

## ПРАВОВАЯ ЖИЗНЬ: НАУЧНО-ПРАКТИЧЕСКИЕ ЗАКЛЮЧЕНИЯ, КОММЕНТАРИИ И ОБЗОРЫ

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### Evolution of the concept of genocide through the lens of modern “memory wars”: International legal and intrastate dimensions

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The article examines how the concept of genocide has evolved at the international and national legal levels, beginning with its origins at the doctrinal level and culminating in international conventions and national regulatory acts. Challenges regarding the definition of genocide and ambiguous interpretation of genocide in relation to crimes against humanity were identified. It is demonstrated that international justice bodies interpret the concept of genocide differently. The study concluded that humanity did not fully utilize the potential of the United Nations and International Criminal Tribunals in order to develop a joint measured approach to assessing historical events, specifically World War II and the genocide in 1939–1945, in the context of actualizing history and triggering memory wars. The positions of states to consolidate the crime of genocide in criminal legislation are considered: compliance with the definition of genocide in international conventions, extension of the list of groups against whose members the genocide can be committed, leaving the list open as to which groups can be included. The preferences of the second option are shown. Examples of states turning to the facts of genocide committed in the past are given (for instance, Armenia towards Turkey, Namibia towards Germany, Poland towards Germany and Russia, Russia towards Germany and its allies during World War II), and it has been suggested that the material responsibility of states cannot be

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applied to events before 1945, since the desire to avoid it leads to non-recognition of political international-legal responsibility.

*Keywords:* genocide, international crime, official remembrance policy, memory wars, self-identification of states, self-identification of peoples.

## 1. Introduction

Currently, we are witnessing the actualization of history on a scale and in a manner that is striking. It has been observed that addressing the past has been a prevailing trend in other eras, but probably historical events have never caused such serious change in the public and political spheres. Many states and peoples in the 21<sup>st</sup> century identify themselves based on certain past events, so moving forward without resolving painful issues is impossible.

Obviously, this situation affects the legal system. There are concepts such as official remembrance policy and memorial legislation, although their significance still causes serious debate. Some legal concepts, or to be more precise, their semantic content, are also transformed as a result of this process. It is predetermined by many theoretical and practical issues: the relationship between international and domestic law, the development of international criminal law and criminal justice, “memory wars” associated with overcoming the remnants of the centuries-old existence of the colonial system, various manifestations of slavery, territorial disputes, revanchist sentiments, historical “resentments” and social traumas, changing the balance of power in the international arena, changing generations of political elites and others.

In this regard, it is quite interesting to explore the evolution of the interpretation of the concept of genocide, which is quite new, since it only arose after World War II, and has been enshrined in both the post-war international conventions and the Rome Statute of the International Criminal Court<sup>1</sup>, but it is also actively developing at the national level and has become increasingly useful to law enforcement practice in recent years.

There have been dozens of studies of genocide published in recent years, covering both the theory and practice of genocide (Šturma, Lipovský 2022). Despite this, scientists are still far from uniformly applying the concept and establishing generally significant criteria for law enforcement. Thus, L. Kazrytski believes that the phenomena designated as genocide should include the massacres committed on political grounds. The scientist is trying to prove that the qualification of Francoist repression as genocide is fully consistent with international law (Kazrytski 2022).

M. M. McGuire and D. J. Murdoch examine the practice of uneven representation of women among Canadian prison inmates as a manifestation of the genocide of indigenous peoples (McGuire, Murdoch 2022). G. H. Stanton, President of Genocide Watch, identifies ten stages of genocide, including symbolization, dehumanization, polarization, etc. (Stanton 2016). Moreover, this view is supported by some lawyers (Matulewska, Gwiazdowicz 2022).

The relevance of the research topic is determined by the fact that states are currently adopting new laws or declaratory documents in which specific historical events related to the conduct of the domestic or foreign policy of various countries are considered as geno-

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<sup>1</sup> “The Rome Statute of the International Criminal Court”. *Official website of the United Nations*. Accessed October 17, 2022. [https://www.un.org/ru/documents/decl\\_conv/conventions/pdf/rome\\_statute\(r\).pdf](https://www.un.org/ru/documents/decl_conv/conventions/pdf/rome_statute(r).pdf).

cide (for example, the Law on the Holodomor 1932–1933 in Ukraine<sup>2</sup> adopted in 2006) as well as international and national processes against persons who are charged with carrying out a policy of genocide, attempted genocide, conspiracy to commit genocide, direct and public incitement to commit genocide as well as complicity in genocide. Particularly, in the fall of 2022, the International Criminal Court began the trial of 89-year-old Félicien Kabuga, who in 1994 was the primary sponsor of Radio-Télévision Libre des Mille Collines of Rwanda, called for the murder of representatives of the Tutsi ethnic group, and then hid in different countries until 2020<sup>3</sup>. Almost at the same time, St Petersburg City Court also began hearings to consider the claim brought by St Petersburg Prosecutor's Office, which requires, among other things, to recognize the Siege of Leningrad as genocide against national and ethnic groups living in the Soviet Union<sup>4</sup>.

