

UDC 341:485 (100)

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GENOCIDE AS AN INTERNATIONAL CRIME AND PROBLEMS OF ITS RECOGNITION

The article is dedicated to the issue of the role of genocide in international law. The authors study the problems of recognizing the genocide as international crime. They consider different scientific approaches to meaning of genocide in international law: from the classic understanding of it, its appearance as a crime to becoming a disputable issue in its recognition based on examples from the XX century.

Moreover, in the paper some international tribunals' activity is considered. The conventions' classification in the context of international law is also done.

Key words: genocide, recognition, politicide, Genocide Convention, Pan-Armenian Declaration.

Problem statement. The issue of genocide as an international crime has been a topic one from the beginning of the XX century. Genocides are committing even nowadays in the XXI century. The problems of its recognition and condemnation become more and more disputable.

Analysis of recent researches and publications. The works of many famous scientists and specialists in the sphere of international law are dedicated to different aspects of genocide as an international crime. There are the dissertation of Avanesyan V. V., the article of Matveeva N. V., Barsegov Yu.G. In the article also are used the Convention on the Prevention and Punishment of the Crime of Genocide adopted by UN and the Pan-Armenian Declaration on the Genocide Centennial.

Paper purpose. Given the before-mentioned reasoning the purpose of the article is to determine the genocide as an international crime and identify the problems of its recognition on the example of the Armenian Genocide in the Ottoman Empire in 1915.

Paper main body. Today the genocide is one of the contentious issues in international law. As a crime, genocide appeared since ancient times, but more extended it became in the XX century. Crimes of this century are the next: the Armenian Genocide in Ottoman Empire in 1915, the genocide of the Slavic population and the Jews during World War II, committed by Nazi Germany,

the genocide of Hutu and Tutsi tribes in Rwanda and Bengal in the 1960s, the genocide of the Hindu population in East Bengal in 1971, the genocide in the 1990s in Yugoslavia and Rwanda, at the beginning of the XXI century in Darfur (Sudan), the Democratic Republic of the Congo, the Central African Republic.

The urgency of the struggle against genocide in the modern world is so great that the UN Secretary General in the framework of the organization in 2004 introduced the post of Special Adviser on the Prevention of Genocide. Many states have established specialized research institutions. For example, in Canada, in 1994, the International Association of Scientists Dealing with the Crime of Genocide was founded, which, together with the International Institute for Genocide Studies and Human Rights since 2006, publishes the academic journal «Genocide Research and Prevention»; in the United Kingdom in 2000 an international center for scientific study of genocide *Aegis* was opened; at the National Press Club of USA in 2007 was established «Task Force on the Prevention of Genocide» by former US Secretary of State Madeleine Albright and former Secretary of Defense William Cohen. The subject of problems associated with the crime of genocide becomes more urgent today, that's why on July 1, 2002 the International Criminal Court was established *inter alia* for judicial investigation of crimes of genocide.

The term «genocide» was introduced into circulation in 1944 by Polish lawyer of Jewish descent Raphael Lemkin, who proposed to declare the action aimed at the liquidation and the destruction of racial, ethnic, religious and social communities, as a barbaric crime in the international law. The term «genocide» is derived from the fusion of the Greek words γένος — race or tribe, and the Latin, *caedo* — killing [3]. Though the term «genocide» came into circulation after the completion of the physical annihilation of the Armenian people in the whole western part of Eastern Armenia, in fact, both terms and the determination of the composition of the crime are closely connected with the Armenian genocide. The Armenian Genocide was the first time in history qualified *expressis verbis* as a crime against humanity in the Declaration of the Principal Allied Powers of 24 May, 1915 [5].

In a special report to the Fifth Conference on the Standardization of International Criminal Law, held in Madrid on October 1933 Lemkin made a proposal to declare actions aimed at the destruction of racial, religious or social groups, barbaric crime under international law — *delicta juris gentium*. The only large-scale crime that Lemkin could mention in 1933 was the Armenian Genocide as the real basis of his proposed definition, and which contained the offense of genocide. Nazis coming to power forced to recall the bloody deeds of their forerunners — the Young Turks. It became obvious that if humanity does not make proper conclusions and take the necessary preventive measures for the Armenian Genocide, new acts of genocide would be followed.

