



## BEST PRACTICES

JEL Classification: K33, K42, K49

# SMUGGLING AS A CRIME OF INTERNATIONAL CHARACTER: CONCEPT, CHARACTERISTICS, QUALIFICATIONS

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### *Abstract*

*The current article is devoted to theoretical aspects of smuggling as international crime in modern international law. Activization of the integration processes occurring at the international and regional levels, globalization of economy and abolition of the international trading barriers do the world very uniform and interconnected. At the same time it becomes rather vulnerable. Gradual transformation of world space to a uniform zone where capitals almost free move, the goods, services and freely extend ideas, creates real preconditions for active development of socially dangerous phenomena. One of the most serious problems is contraband of narcotics, psychotropic substances, weapon, cultural-historical values.*

*Keywords: smuggling, concept, characteristics, qualifications, international, customs, law.*

### **Introduction**

#### **Concept of smuggling of international law**

At the moment the concept of smuggling is the settled term, but somewhat disputable. So, in the dictionary reference on international law smuggling is the international offense in the sphere of customs business. According to national state legislation smuggling admits moving through customs border of separately taken state besides or with concealment from customs control or with deceptive use of documents or means of customs identification, or interfaced to a non declaration or doubtful declaring: drugs, psychotropic, strongly operating, poisonous, poisoning, radioactive and explosives; arms, explosive devices, firearms, cartridges to it and ammunition (except the smooth-bore hunting weapon and cartridges to it) Nuclear, chemical, biological and other types of weapon of mass destruction, materials and the equipment which can be obviously used at its creation; strategically important raw goods; subjects of art, historical and archaeological property of the people of separately taken country and foreign countries, and equally such moving of other goods made in the large sizes or with use of office position of the public official or the public official with use of the office position or the person, released from certain forms of customs control, or the person authorized on moving through customs

border of the state of the separate goods and vehicles, released from certain forms of customs control, or a group of persons, organized for employment by contraband. At the same time, contraband admits non-return on customs territory of the state of subjects of art, historical and archaeological property of the people of the country and the foreign countries which have been taken out for its limits if such returning is obligatory; or moving of the goods and vehicles through customs border of the state by its break expressed in their open moving through customs border contrary to a direct interdiction of the official present thus, carrying out customs control <sup>21</sup>. Contraband is punished according to the national criminal legislation (item 228 of CK RB), and also with the national administrative legislation (Gl.14 KoAP). Arms, explosives, fire-arms, cartridges to it and ammunition (except the smooth-bore hunting weapon and cartridges to it).

In our opinion, contraband from the point of view of international law is in any way the international offense. Because in crime international law in customs sphere it is considered to be crimes of the international character, we should prove that contraband is an international crime.

On purpose of evidence it is reversible to formulations the international crime and a crime of the international character. The international crime and a crime of the international character are two versions of the international criminality. We will address to the dictionary-directory on Dodonov V. N's international law.

The international crime – the heaviest international and illegal act encroaching on bases of existence of the states and the nation, the undermining major principles of international law menacing to an international peace and safety. In prepared by the International Law Commission draft articles on responsibility of the states it is emphasized that «the international and illegal act resulting violation by the state of the international obligation, so fundamental for ensuring the vital interests of the international community that its violation is considered as a crime before the international community as a whole, makes the international crime».

The universal peace and the international safety can be object of the international crime; good-neighbourhood between the people and the states; the rights of the people and the nations to self-determination; laws and customs of war.

Crimes belong to number of the international crimes according to the Charter of the International military court of 1945 (Art. 6) and other international legal acts against the world, war crimes, crimes against humanity, crimes against humanity among which it is possible to call: colonialism, genocide, apartheid, mass pollution of the atmosphere or seas (ecocide). Such crimes can be made as a result of heavy violation of the international obligations having fundamental value for providing an international peace and safety, the right of the people to self-determination, protection of the human person, protection of environment. They infringe interests not only directly affected state, but also all world community as a whole. In this case the relations of responsibility arise between the state

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<sup>21</sup> Додонов В.Н., Панов В.П., Румянцев О.Г. Международное право. Словарь-справочник / Под общей ред. акад. МАИ, д.ю.н. В.Н. Трофимова. – М. ИНФРА – М, 1998. – с.110-111  
which has committed the international crime, and all other states.