During contemporary processes of self-identification of states and people, there has been a transformation of the concept of genocide, which is accompanied by “memory wars”.

## 2. Basic research

The term “genocide” was originally chosen to assess the crimes committed in the past. A particular pioneer in this field was R. Lemkin (1900–1959), who, as a student at Lviv University, began to study the mass murder and deportation of Armenians in the Ottoman Empire between spring 1915 and autumn 1916, a phenomenon later called the first genocide of the 20<sup>th</sup> century. World War II, however, forced the scientist to shift his focus from the past to the present, and in 1944 he described the acts committed by Germany and Italy against certain peoples in the occupied territories as genocide for the first time (Lemkin 1944). Afterwards, Lemkin played a key role in consolidating genocide as a crime at an international level: first through the Resolution 95 (I) of the United Nations General Assembly on Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal dated December 11, 1946, and then with the Convention on the Prevention and Punishment of the Crime of Genocide (1948)<sup>5</sup>.

There are many reasons why it is difficult to formulate a single definition of genocide and interpret this concept.

First, there are various perspectives regarding the relationship between the concepts of crimes against humanity and genocide.

Thus, Ju. I. Cevek, P. T. Veres argue that these terms are synonymous, and therefore, targeted activities for the mass slaughter of people on any grounds are prohibited at the international legal level since 1925 (Cevek, Veres 2016, 12).

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<sup>2</sup> “The Law of Ukraine on the Holodomor 1932–1933 in Ukraine dated November 28, 2006”. *The main legal portal of Ukraine “Liga: zakon”*. Accessed October 17, 2022. [http://search.ligazakon.ua/l\\_doc2.nsf/link1/T060376.html](http://search.ligazakon.ua/l_doc2.nsf/link1/T060376.html).

<sup>3</sup> “Kabuga, Félicien (MICT-13-38). 2022”. *The United Nations International Residual Mechanism for Criminal Tribunals*. Accessed October 17, 2022. <https://www.irmct.org/en/cases/mict-13-38>.

<sup>4</sup> The Official website of St Petersburg City Court. Accessed October 17, 2022. [http://sankt-peterburg-sky.spb.sudrf.ru/modules.php?name=press\\_dep&op=1&did=244](http://sankt-peterburg-sky.spb.sudrf.ru/modules.php?name=press_dep&op=1&did=244).

<sup>5</sup> “The Resolution 95 (I) of the United Nations General Assembly on Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal dated December 11, 1946”. *Official website of the United Nations*. Accessed October 17, 2022. [https://www.un.org/ru/documents/decl\\_conv/conventions/genocide.shtml](https://www.un.org/ru/documents/decl_conv/conventions/genocide.shtml); “The Convention on the Prevention and Punishment of the Crime of Genocide dated December 9, 1948”. *Official website of the United Nations*. <https://www.un.org/en/genocideprevention/genocide-convention.shtml>.

By establishing a chronological sequence, another conclusion can be drawn. In 1915, France, Great Britain, and Russia participating in World War I jointly declared that mass crimes against civilians were crimes against humanity and civilization (France, Great Britain, Russia Joint Declaration of 1915)<sup>6</sup>. Further, the introduction of the term “genocide” into international law in 1946 did not eliminate the concept of “crime against humanity”.

A major contributing factor to this problem is the inconsistent interpretation of the term “crimes against humanity” at the international legal level.

Shortly after the end of World War II, the United Nations Commission for the Investigation of War Crimes, operating since 1943 and later renamed the United Nations War Crimes Commission, gave an interpretation of the term “crime against humanity” used in the Joint Declaration of May 24, 1915, recognizing it as identical crimes, which were qualified as inhuman acts by the Nürnberg Tribunal between 1945 and 1946 against their own subjects (Marukyan 2017, 74–75).

