms, forms, methods, means of control activities, etc).

3. Contractual component of the control mechanism for ensuring the implementation of international agreements

The legal object of international control should be the fulfillment of obligations under an international treaty (ie conduct). In this regard, the opinions of most scholars coincide, although they contain some theoretical nuances. Thus, I. Kotlyarov, S. Marochkin as the object of international control call the compliance of the behavior/actions of states with the accepted obligations/legal orders. R. Valeev, P. Radoinov, A. Talalaev, O. Tiunov, O. Ustinova talk about the observance by states of their obligations under international legal/treaty obliga-

tions. A. Ibragimov, L. Busa use the term "fulfillment" of obligations. Interesting is the opinion of A. Gaverdovskii, who considers violations of the principles and norms of international law as an object of international control, and also A. Fastov ra S. Nistratova, who propose to consider violations of international law as an object of international control. Foreign authors are even more interested in theorizing and as the object of international control call the functioning of an international treaty (K. Pieragostini), as well as risks and benefits for international security and the parties to the treaty (W. Jackson).

International treaty practice provides a fairly clear answer to the question of the object of international control. Thus, the norms of "Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof" of February 11, 1971 the object of international control is called "compliance with the provisions of this Treaty", "the fulfillment of the obligations assumed under the Treaty" (para. 1, 2, 4 of Art. III). The Statute of the International Atomic Energy Agency stipulates that the object of control activities of the Agency's inspectors is the fulfillment of the obligations of the states, as well as to comply with health and safety standards (part A6, Art. XII of the Statute of the IAEA). The "Treaty on the Non-Proliferation of Nuclear Weapons" of 1 July 1968 contains the norm according to which the fulfillment of obligations under the Treaty is also a subject to international control (Part 1, Article III). Thus, international treaty practice allows us to conclude that the first component of the control mechanism to ensure the implementation of international agreements is the fulfillment / compliance with contractual obligations by the parties to an international agreement.

4. Institutional component of the control mechanism for ensuring the implementation of international agreements

O. Tarasov proved that in the post-Soviet space, including in Ukrainian literature, there are three distinct areas of research on the issue of international legal personality: "The first direction continues the Soviet tradition of ignoring the international legal personality of man within a closed interstate system, defending the position of anthropological nihilism in the science of international law. The circle of subjects of international law in this direction is rigidly dogmatized. ... The second direction ... has a compromise nature, which tries to lavish between traditional statism and the gradual (with a lot of reservations) admission of the individual and INGOs into

separate, strictly established areas of interstate cooperation. The third area of research, which is just emerging in the post-Soviet space, defends the independent nature of the international legal personality of man within an open international legal system, where each of the subjects of the international law has its own, often unique, international legal status" (Tarasov, 2014, p. 353). Therefore, among the main subjects of international control (controlling subjects) it is possible to distinguish: 1) states; 2) international organizations and their bodies, 3) specially created control bodies. However, it should be borne in mind that the subject composition of the legal relations of international control is expanding with the help of controlled entities, which may be any subject of international law - participants in certain international treaties, as well as civil society institutions that are involved in control activities.

International treaty practice confirms our thesis on the subjects of legal relations on the implementation of international control and is evidence of the formation of an appropriate international legal institution. Thus, in the international humanitarian law of the Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005 stipulates that international monitoring of the implementation of the provisions of the Geneva Conventions and Additional Protocols shall be carried out by: 1) *the belligerent parties*: "at the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention" (Art. 132 Convention III); 2) *the Protecting Powers*: "representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, ... and shall have access to all premises occupied by prisoners of war" (Art. 126 Convention III); 3) *the International Fact-Finding Commission*: in accordance with paragraph "a" of Part 1 of Art. 90 of Additional Protocol I establishes an International Fact-Finding Commission that is competent to «enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol» (para. "i" of P. 2 Art. 90 Protocol I); 4) *International Committee of the Red Cross*: Representatives of the International Committee of the Red Cross enjoy the same rights as representatives or delegates of the Protecting Powers (Art. 126 Convention III). Thus, in the legal relationship of international control over the implementation of treaty obligations under international humanitarian law, such subjects of control as the state, a specially created

international control body and an international (non-governmental) organization.

5. Substantive component of the control mechanism for ensuring the implementation of international agreements

The control mechanism of the international treaty functions in strict accordance with the generally accepted principles of modern international law, which are fully reflected in the Helsinki Final Act, in addition, the principles directly related to the organization and conduct of international control are applied. The control mechanism uses various methods of international control over compliance with international agreements (conventions), ie specific methods of carrying out control activities, a set of techniques and methods of carrying out control measures. Sharing the opinion of representatives of Ukrainian and foreign science of international law, they include the exchange of information, reviews, reports, consultations, observations, inspections, questionnaires, monitoring, verification, investigation, arbitration and judicial control, etc (Valeev, 2001, p. 15–16). The specific functioning of the substantive component of the control mechanism of the international treaty will be considered on the example of the Criminal Law Convention on Corruption.