The states, the international organizations and physical persons can be subjects of the international crime and subjects of responsibility for their fulfillment. The states and other subjects of international law bear material, moral and political responsibility for the international crime, and physical persons – the international criminal liability of individuals.

Crimes of the international character – socially dangerous acts provided by international treaties which are not relating to the international crimes, encroaching on the normal relations between the states and causing a damage to peace cooperation in various areas. Unlike the international crimes of responsibility for crimes of the international character bears not the state, and individuals. Responsibility attacks to a basis of the international treaty, but by the national right. Depending on object of encroachment and degree of the international danger they are subdivided into the following groups:

- 1) crimes against stability of the international relations (the international terrorism, capture of hostages, crimes on air transport, plunder of a nuclear material, a drug trafficking, contraband, illegal emigration, propagation of war and other acts, causing a damage to economic, social and cultural development of the states);
- 2) counterfeiting, legalization of criminal incomes, encroachments on cultural values of the people and others;
- 3) criminal encroachments on personal human rights: slavery, a slave-trade, trade in women and children, tortures, regular and mass infringements of human rights and others;
- 4) the crimes made in the high sea: a piracy, неоказание on the sea, pollution of the sea environment, rupture or damage of an underwater cable or the pipeline and others;
- 5) war crimes of the international character; application of the forbidden means and war methods, marauding, violence over the population in the war zone and others

Summarizing the above-stated kinds of crimes according to the dictionary-directory on international law it is necessary to note the following. The international crime should be delimited legally from crimes of the international character.

So, delimiting criteria are elements and signs of the crime encroaching on the world and safety of mankind, and also object and the objective parties of an encroachment. Concerning the subject of the international crimes responsibility for their fulfillment bear both the states, and separate individuals, sometimes legal bodies. As to the subject of a crime of the international character only physical persons in what basic difference consists in a question of responsibility of the subject of international law in this case can admit.

Regarding the concept of international crime "international crime" means a special degree of public danger to the international community, coming from the wrongful conduct of states <sup>22</sup>. As the state's responsibility for international crime entails political consequences in international relations. Gravity of the violation, the importance of the obligation breached the security of the international community to define the objective aspect of the crime. The object of attacks in the international crimes are international peace

<sup>22</sup> Reshetov, Yu. The fight against international crime against the peace and security. M., 1983, P.45.

and security, the fundamental obligation to protect human rights and environmental protection<sup>23</sup>.

Therefore an international crime violates peremptory norms of international law [jus cogens], and specific forms of international obligation [erga omnes]<sup>24</sup>.

We agree with E. and F. Narbutaeva Safaeva that because of great public danger qualification of a wrongful act of the state as an international crime distinguishes it from ordinary crimes. The fact that the qualification of ordinary crime is the responsibility of national courts and differentiated framework of national legislation. In contrast to such a qualification is not an international crime is the result of subjective assessment by the individual state. Unlawful action of a State or group of states recognized by the international crime only if the International Criminal Court, UN Security Council or other international bodies say about it and take some steps towards the realization of the international responsibility of that State<sup>25</sup>.

According I.P.Blischenko and I.V.Fisenko, state participation in the international crimes may be direct or indirect. According to them, when the state commits a crime on behalf of their agencies, law enforcement agencies and representatives, we can say about his direct involvement. If the commission of international crimes by individuals who have no formal relationship to the state apparatus, is allowed within the jurisdiction of the state alleged, it is indirectly involved.

Thus, we conclude that the separation of some compounds of international crimes of international crimes is very conditional. Thus, in light of Resolution 1269 (1999), adopted by the Security Council on the 4053 meeting, October 19, 1999 was the first attempt to classify terrorism as an international crime. This thesis is based on the considered measures to "address threats to international peace and security posed by terrorism<sup>26</sup>."