Article 1 of the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity dated November 26, 1968 clarifies that crimes against humanity include genocide, as defined by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948), even if these acts did not violate domestic laws in the country where they occurred (Kolosov, Krivchikova 1997, 14).

Through the analysis of these documents, it becomes possible to differentiate between crimes against humanity and genocide. Thus, G. Mettraux notes that, first, crimes against humanity and genocide have a different *mens rea*. Second, the range of underlying offences which may qualify as genocidal is more restricted in scope than those that may qualify as crimes against humanity. Third, crimes against humanity must be committed in the context of an armed conflict, whereas genocide may be committed in time of peace as well as in time of war. Fourth, the definition of genocide unlike that of crimes against humanity does not require that the acts of the accused occur in the context of a widespread or systematic attack against a civilian population. Fifth, whereas a crime against humanity may only be committed against civilians, genocide can be committed against any member of the targeted group, whether combatants or civilians (Mettraux 2006).

The researchers also point out that the main feature that distinguishes the criminal offense of genocide from those of crimes against humanity, war crimes, or other offenses such as unlawful killing is the requirement to prove that the perpetrator possessed “the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group” (O’Connor, Rausch, Albrecht 2007, 197; Murray 2011, 591).

The term “crimes against humanity” originated earlier and now includes genocide on a par with expulsion resulting from an armed attack or occupation and inhuman acts caused by apartheid.

Second, there is not always a completely correct interpretation of concept of crimes against humanity in Russian.

Thus, in the Charter of the International Military Tribunal (Nürnberg Tribunal) of 1945, crimes against humanity (in the sense of people in general) were enshrined as one of the types of international crimes<sup>7</sup>. However, some later translations used the term

<sup>6</sup> Human rights. A Compilation of International Instruments. 1989. New York: The United Nations.

<sup>7</sup> “Charter of the International Military Tribunal”. *Sbornik deistvuiushchikh dogovorov, soglashenii i konventsii, zakliuchennykh SSSR s inostrannymi gosudarstvami*. Iss. 11: *Deistvuiushchie dogovory, soglash-*

“crimes against humanity”, meaning being humane (i. e. pertaining to a human being and having qualities befitting human beings)<sup>8</sup> by humanity. In particular, this version is found in the Information-Legal Database “International Humanitarian Law” of the International Committee of the Red Cross<sup>9</sup>, in the collection of materials “Nürnberg Tribunal” published in the late 1980s — 1990s (Rekunkov 1987–1999) and even now in the Russian version of the United Nations website<sup>10</sup>.

There are, however, at least two reasons why the translation of the term “crimes against humanity” contained in Art. 6 (c) of the Charter of the International Military Tribunal meaning being humane by humanity is questionable. Firstly, according to the Russian language rules, it is impossible to commit crimes against an object feature. Secondly, the above-mentioned article deals with the inhumane acts committed against any civilian population, not with any properties. Finally, turning to English dictionaries shows that the word “humanity” primarily means people in general (for instance, *Bombing civilians is a crime against humanity* or *He was found guilty of crimes against humanity*)<sup>11</sup>, while the same word in the meaning “being humane” is illustrated by utterly different examples (*If only he would show/display a little humanity for once*)<sup>12</sup>. Thus, in light of the post-war Charters of the International Military Tribunals, the first option seems appropriate.

As genocide and crimes against humanity (as meaning being humane) are described in the Rome Statute of the International Criminal Court as separate types of international crimes<sup>13</sup>, using them as synonyms for the concept of crimes against humanity (as meaning people in general) creates further terminological confusion. As S. R. Ratner notes, there are three key differences between genocide and crimes against humanity: a) the intent to destroy a group in whole or in part; b) a limited set of groups against whose members the relevant acts are criminal, i. e., racial, religious, national, or ethnic; and c) a limited list of grave underlying acts focusing on physical extermination (Ratner 2007).

A third reason is the narrowing of the definition of genocide in the final text of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide dated December 9, 1948, which entered into force on January 12, 1951. While the Convention was being drafted, genocide was intended to mean any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, but the USSR representative A. Ya. Vyshinsky suggested the socio-political element be removed (Veres 2015, 65). This was due to the political repression in the USSR of the second half of the 1930s, which resumed after the Great Patriotic War.

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*eniia i konventsii, vstupidivshie v silu mezhdu 22 iyunia 1941 goda i 2 sentiabria 1945 goda*, 165–172. Moscow, Politizdat Publ. (In Russian)

<sup>8</sup> “Humane”. *Online Etymology Dictionary*. Accessed October 17, 2022. <https://www.etymonline.com/search?q=humane>.