The first document with international character, which uses the term «genocide» was an indictment of October 18, 1945 against the major German war criminals brought before the Nuremberg Military Tribunal, but it used

the term *post factum*. Neither in the Charter of the International Military Tribunal for the trial of the major war criminals of the European Axis Powers or in its judgment on October 1, 1946 the word «genocide» does contain.

Thus, the Charter of the International Military Tribunal, which judged major war criminals in Germany and acts of genocide committed by them against the Jews and the Slavic population of the occupied countries of Eastern Europe, in the list of crimes subject to the jurisdiction of the Tribunal has not yet applied the term of genocide, although it has meant this offense: item «C» of Article 6 refers to «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...» [5].

Determining the validity of the actions' qualification covered by the composition of the offense on the basis of a formal recognition, the possibility of such qualification would not only limit the acts of genocide committed after the adoption of Genocide Convention, but by the range of the signatory states which have ratified it. Legal and political absurdity of such an assumption is obvious. So, the question about the term and related question of the legal qualification of the genocide acts committed before the adoption of the Convention or committed after its adoption by states, which are not signed or ratified the convention becomes very essential.

December 9, 1948 the United Nations General Assembly adopted the «The Convention on the Prevention and Punishment of the Crime of Genocide», according to which genocide was considered as an international crime.

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: 1) killing members of the group; 2) causing serious bodily or mental harm to members of the group; 3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; 4) imposing measures intended to prevent births within the group; 5) forcibly transferring children of the group to another group [1].

Countries that have signed the Convention oblige to prevent genocide and punish for committing it. According to Article III of the Convention the following acts shall be punishable: 1) genocide; 2) conspiracy to commit genocide; 3) direct and public incitement to commit genocide; 4) attempt to commit genocide; 5) complicity in genocide.

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals. According to Article IX disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute [1].

The UN Convention does not consider as the fact of genocide the killings of political groups. Renowned sociologist, an expert on the history of geno-

cides Leo Cooper believes that in today's world, political differences are as much a cause for looting and destruction, as well as racial, national, ethnic or religious differences. In addition to the convention well-known scientists Ted Gur and Barbara Harf coined the term «politicide». Politicide or political assassination is determined by the premeditated and massive destruction of the nation, the people or the political, social, military, cultural and scientific figures from committing genocide.

April 24, 1915 considered as the day of the extermination of nearly a thousand representatives of the Armenian intelligentsia and subsequently the number of victims reaches the million and a half Armenians from two million in Ottoman Empire. There are a lot of proofs of this act which is denied by Turkish government. The citations of some prominent international law scientists and historians could be a good illustration of this thesis. For example, the Swiss newspaper «Bazler Nachrichten» characterized the actions of the Turkish government as «planned», «destruction of an entire people», carried out by «vile and brutal destruction of the system» [4]. Jacques de Morgan, French scientist said in 1917: «The deportations of Western Armenians have nothing more than a veiled destruction of the people. There are no words to describe the horror» [3, p. 377]. Another German scientist Joseph Marquart: «Even after the proclamation of the Constitution the main slogan of the Turkish policy remains: when Armenians will be exterminated, there will be no Armenian question» [3, p. 377].

Why does the Republic of Turkey refuse to recognize the genocide of Armenians in Ottoman Empire in 1915? The issue of responsibility for a crime encourages Turkey to fiercely resisting the recognition of the Armenian genocide. Firstly, the Republic of Turkey does not want to be responsible for the acts of their ancestors, and secondly, the recognition means political defeat and the obligation to carry both political and financial responsibility. Turkey refuses to recognize the Armenian Genocide, citing the fact that this massacre occurred during the hostilities of World War I and was not carrying a purposeful anti-Armenian nature.

The official campaign of Armenian Genocide denial by Turkey has escalated on the 100th anniversary of the Armenian Genocide. The Turkish State mobilizes all opportunities, spends huge resources and traditional means of political pressure on the government and bribery media widely resorts to paid services of professional lobbying organizations. There are many documents confirming the Armenian Genocide in the Ottoman Empire, but Turkish government twice cleaned the archives with documents on the Armenian Genocide in 1919 and the 90-ies of XX century. In order to destroy traces of Armenians in Turkey, the country systematically destroyed the monuments of Armenian architecture. The most recent evidence of anti-Armenian position is that Turkey has recalled its ambassador to Austria in 2015 after the Austrian parliament adopted a declaration recognizing the Armenian Genocide in the Ottoman Empire.

