Yaremenko S. O.
National University «Odessa Law Academy»,
a post-graduate student with the Department of Criminal Law

INTERNATIONAL COOPERATION REGARDING FIGHT AGAINST CYBERCRIME

Having started to become a single globalized community, the modern world doesn't anymore surprise its citizens with stern integrative processes in all possible spheres. Information exchange is a good example of a phenomenon that recognizes neither national nor continental limits. On the Internet, where borders are meaningless, we are vulnerable to criminals from all over the world (M. Yasin Aslan. Global Nature of Computer Crimes and the Convention on Cybercrime //Ankara Law Review Vol.3 No.2, p.130).

The necessity to cooperate internationally and develop international standards dealing with this problem is obvious for a number of reasons. First, crimes committed on the Internet often begin in one county and end in another, creating law enforcement challenges. Indeed, which country's legislation should be applied in such case? Which country should execute the punishment for such a crime? The issue becomes even more complicated with the countries that do not have proper legislation. Another problem emerges if the level of technological development of a country is low. The great disparities in opportunity to access the Internet and the information and educational/business opportunities tied to this access between developed and developing countries are called the «global digital divide» (Lu, Ming-te. Digital divide in developing countries // Journal of Global Information Technology Management Vol.4 No.3, p. 2). Among other things, the 'digital divide' provides 'safe havens' for cyber-criminals (Roderic Broadhurst. Developments in the Global Law Enforcement of Cyber-Crime // An International Journal of Police Strategies and Management, Vol. 29 No.2, p. 408). But even in the countries with high level of IT development, the impossibility to deal with cybercrimes just with the means of one country is a cornerstone of the situation.

The international organizations which are the most active elaborating criminal and procedural aspects of combating cybercrimes are Council of Europe, United Nations, European Union, Organization for Economic Cooperation and Development, Commonwealth of Independent States. It should also be noted that Interpol and the G-8 states play an important role in combating cybercrimes. At the international level two new treaty instruments provide a sound basis for the essential cross-border law enforcement cooperation required to combat cybercrime. The first of these instruments, the Council of Europe's Cybercrime Convention, is purpose built and although designed as a regional mechanism has global significance. The second is the United Nations Convention Against Transnational Organized Crime, which is global in scope but indirectly deals with cyber-crime when carried out by criminal networks in relation to serious

crime (Roderic Broadhurst. Developments in the Global Law Enforcement of Cyber-Crime // An International Journal of Police Strategies and Management, Vol.29 No.2, p. 411).

The first international act with the aim of harmonizing national laws and raising cooperation in fighting cybercrimes was The Convention on Cybercrime, adopted by the Committee of Ministers of the Council of Europe on 8 November 2001 in Strasbourg. The main requirement of the Convention is participation of the countries in combating cybercrimes, as well as harmonizing and updating and their criminal laws against computer-facilitated fraud, hacking, child pornography, copyright infringement, and other kinds of cybercrimes. The parties are required to adopt appropriate legislation to counter computer crime, to ensure that their law enforcement officials have the requisite authority and procedural tools to effectively investigate and prosecute such crimes. In addition, the Convention obliges parties to cooperate with each other to the widest extent possible for the purposes of investigations or proceedings relating to computer crime and makes all computer crimes extraditable offenses.

The UN Convention Against Transnational Organized Crime, on the other hand, is not directly aimed at cybercrime, but it is an important instrument dealing with some aspects of cybercrime. The Convention came into force on the 23 September 2003 and by now has been signed by 147 States (and 175 parties). Additionally to enabling mutual legal assistance between states and establishing a number of offence categories, the TOC Convention expressly refers (Article 29 (2)) to methods for combating the misuse of computers and telecommunications networks, provisions for training and materials, especially assistance for developing countries, and places obligations on capable states. The TOC Convention also establishes a number of principles and arrangements for international cooperation, which may be taken as an example of a potent global instrument against cyber-crime. They include regulations limiting the rule of double criminality for mutual assistance purposes and introduce 'enterprise' responsibility (see ibid, p. 218). The importance of the Convention is seen from the fact that the definitions of 'serious crime' and 'organized criminal group' don't anymore position these phenomena in a way they were traditionally viewed, i.e. as quite a narrow range of offences. Article 3 of the Convention considers an offence 'transnational' if it is: (a) committed in more than one State; (b) committed in a single State but planned, prepared, directed or controlled in another State; (c) committed in one State but involving an organized group whose activities cross national boundaries; or (d) committed in a single State but has 'substantial effects' in another State. Therefore, a big variety of cybercrimes would qualify as 'a serious crime', according to the Convention. The question of extradition is also covered by the convention, making the parties to extend their bilateral extradition agreements, including a number of crimes covered by the convention into the list of extraditable offences, therefore, including a number of cyberspace offences.

The question whether it is reasonable to create a new treaty which would become a worldwide standard is highly debatable. On the one hand, the Council of Europe's Convention on Cybercrime was developed mostly by European countries, considering the cultural and legal peculiarities of these countries. Some even say that the Convention has already become out-of-date. Also, the countries that didn't take part in drafting the convention would have it thrust upon them. On the other hand, the creation of a new treaty addressing the cybercrime problems in a different way can become a barrier for the constructive processes that have been launched by the already existing Convention. Having existed for more than seven years, the Council of Europe's Convention on Cybercrime has the widest coverage of any international treaty of this kind, covering one third of current internet users. For these reasons, we believe that the work on increasing a number of signatories and ratifications of the existing Convention on Cybercrime to make it really a worldwide act seems more reasonable than the development of a brand new treaty.

Берш А. Я.

Национальный университет «Одесская юридическая академия», аспирант кафедры уголовного права

МИШЕЛЬ ФУКО И ЕГО УГОЛОВНО-ПРАВОВЫЕ КОНЦЕПТЫ

На философско-правовых воззрениях французского историка, социолога, криминолога Мишеля Фуко лежит печать идей Ф. Ницше и З. Фрейда. В 1971 г. во Франции по его инициативе была создана «Группа информации о тюрьмах», в чью задачу входило изучение условий содержания заключенных и информирование о них общественности. Работа в этой группе позволила М. Фуко создать объемное исследование «Надзирать и карать: рождение тюрьмы» (1975), основные положения которого явились развитием его концепции отношений между властью и насилием, преступлением и наказанием.

В своих работах М. Фуко предложил новое видение философско-правовых проблем европейской истории, которую он рассматривает с XIII по XX в. Отвергая традиционные объяснительные схемы и термины, он попытался подойти к проблемам власти и насилия с позиций нового метода, который назвал «археологическим».

М. Фуко исходил из предпосылки, что власть всегда представляла собой для человеческого рассудка нечто загадочное, таинственное, внушающее смешанные чувства ужаса и восхищения. В ней всегда ощущалось присутствие чего-то демонического. Главным ее объектом, то есть предметностью, над которой она распространяла свое влияние, являлось, по преимуществу, человеческое тело. Разные типы государств и исторических эпох различались между собой прежде всего тем, что в одних условиях социальный контроль осуществлялся через прямое воздействие на