<sup>9</sup> “The Charter of the International Military Tribunal — Annex to Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal dated August 8, 1945”. *Electronic Collection of Legal and Regulatory-Technical Documents*. Accessed October 17, 2022. <https://docs.cntd.ru/document/901737883>.

<sup>10</sup> “Crimes against humanity and war crimes”. *Official website of the United Nations*. Accessed October 17, 2022. [https://www.un.org/ru/documents/decl\\_conv/conv\\_warcrimes.shtml](https://www.un.org/ru/documents/decl_conv/conv_warcrimes.shtml).

<sup>11</sup> “Humanity”. *Oxford Advanced Learner’s Dictionary*. Accessed October 17, 2022. <https://www.oxfordlearnersdictionaries.com/definition/english/humanity?q=humanity>.

<sup>12</sup> “Humanity”. *Cambridge Dictionary Online*. Accessed October 17, 2022. <https://dictionary.cambridge.org/dictionary/english/humanity>.

<sup>13</sup> The Rome Statute of the International Criminal Court.

This approach in the Convention was a setback, since in the 1945 Charter of the Nürnberg Tribunal, crimes against humanity included, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war or persecutions on political, racial or religious grounds. This challenge has not been overcome in the Rome Statute of the International Criminal Court, since, under Art. 6, genocide refers only to the acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

Fourth, the interpretation of genocide by international justice bodies can somewhat change its nature. As an example, in 1998, the International Criminal Tribunal for Rwanda sentenced Jean-Paul Akayesu for systematic rape of Tutsi women recognized as genocide because it had two elements: the presence of direct intent and serious mental or physical damage to members of the group<sup>14</sup>.

Finally, the fifth reason is that genocide has received a fairly broad interpretation in the scientific literature. Specifically, it is used to describe historical genocide and modern genocide (Chernovitskaya 2015), cultural genocide (Krasnitskaya 2015), “grain genocide” (Alimov, Alimov 2015) and genocide against all (Al’tman 2022), etc.

In spite of the rules regarding genocide at the international legal level, the concept can be defined in a variety of ways at the national level. There are countries whose criminal law clearly follows the wording of the Convention on the Prevention and Punishment of the Crime of Genocide (1948). Particularly, according to Art. 393 of the Criminal Code of the Republic of Armenia, genocide is defined as the actions aimed at the complete or partial extermination of national, ethnic, racial or religious groups by means of killing the members of this group, inflicting severe damage to their health, violently preventing them from childbearing, enforced hand-over of children, violent re-population, or physical elimination of the members of this group<sup>15</sup>. Legislators in Russia hold the same position. According to Art. 357 of the Criminal Code of the Russian Federation, the complete or partial destruction of a national, ethnic, racial or religious group is punishable<sup>16</sup>.

A number of states, however, have enshrined broader interpretations. Here, one should consider three approaches.

For example, in Art. 269 of the Penal Code of the Democratic Republic of Ethiopia (2004), the term “genocide” includes criminal acts against not only national, ethnic, racial and religious groups, but also political ones<sup>17</sup>.

According to Chapter 11 of the Criminal Code of Finland, the genocide may be committed against national, ethnic, racial or religious group or another comparable group<sup>18</sup>.

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<sup>14</sup> “Outreach Programme on the 1994 Genocide Against the Tutsi in Rwanda and the United Nations”. *Official website of the United Nations*. Accessed October 17, 2022. <https://www.un.org/ru/preventgenocide/rwanda/backgrounders.shtml>.

<sup>15</sup> “The Criminal Code of the Republic of Armenia. 2003”. *Official website of the National Assembly of the Republic of Armenia*. Accessed October 17, 2022. <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng>.

<sup>16</sup> “The Criminal Code of the Russian Federation No. 63-FZ dated June 13, 1996 (as amended on September 24, 2022)”. *Official Internet portal of legal information*. Accessed October 17, 2022. <http://pravo.gov.ru>.

<sup>17</sup> “The Criminal Code of the Federal Democratic Republic of Ethiopia”. *Official website of the International Labor Organization*. Accessed October 17, 2022. <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf>.

<sup>18</sup> “The Criminal Code of Finland”. *Finlex Data Bank*. Accessed October 17, 2022. [https://www.finlex.fi/en/laki/kaannokset/1889/en18890039\\_19951010.pdf](https://www.finlex.fi/en/laki/kaannokset/1889/en18890039_19951010.pdf).