In the future, the events of September 11, 2001 by the Security Council was adopted at the 4385 meeting, 28 September 2001 Resolution 1373 (2001) on the basis of Resolutions 1269 (1999) on October 19, 1999 and 1368 (2001) on September 12, 2001. The document stipulated: "any act of international terrorism constitute a threat to international peace and security", which confirms the transformation of terrorism in international crime. In 2001 significantly intensified its efforts in this direction, which was also the result of Resolution 1377 (2001) Adopted by the Security Council at the 4413 meeting of November 12, 2001.

At the present stage of the final document on counter-terrorism is resolution 1989 (2011), adopted by the Security Council at the 6557 meeting of June 17, 2011 pursuant to resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1373 (2001) 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1624 (2005), 1699 (2006), 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009) and 1988 (2011), which implies that "terrorism in all its forms and manifestations constitutes one of the most serious threats to

<sup>23</sup> Э.НАРБУТАЕВ, Ф.САФАЕВ. The rate of international criminal law. Tashkent, 2006, C.311.

<sup>24</sup> International Crimes of States, ed. by Weiler J., Berlin, New York, 1989, pp. 156-157.

<sup>25</sup> Э.НАРБУТАЕВ, Ф.САФАЕВ. The rate of international criminal law. Tashkent, 2006.

<sup>26</sup> S/RES/1269 (1999) Resolution 1269 (1999) adopted by the Security Council at its 4053 meeting, on 19 October 1999

peace and security and that any acts of terrorism are criminal and unjustifiable, regardless of their motivation, whenever and by whomsoever committed. " In the text must be "unequivocal condemnation" of al-Qaeda "and other related individuals, groups, companies and organizations for ongoing and multiple criminal terrorist acts aimed at causing the death of any innocent civilians and other victims, destruction of property and greatly undermining stability. Terrorism can not and should not be associated with any particular religion, nationality, or civilization <sup>27</sup>. "

Thus, on the basis of the above, such as smuggling offense must be considered separately for the compositions in accordance with modern law enforcement.

### **The history of smuggling**

Smuggling as a crime occurred in the early days, but these wrongful acts took place at the national level, within a single state. The twentieth century saw the flourishing of smuggling.

Thus, the Convention on the Suppression of smuggling of alcoholic products (Helsinki, August 19, 1925) was among the first to curb alcohol.

With the growth and spread of drug addiction was a process of development, improvement and convergence of international and national laws. The first ever international treaty was the Hague Convention of 1912, which laid down the following principles: production and distribution of raw opium shall be verified by law, and his smoking should be eradicated, production, sale and use of drugs should be limited by law solely for medical purposes, and more. In the following were accepted international legal instruments on the fight against smuggling, among them the Convention on the Prohibition of the illegal drug trade in 1936

In order to unify the numerous international legal norms adopted in the 1961 Single Convention on Narcotic Drugs, which replaces all earlier agreements in this area, except for the previously mentioned 1936 Convention About a hundred States have acceded to the Convention.

In order to differentiate psychotropic substances and the fight against illicit production and distribution in 1971 adopted the Convention on Psychotropic Substances.

Both conventions require States to all serious and deliberate illegal operations with drugs and psychotropic substances are punished with imprisonment or other penalties related to deprivation of liberty (art. 36 Convention of 1961 and article. 22 of the Convention, 1971.).

In violation of these norms in Iran, Iraq, Pakistan, Malaysia and other countries (of 12) for the use and distribution of drugs established the death penalty <sup>28</sup>. Convention

<sup>27</sup> S/RES/1899 (2011) Resolution of 1899 (2011) adopted by the Security Council at 6557 meeting, on 17 June 2011

<sup>28</sup> Likhachev, In. A. The role of criminal law in the protection of the economies of developing countries, M. 1983.

provide for the territorial principle of criminal punishment, ie, under the laws of the State in whose territory the crimes. In place of detention, criminal jurisdiction is exercised only when the non-his extradition....