According to Art. 24 of the «Criminal Law Convention on Corruption (ETS 173)»(1999) «The Group of States against Corruption (GRECO) shall monitor the implementation of this Convention by the Parties». GRECO's work is divided into rounds, each of which explores a range of issues on a particular topic. During the first round, which took place in 2000-2002, assessed the independence, specialization and powers of the bodies involved in the fight against corruption, as well as the issue of immunity of civil servants from arrest and prosecution. Second round of evaluation (2003-2006) was devoted to the issue of detection and confiscation of proceeds from corruption, prevention of the use of legal entities to conceal corruption. The third round of evaluation (2007–2011) was focused on the criminalization issues of certain acts covered by the Convention, as well as ensuring the transparency of the financing of political parties. In 2012–2016, a fourth round was held on the prevention of corruption among parliamentarians, judges and prosecutors. In 2017, the fifth round of the GRECO evaluation was launched, which focused on preventing corruption, stimulating incorruptibility and impartiality in governments and law enforcement agencies.

The GRECO evaluation mechanism consists of two stages. At the first stage, a general

analysis of the situation is carried out in order to identify problems and develop recommendations for improving legislation and law enforcement practices. To do this, two experts from other countries, selected from pre-established lists by national delegations, are sent to the country under assessment. The second stage assesses the measures taken by states to implement the proposed recommendations. Further evaluation of the implementation of the recommendations (the “Compliance Procedure”) serves to verify the achievements of Member States and to facilitate the implementation of the recommendations. The list of issues for evaluation and the team of experts for each country being audited are approved at the GRECO plenary session. Written answers to the questions, as well as information received by experts during the visit to the country directly from representatives of state bodies and civil society institutions, form the basis of a preliminary expert reports. Experts first send the draft preliminary report to the state so that it can make remarks and comments on the report before it is submitted to GRECO. The draft is then discussed in plenary and put to the vote. In addition to analyzing the implementation of anti-corruption standards, the final evaluation report provides mandatory and optional recommendations for improving legislation and law enforcement practices. Mandatory recommendations must be implemented within 18 months.

That is, in the functioning of the control mechanism of an international treaty, the substantive component ensures the use of subjects of international control of various forms, methods and measures of control activities, adhering to the relevant principles and norms of international law, which allows to qualitatively ensure compliance with international treaties.

6. Conclusions

International control as a means of securing international obligations is becoming increasingly important today, becoming the norm and necessary condition for the functioning of international law. The study of the phenomenon of international control over compliance with international treaties is of great practical importance, directly affecting the quality and degree of development of provisions on the control mechanism of specific international treaties. An effective control mechanism, in turn, makes a huge contribution to ensuring proper compliance with international treaty obligations, which ultimately affects the state of compliance with international law and improving the effectiveness of international law in general.

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Олеся Требіна,

аспірантка кафедри міжнародного права, Національний юридичний університет імені Ярослава Мудрого, вулиця Пушкінська, 77, Харків, Україна, індекс 61024, olesyatrebina@gmail.com

ORCID: orcid.org/0000-0002-1985-9646

КОНТРОЛЬНИЙ МЕХАНІЗМ МІЖНАРОДНОГО ДОГОВОРУ: СУТНІСТЬ І СКЛАДОВІ

Анотація. *Метою роботи* є з'ясування сутності та основних складових контрольного механізму забезпечення виконання міжнародних договорів.

Методи дослідження. Методологічно робота заснована на системному підході в аналізі міжнародних правовідносин та міжнародних договорів, на формально-логічному й компаративному методах тлумачення міжнародного права, використовуваних як на теоретичному, так і на емпіричному рівнях, контент-аналізі міжнародних договорів.

Результати. Доведено, що міжнародний контроль як засіб забезпечення міжнародних зобов'язань набуває все більш важливого значення, стає нормою та необхідною умовою функціонування міжнародного права. Обґрунтовано, що як будь-які правовідносини, міжнародні контрольні правовідносини мають необхідні елементи: об'єкт, суб'єкти та зміст. Об'єктом міжнародного контролю є виконання зобов'язань за міжнародним договором. Суб'єктами контрольної діяльності можуть виступати міжнародні організації та їх органи, спеціально створювані контрольні органи та держави. Зміст правовідносин міжнародного контролю включає взаємні права та обов'язки суб'єктів при тому, що основний та загальний обов'язок у будь-яких контрольних правовідносинах є необхідність відповідати загальноновизнаним принципам та нормам міжнародного права. Визначено, що виходячи зі структури міжнародних правовідносин, ми можемо виділити три складові в контрольному механізмі виконання міжнародних договорів: 1) договірну складову, пов'язану з об'єктом правовідносин, 2) інституційну складову, пов'язану з суб'єктом (суб'єктами) міжнародних правовідносин та 3) змістовну складову, пов'язану зі всім спектром забезпечення вимог міжнародних договорів (принципи, норми, форми, методи, засоби контрольної діяльності тощо).

Висновки. Дослідження феномену міжнародного контролю за дотриманням міжнародних договорів має величезне практичне значення, безпосередньо впливаючи на якість та ступінь розробленості положень про контрольний механізм міжнародних договорів. Ефективно діючий контрольний механізм, своєю чергою, вносить значний внесок у справу забезпечення належного дотримання міжнародних договірних зобов'язань, що, зрештою, позначається на стані дотримання міжнародно-правових норм та підвищення ефективності міжнародного права загалом.

Ключові слова: міжнародний договір (конвенція), міжнародний контроль, контрольний механізм договору (конвенції), суб'єкт міжнародного права, міжнародні правовідносини.

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