In other words, there is no clear definition of the latter's signs. France, Belarus, and Georgia use the wording "groups determined by any random criterion" in their criminal legislation (Tarbagaev, Moskalev 2016, 514).

Article 118 of the Criminal Code of Poland actually lists all the signs of genocide (ludobójstwo), but the term itself is not used (the chapter is called "Crimes against Peace, Humanity and War Crimes / Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne"). "Groups with a certain worldview / grupy o określonym światopoglądzie" has been added to those that are enshrined at the international legal level<sup>19</sup>.

Even though the second approach is the most common (Lithuania<sup>20</sup>, Latvia<sup>21</sup> and other countries), the first is preferred, since when dealing with such serious crimes, which are classified as international crimes, clear wording should be used to avoid ambiguous interpretations.

For the crime of genocide, various proposals exist aimed at improving the establishment of international or domestic criminal liability. One of them implies referring to those theoretical developments made by R. Lemkin in 1945 (Tarbagaev, Moskalev 2016, 516). According to him, genocide includes various forms of cultural identity destruction, such as: destruction of cultural property, books written in the language of the group, prohibition of speaking the native language, closure of museums and schools, destruction of historical monuments, religious institutions, etc. (Lemkin 1945, 40).

In the 1950s, this approach was developed by the Corresponding Member of the USSR Academy of Sciences A. N. Trainin, one of the authors of the Charter of the International Military Tribunal and then a consultant to the Soviet prosecution in Nuremberg. He distinguished genocide physical (eliminating people belonging to a particular race or nation), biological (fighting against childbearing, forced abortions, sterilization, prohibition of marriage) and national-cultural, meaning the destruction of the national culture and achievements of peoples (Trainin 1956).

The concept of genocide plays a crucial role in modern "memory wars".

This phenomenon is unique to the 21<sup>st</sup> century, though sprouts have been found since the 1970s<sup>22</sup>. The Holocaust was first challenged by scientific works that appeared at that time. Particularly, they attempted to challenge the fact that gas chambers cannot exist in the form described. This led to the criminalization of such public judgments. In time, the references to past events grew in number. The issue of the Armenian genocide in the Ottoman Empire during World War I, the extermination of Indians in North America was raised.

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<sup>19</sup> "Article 118 of the Criminal Code of the Republic of Poland dated June 6, 1997". *ISAP — Internetowy System Aktów Prawnych*. Accessed October 17, 2022. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/O/D19970553.pdf>.

<sup>20</sup> "Article 99 'Genocide' of the Republic of Lithuania Law on the Approval and Entry into Force of the Criminal Code dated September 26, 2000 (as amended on November 21, 2017)". *Lietuvos Respublikos Seimas*. Accessed October 17, 2022. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c>.

<sup>21</sup> "Section 71 'Genocide' of the Chapter IX 'Crimes against Humanity and Peace, War Crimes and Genocide' of the Criminal Law of the Republic of Latvia dated June 17, 1998 (as amended on June 16, 2022)". *Legal acts of the Republic of Latvia*. Accessed October 17, 2022. <https://likumi.lv/ta/en/en/id/88966-criminal-law>.

<sup>22</sup> "Gökarıksel on Koposov, 'Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia'. 2019". *H-Net: Humanities & Social Sciences Online*. Accessed October 17, 2022. <https://networks.h-net.org/node/3911/reviews/4638524/g%C3%B6kar%C4%B1ksel-koposov-memory-laws-memory-wars-politics-past-europe-and>.

With the advent of the new millennium, the “struggle for the past”, more precisely its interpretation, shifted from the public to the political area. As “memory wars” developed, it touched upon topics such as geological discoveries and European settlement of other continents, slavery and colonialism, and World War I and World War II.

Genocide crimes committed in the past have greatly affected relations between countries, causing sometimes open clashes between them.

The following are the current challenges in the area.

The issue of Turkey’s recognition of the fact of the Armenian genocide during World War I is extremely painful for the Republic of Armenia. During the 100<sup>th</sup> anniversary of these tragic events in 2015, Armenia adopted a Declaration calling on Turkey to recognize this fact<sup>23</sup>. A number of European states, including France, have passed laws recognizing genocide against the Armenian population in the Ottoman Empire. However, the Turkish government has refused to recognize the mass extermination of Armenians, referring to the lack of regulatory acts from the early 20<sup>th</sup> century<sup>24</sup>.