The norm against these crimes is in the UN Convention 1982. Law of the Sea. According to Art. 108 all States shall cooperate in curbing the illicit trade in narcotic drugs and psychotropic substances engaged in by ships on the high seas in violation of international rules.

In 1988 he was adopted and opened for signature by the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It does not undo the action of the 1961 and 1971gg. and includes links to some of their provisions. Among the offenses Convention 1988 relates to the production, manufacture, extraction, distribution, sale, delivery on any terms, transport, import or export, as well as the cultivation of opium poppy, coca leaf, cannabis plant for the production of illegal drugs.

Vienna International UN Convention obliges States parties, to bring its legislation into conformity with its provisions (Article 3). This suggests to approximate the norms of national and international legislation to establish a common responsibility for engaging in illicit traffic in narcotic drugs and psychotropic substances. The need for this measure in our view, the following objective reasons.

First, in most countries there is no single comprehensive and exhaustive legislation and generated criminal drug policy in national legal systems.

Second, the criminal-law doctrine of developed countries with regard to drug addiction focused less punitive than in developing countries.

Third, the legislation takes a significant number of states under the control of only the so-called natural drugs and is totally in control of psychotropic substances. In those few cases where such monitoring takes place, it is not through criminal law and administrative law, which have often vague, insufficient for a rigorous and specific controls.

Fourth, the laws of most countries there is no uniformity in the terminology of the classification of drugs in determining the types of crimes and other offenses in determining penalties, as well as details of administrative and judicial procedures. This international convention has played an important role not only in addressing these shortcomings of foreign laws to combat the illicit trafficking of narcotic substances, but also made a worthy contribution to the systematization.

The UN Commission on Narcotic Drugs at its next meeting on January 29, 1990 decided to add the List of the Single Convention on Narcotic Drugs of 1961. new kinds of drugs and a list of the UN Convention on Psychotropic Substances of 1971. - Psychotropic Substances. The latter also were enshrined in the national legislation of several Member States of the Convention of 1988<sup>29</sup>. These changes continue to occur and to this day<sup>30</sup>

### **Smuggling in contemporary international law**

The principal distinguishing feature is its dynamic trafficking, because the methods

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<sup>29</sup> Materials of the UN Commission on narcotic drugs Vienna - 29.01-02.02 1990.

<sup>30</sup> The report of the UN Commission on narcotic drugs Vienna - 08-12.11.1991 g.

and techniques for its use are constantly being improved.

As stated earlier, since September 11, 2001 Terrorism pays special attention from both the UN Security Council, International Court of Justice, and other intergovernmental organizations. Meanwhile, no less a danger to the international community is smuggling weapons to the planet's hot spots, as well as to carry out terrorist acts. The smuggling of narcotic drugs and psychotropic substances is not much of a threat because it undermines the efforts of governments to create and develop economic infrastructure to address the economic and social problems <sup>31</sup>. There is a steady tendency to increasing volume of smuggling of cultural property and objects of nature and wildlife.

It is known that the composition of international crimes are different from international crimes, which are caused by an attack on peace and peaceful relations between nations and peoples, international security, the basics of international communication. Feature is the availability of qualified smuggling several formulations of the crime.

### **The smuggling of weapons and ammunition**

In modern international law there is an equivalent concept of smuggling of arms and ammunition, namely contraband of war.

The smuggling of war - under international law a set of materials and items carried by the neutral countries in violation of their neutral status for one of the belligerents. Contraband of war can not be objects of care for the wounded and sick. Contraband of war shall be subject to forfeiture, together with the means of delivery. <sup>32</sup>

The specifics of the crime is manifested in the features of the subjective side, namely the requirement of specific intent to further arms shipments as possible to recover the revenue and (or) direct extermination. Thus the objective of the offense of smuggling of arms and ammunition includes not only actions aimed at the direct physical destruction of people in the implementation of military operations, but also in peacetime, in order to carry out terrorist actions.

So far, the UN was not accepted by the relevant resolutions on weapons smuggling. These issues are partially addressed in the United Nations Convention against Transnational Organized Crime (A/RES/55/25) on November 15, 2000, as well as the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (A/RES/55/255) on May 31, 2001.