In the case of genocide, it is possible for perpetrators to hide for a long time without being punished. The International Criminal Tribunal for Rwanda ceased its work in 2015, but the persecution of businessmen and employees of broadcasting bodies in Rwanda continues<sup>25</sup>.

Germany’s apology to Namibia for the events of 1904–1907 can be considered recognition of genocide against the colony’s population. In 1884, Namibia became a German colony. After 30 years, however, under strong colonial pressure, an uprising broke out, which was brutally suppressed: people were driven into the desert, water sources were poisoned, medical experiments were conducted, etc. There were many who sought refuge in the British protectorate in present-day Botswana. Consequently, about 80 % of the Herero tribe (approximately 65,000 people) and 50 % of the Nama tribe (10,000 people) died (Buryachkova 2015). After Germany recognized the fact of committing a crime of genocide, Herero representatives in the same year filed a lawsuit against the German Government and some German companies (Deutsche Bank and Woermann-Linie) demanding payment of 4 billion US dollars<sup>26</sup>.

Recently, Poland has bluntly brought up the issue of interpreting the World War II events. Thus, back in 2020, Deputy Foreign Minister of Poland P. Jabłoński declared the right of Warsaw to demand reparations from Moscow for the damage caused during World War II. After that, the leader of the ruling Law and Justice party, J. Kaczyński, accused the USSR of “genocide” and “plundering” Poland in order to further bill Moscow<sup>27</sup>.

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<sup>23</sup> “The Pan-Armenian Declaration on the Centennial of the Armenian Genocide dated January 29, 2015”. *Official website of the Ministry of Foreign Affairs of the Republic of Armenia*. Accessed October 17, 2022. <https://www.mfa.am/en/interviews-articles-and-comments/2015/01/29/pan-arm-dec-armgen/4756>.

<sup>24</sup> “The Armenian Allegation of Genocide: The issue and the facts. 2007”. *Official website of the Ministry of Foreign Affairs of the Republic of Türkiye*. Accessed October 17, 2022. <https://www.mfa.gov.tr/the-armenian-allegation-of-genocide-the-issue-and-the-facts.en.mfa>.

<sup>25</sup> “Rwandan genocide suspect: A ‘businessman’, not warlord — Defense. 2022”. *Africanews*. Accessed October 17, 2022. <https://www.africanews.com/2022/09/30/rwandan-genocide-suspect-a-businessman-not-warlord-defense>.

<sup>26</sup> “Hereros v. Deutsche Afrika-Linien GMBLT Co. 2007”. *International Crimes Database*. Accessed October 17, 2022. <https://www.internationalcrimesdatabase.org/Case/928/Hereros-v-Deutsche-Afrika-Linien>.

<sup>27</sup> “Jarosław Kaczyński dla ‘Bilda’: Polska nie pogodzi się z tym, że nie otrzymała reparacji za zniszczenia wojenne. 2020”. *Wpollyce.pl*. Accessed October 17, 2022. <https://wpollyce.pl/polityka/483937-prezes-pis-w-wywiadzie-dla-bilda-przypomina-o-reparacjach>.



In September 2022, the Sejm of the Republic of Poland adopted the resolution demanding reparations from Germany in the amount of 1.32 trillion US dollars, although, in 1953, Poland officially refused reparations. Only four of the 437 deputies present were against the resolution, and 15 abstained. The resolution did not use the word “genocide”, but the politicians in their speeches indicated that Poland suffered numerous human casualties (in Poland, about 5.5 million locals died, and only 380 thousand Jews survived out of the 3.3 million<sup>28</sup>) and material losses during World War II. Germany counterclaimed that territories transferred to Poland at the Potsdam Conference should be returned. Additionally, Polish President Andrzej Duda confirmed in an interview with *Wprost* that Poland may demand reparations from Russia<sup>29</sup>.

Thus, despite the international agreements reached in the past, the question of material responsibility of states for the World War II continues to be raised.

The issue of genocide during World War II has not been raised in the Russian Federation until recently. The Prosecutor’s Office, however, compiled and prepared 59 volumes of documents in 2022<sup>30</sup> for a criminal case on the genocide of the peoples of the USSR. First of all, it comes to the Siege of Leningrad. In the process that started in the City Court of St Petersburg, the legal assessment should be provided by military personnel from Belgium, Finland, Germany, Italy, Latvia, the Netherlands, Norway, Poland, Spain, as well as volunteers<sup>31</sup>. Hearings in the case are ongoing.

### 3. Conclusions

The concept of genocide, first introduced at the doctrinal level in the 1940s, later acquired legal content in international legal instruments. Despite the fact that more than 150 states have signed and ratified the Convention on the Prevention and Punishment of the Crime of Genocide (1948), a broader understanding of those groups against which genocide can be committed began to emerge at the national level, either by including groups on a political basis or by using vague wording that allows new groups to be included. Since the first option avoids a situation of legal uncertainty regarding such a serious international crime, it is preferable. A broader interpretation of the crime of genocide appears thanks to judicial practice as well, but it is necessary to clearly understand the relationship between the concept of genocide with crimes against humanity (as meaning either people in general or being humane) and other terms used in international law.

Both the founder of the concept of genocide, R. Lemkin, and subsequent researchers realized that genocide involves the destruction of national-cultural identity. Due to the importance of historical memory as one of its crucial elements, it, on the one hand, is entirely justified and necessary to examine the past, as it affects issues of national and

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<sup>28</sup> “‘They have bluntly raised the question.’ Poland demanded reparations from Germany. What do Poles want to get a trillion US dollars for?” *Lenta.Ru*. Accessed October 17, 2022. <https://lenta.ru/articles/2022/10/17/reparatsiya>.

<sup>29</sup> “Andrzej Duda dla ‘Wprost’: Nie boję się Trybunału Stanu. Żadnej decyzji bym nie zmienił. 2022”. *Wprost*. Accessed October 17, 2022. <https://www.wprost.pl/kraj/10859638/andrzej-duda-dla-wprost-nie-boje-sie-trybunalu-stanu-zadnej-decyzji-bym-nie-zmienil.html>.

<sup>30</sup> “St Petersburg City Court began the process of recognizing the Siege of Leningrad as genocide. 2022”. *TASS Russian News Agency*. Accessed October 17, 2022. <https://tass.ru/obschestvo/15774245>.

<sup>31</sup> “The announcement from 10.10.2022”. *Official website of St Petersburg City Court*. Accessed October 17, 2022. [http://sankt-peterburgsky.spb.sudrf.ru/modules.php?name=press\\_dep&op=1&did=244](http://sankt-peterburgsky.spb.sudrf.ru/modules.php?name=press_dep&op=1&did=244).

state identity, aids in the healing of social injuries, without which it is almost impossible to move forward, but, on the other hand, it also causes new threats, conflicts, and even “memory wars”.

In our opinion, the following mechanisms and tools will be helpful in resolving this issue.

The overarching international conventions adopted at the United Nations that determine the consolidated position of states on historically significant topics that still have a serious impact on countries’ foreign and sometimes domestic policies. It was particularly important to develop the unified attitude to overcome attempts to revise the results of World War II.

It is important to note that state material responsibility for the genocide committed in the distant past may be rejected at the present stage. In order to prevent future crimes from being committed, political responsibility must be present, since awareness of past crimes is a necessary moral foundation.

In both the international and regional arenas, the demands of modern states regarding the crimes of genocide committed in the past do not contribute to stabilizing the situation. Due to the complexity and ambiguity of many historical events, mutual claims are unlikely to be satisfied. Moreover, how can a state be held responsible for acts that were not criminal at the time of their commission according to international and national law? The International Military Tribunal, whose charter was adopted on August 8, 1945, is the reference point in the Convention on the Non-Application of Statutory Limitations to War Crimes and Crimes against Humanity (1968)<sup>32</sup>. The adoption of regulatory acts that do not reflect another country’s position, culture and basic national attitudes will not contribute to peace, security or cooperation. To overcome the negative consequences of the past, joint continuous effort is needed.

## References

- Alimov, Kairulla G., Kuandyk K. Alimov. 2015. “Grain genocide of Russia”. *AgroSnabForum* 11 (139): 58–61. (In Russian)
- Al’tman, Il’ya A. 2022. “Genocide against all”. *Nezavisimaya gazeta* 127 (8466): 7. (In Russian)
- Buryachkova, Elena G. 2015. “Genocide: Historical aspects”. *Innovatsionnye tekhnologii v nauke i obrazovanii* 1 (1): 22–23. (In Russian)
- Cevak, Judit I., Péter T. Veres. 2016. “Holodomor in Ukraine the worst genocide in the Soviet Union (controversial issues around the definition of genocide)”. *Veles* 9–1 (39): 11–18.
- Chernovitskaya, Yuliya V. 2015. “Historical genocide and modern genocide: the problem of responsibility”. In *Materialy ezhegodnykh Moiseevskikh chtenii*. Vol. 4, 62–69. Moscow, Akademiia MNEPU Publ. (In Russian)
- Kazyrytski, Leanid. 2022. “Francoist repression in Spain and the crime of genocide”. *Criminology and Criminal Justice* 5 (22): 676–693. <https://doi.org/10.1177/17488958211017385>
- Kolosov, Yurii M., Emiliia S. Krivchikova, eds. 1997. *Current international law*. In 3 vols, vol. 3. Moscow, Moskovskii nezavisimiyi institut mezhdunarodnogo prava Publ. (In Russian)
- Krasnitskaya, Anna N. 2015. “Genocide of Ukrainian culture in the second half of the nineteenth century”. *Gileia: nauchnyi vestnik* 96: 30–33. (In Russian)