The subject of crime are different kinds of weapons and precursors. The main qualified by the smuggling of weapons and ammunition, is that these crimes are the subjects of the state in most cases, the highest representatives of the government or individuals acting on their instructions, as well as natural persons (smugglers), organized group of persons acting under a single agreement.

<sup>31</sup> Customs crime : the Nature and problem identification. A.Zhbankov. Siberian Law Herald. - 2004. - № 4. c.24-35 (p.31)

<sup>32</sup> V.N. Dodonov, V.P. Panov, Rummyantsev O.G. The international law. Dictionary-Handbook / Under General edition Acad. MAI, doctor of law. V.N.Trofimova. - M. INFRA - M, 1998. - c.254

States and other subjects of international law are non-material (political) and the financial responsibility, as individuals - individual criminal responsibility. The official status of the person (head of state or government) does not exempt him from criminal responsibility.

Assign responsibility for the offense involves the degree of participation in the implementation of the subject of smuggling weapons, given that the unifying feature of the customer, Executive Director (technical artist), a mediator is the presence of direct intent.

### **The smuggling of narcotic drugs and psychotropic substances**

The concept of crime remains the same, but the tendency to expand its contents revealed since 2008 in the relevant General Assembly resolutions 63/195 and 63/197 of 18 December 2008, resolution 64/179 of 18 December 2009, resolution of the Economic and Social Council, UN 2009/23 on July 30, 2009, resolution 2010/20 on July 22, 2010, resolution 2011/34 on July 28, 2011, the strategy of the United Nations Office on Drugs and Crime, 2008-2011.

The International Convention on Mutual Administrative Assistance in the prevention, investigation and combating of Customs offenses (Nairobi, 9 June 1977) Appendix X - Help in the fight against smuggling of narcotic drugs and psychotropic substances contain the rules on information cooperation among customs authorities in the face.

The peculiarity of the subjective side is that the intentions are realized, undermine the viability of a single nation, which causes economic and social problems of the state.

The subject of crime are different kinds of drugs of plant and synthetic origin.

The subjects of this crime are mostly individuals and legal persons (under the guise of pharmaceutical companies). Individuals bear individual criminal responsibility.

### **The smuggling of cultural property**

Despite its importance as part of the cultural heritage of humanity, cultural values are too often treated as mere commodities, not only deprives them of the main cultural, historical and symbolic content, but also stimulates the activity that leads to their loss, destruction, displacement, theft and trafficking. In this regard, the smuggling of cultural property acquired such a serious scale<sup>33</sup>.

In order to deal with criminal assault have been numerous attempts, dating back to 1954.

Resolution of the Economic and Social Council 2003/29 on July 22, 2003, entitled "Prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property." Resolution 2004/34 on July 21, 2004 and 2008/23 dated July 24, 2008, entitled "Protection against trafficking in cultural property," the General Assembly resolution 58/17 on December 3, 2003, 61/52 of 4 December 2006 and 64/78 of 7

<sup>33</sup> E/2010/SR.45 Measures in the field of crime prevention and criminal justice in the protection of the cultural values, particularly in relation with their illegal turnover of 22 July 2010





December 2009 concerning the return or restitution of cultural property to countries of origin, as well as other relevant United Nations resolutions.

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14 November 1970.

Convention on Stolen or Illegally Exported Cultural Objects, adopted by the International Institute for the Unification of Private Law 24 June 1995 and the Convention on the Protection of Cultural Property in the Event of Armed Conflict, adopted May 14, 1954, and its two protocols, adopted May 14, 1954, and goda124 March 26, 1999 <sup>35</sup>, as well as such regional instruments as the Convention on the protection of archaeological, historical and artistic heritage of American States, adopted by the General Assembly of the Organization of American States, June 16, 1976, and the revised European Convention for the Protection of Archaeological Heritage, signed on January 16, 1992 ,

The United Nations Convention against Transnational Organized Crime

The International Convention on Mutual Administrative Assistance in the prevention, investigation and combating of customs offenses Nairobi, 9 June 1977) Annex XI - Assistance in the fight against smuggling of works of art, antiques and other cultural values, which include rules on information cooperation of States in the face customs authorities.