<sup>32</sup> “The Convention on the Non-Application of Statutory Limitations to War Crimes and Crimes against Humanity dated November 26, 1968”. *United Nations Treaty Collection*. Accessed October 17, 2022. [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-6&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-6&chapter=4&clang=en).

- Lemkin, Raphael. 1944. *Axis rule in occupied Europe: Laws of occupation, analysis of government, proposals for redress*. Washington, Carnegie Endowment for World Peace.
- Lemkin, Raphael. 1945. "Genocide — A modern crime". *Free World* 4: 39–43.
- Marukyan, Armen Ts. 2017. "Value of the Joint Declaration of Powers of the Entente of May 24, 1915, in the question of qualification of Armenian genocide and its impact on the authorities of the Ottoman Empire". *Gumanitarnye i iuridicheskie issledovaniia* 3: 71–75. (In Russian)
- Matulewska, Aleksandra, Dariusz J. Gwiazdowicz. 2022. "In quest of genocide understanding: Multiple faces of genocide". *International Journal for the Semiotics of Law — Revue internationale de Sémiotique juridique* 35: 1425–1443. <https://doi.org/10.1007/s11196-021-09847-5>
- McGuire, Michaela M., Danielle J. Murdoch. 2022. "(In)-justice: An exploration of the dehumanization, victimization, criminalization, and over-incarceration of indigenous women in Canada". *Punishment and Society* 4 (24): 529–550. <https://doi.org/10.1177/14624745211001685>
- Mettraux, Guénaél. 2006. "Genocide and crimes against humanity". *International Crimes and the Ad Hoc Tribunals*, 329–340. Oxford, Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199207541.003.0026>
- Murray, Alexander R. J. 2011. "Does international criminal law still require a 'crime of crimes'? A comparative review of genocide and crimes against humanity". *Goettingen Journal of International Law* 3 (2): 589–615.
- O'Connor, Vivienne M., Colette Rausch, Hans-Jörg Albrecht, eds. 2007–2008. *Model codes for post-conflict criminal justice*. In 2 vols, vol. 1. Washington, D. C., United States Institute of Peace.
- Ratner, Steven R. 2007. "Can we compare evils? The enduring debate on genocide and crimes against humanity". *Washington University Global Studies Law Review* 3 (6): 583–589.
- Rekunkov, Aleksandr M., ed. 1987–1999. "The Charter of the International Military Tribunal". *Niurenbergskii tribunal*. In 8 vols, vol. 8, 146–153. Moscow, Iuridicheskaia literatura Publ. (In Russian)
- Stanton, Gregory H. 2016. "10 stages of genocide". *Genocide Watch*. Accessed October 17, 2022. <http://genocidewatch.net/genocide-2/8-stages-of-genocide>.
- Šturma, Pavel, Milan Lipovský, eds. 2022. *The crime of genocide: Then and now: Evolution of a crime*. Leiden, Brill, Nijhoff.
- Tarbagayev, Aleksey N., Georgy L. Moskalev. 2016. "Key directions for modernizing the norm on criminal liability for genocide in the Criminal Code of the Russian Federation". *Vserossiiskii kriminologicheskii zhurnal* 3 (10): 511–520. (In Russian)
- Trainin, Aron N. 1956. *Protecting peace and combating crimes against humanity*. Moscow, Academy of Sciences of the SSSR Press. (In Russian)
- Veres, Péter. 2015. "Controversial issues around definition of 'crimes against humanity' (genocide) the eyes of historians". *Vestnik Permskogo gosudarstvennogo gumanitarno-pedagogicheskogo universiteta. Ser. 3. Gumanitarnye i obshchestvennye nauki* 1: 62–73. (In Russian)

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