The peculiarity of the subjective side of that is looting of historical and cultural heritage separate state.

The subject of crime are different types of historical values of particular value to the cultural heritage is not just a single state, but of all mankind.

The subjects of this crime are mostly individuals and legal entities. Individuals bear individual criminal responsibility.

### **Smuggling of wild fauna and flora threatened with extinction**

In order to combat the smuggling of wildlife and fauna, Member States shall take appropriate measures to prevent illicit trafficking in species of wild fauna and flora, endangered, and control, including the adoption, where appropriate, the necessary legislation for the prevention, investigation and prosecution of such trafficking, in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES, including its fundamental principles <sup>36</sup>;

Devoted to the crime of Economic and Social Council decision 2001/12 of July 24, 2001 and 2003/27 dated July 22, 2003, regarding the illicit trafficking in protected species of wild fauna and flora, and resolution 2008/25 on July 24, 2008, concerning international cooperation in the prevention of illegal international trafficking in forest products, including timber, wildlife and other forest biological resources, and combat resolution 62/98 of the General Assembly on December 17, 2007, in which the Assembly adopted a non-legally binding instrument on all types of forests in which the Member States and

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<sup>35</sup> Ibid, vol. 2253, No. 3511.

<sup>36</sup> United Nations, *Treaty Series*, vol. 993, No. 14537.

other parties were urged to strengthen bilateral, regional and international cooperation in addressing international illegal trade in forest products.

The subjective side - is treacherous destruction and damage to life and health of wildlife is threatened fauna species diversity.

The subject of the crime - different types of flora and fauna, endangered species, which are shared with the global community.

The subject of the crime - individuals and legal entities. Individuals bear individual criminal responsibility

### **Summary and concluding remarks**

Modern international crimes are criminal acts that do not just inflict economic damage to the States, are making a social imbalance in society, but can also pose a threat to the security question, life and health of citizens of one state or the entire world community as a whole. We share the view Mansurov TT on contemporary international crimes, which differ greatly increased technical equipment, high level of organization, with significant financial resources. Their main feature is a clear - a blurring of boundaries between international crimes and crimes committed at the national level. Moreover, in the exercise of criminal offenses of terrorist organizations has been developing with the drug, as well as criminal organizations involved in illegal arms and human trafficking for the purpose of illicit trafficking<sup>37</sup>.

As a result, smuggling of arms, narcotic drugs and psychotropic substances by virtue of increased social danger to the international community may qualify as an international crime. The fact that no contraband import / export of weapons is impossible to carry out certain war crimes and acts of terrorism.

As for the smuggling of narcotic drugs and psychotropic substances and allow the possibility of allocating a separate international crime of persecution because of his goal: the extermination of people secretly a separate state.

In fact, smuggling may be cited as an international crime, because it undermines the fundamental principles of international law, threats to international peace and security.

### **Endnotes**

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<sup>37</sup> Mansurov, Timur, The legal framework of international cooperation in combating crimes of an international character : Dis. ... kand. jurid. nauk : 12.00.10: Moscow, 2004 190 c. The RSL OD, 61:04-12/1147



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13. United Nations, *Treaty Series*, vol. 249, No. 3511

14. *Ibid*, vol. 2253, No. 3511

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**JEL Classification: K34, O2, O4, O18**

## **CUSTOMS SERVICE OF INDEPENDENT AZERBAIJAN IS SUCCESSFULLY WALKING THE PATH OF DYNAMIC DEVELOPMENT**

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### **Abstract**

*The article is devoted to research of dynamic development of Customs Service of the Independent Republic of Azerbaijan. The issues of strengthening the legal framework and modernization of the customs service have been analyzed. The principle of "Single window" has been highlighted as the main factor to simplify transport and trade flows. The results of combating illicit trafficking have been shown.*

*Keywords: development, modernization, strengthening, customs, authorities, changes.*

### **Introduction**