At the same time, foreign policy support of the state policy on denial of the crime is a subject of concern of the Turkish government. Just as it was in the

late XIX and throughout the XX centuries, Turkey prevents the resolution of the Armenian issue, based on the political support of some of the great powers. Despite the radical change in the situation in the world, the USA is still assign the role of Turkey as one of its main military partners, despite the fact that 45 of the 50 states recognize the Armenian Genocide and declare April, 24 the Day of Remembrance of the Victims of the Armenian Genocide.

The Republic of Armenia, in turn, continues to fight for recognition and on January 29, 2015 it adopted the Pan-Armenian Declaration on the Genocide centennial, in which the Republic of Armenia and Armenians: condemns the illegal blockade of the Republic of Armenia imposed by the Republic of Turkey, its anti-Armenian stance in international area and the imposition of preconditions in the normalization of interstate relations, considering this a consequence of the continued impunity of the Armenian Genocide, Meds Yeghern; calls upon the Republic of Turkey to recognize and condemn the Armenian Genocide committed by the Ottoman Empire, and to face its own history and memory through commemorating the victims of that heinous crime against humanity and renouncing the policy of falsification, denialism and banalizations of this indisputable fact. Armenia also supports those parts of Turkish civil society whose representatives nowadays dare to speak out against the official position of the authorities; appeals to UN member states, international organizations, all people of good will, regardless of their ethnic origin and religious affiliation, to unite their efforts aimed at restoring historical justice and paying tribute to the memory of the victims of the Armenian Genocide; expresses gratitude to those states and international, religious and nongovernmental organizations that had political courage to recognize and condemn the Armenian Genocide as a heinous crime against humanity and even today continue to undertake legal measures to that end, also preventing the dangerous manifestations of denials; expresses the hope that recognition and condemnation of the Armenian Genocide by Turkey will serve as a starting point for the historical reconciliation of the Armenian and Turkish peoples [2].

Conclusions. To conclude the article we would like to emphasize that in the point of view of many international law scientists and experts the Armenian Genocide is fully consistent with the composition of an international crime. Some states act as the protectors and successors to this crime, trying to relieve the responsibility for the genocide of the Armenians of the Turkish state. Unable to hide objective and generally known facts or considerations justifying this action by «national security» and «the right of self-preservation», which clearly and unequivocally rejected by international law, they are trying to hide behind «legal» arguments of a purely formal nature. Due to that, they argued that the Turkish state could not commit the crime of genocide, as this concept came later and its punishable was established only with the entry into force in 1955 the Genocide Convention.

Denying the validity of the qualification of the physical destruction of the Armenian population by the Turkish state in 1878–1923 as the crime of genocide, they deny the legitimacy of such qualification and for all other cases of

mass destruction of national groups committed before the date of entry into force of this convention, including the historical fact of the destruction by Nazi Germany of 12 million people of Slavic and Jewish origin. This approach is refuted as by the Nuremberg and other trials of Nazi war criminals as by the Convention itself.

Those rules of international law that have been applied in evaluating the actions of Nazi Germany against the Jews and the Slavic population of Eastern Europe are also applicable to the assessment of identical content actions of the Turkish state against the Armenians. This is confirmed not only by logical reasoning, but also by specific international legal instruments, directly and indirectly related to the Armenian Genocide. The crime of genocide is not just a complex that violates human rights, it encroaches on the sphere of human security as a whole: to life, physical health, mental health, human genetics, reproductive ability, intelligence, spirituality. The fact of the Armenian Genocide by the Ottoman government is justified, recognized and confirmed by eyewitness accounts, laws, resolutions and decisions of various countries and international organizations. Turkey as the successor of the Ottoman Empire is responsible for the material and territorial damage caused of Armenians' genocide. A compromise is possible only after Turkey recognizes the Armenian Genocide in the development and adoption of specific measures to address the effects of the crime on the basis of a package of political and legal decisions on the whole range of the Armenian-Turkish relations.

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**ГЕНОЦИД ЯК МІЖНАРОДНИЙ ЗЛОЧИН І ПРОБЛЕМИ
ЙОГО ВИЗНАННЯ**

Резюме

У статті розглянуто питання про геноцид як міжнародний злочин, досліджено проблему визнання геноциду як міжнародного злочину. Особлива увага приділяється аналізу різних наукових підходів до визначення поняття «геноцид» у міжнародному праві та розгляду спірних питань його визнання на основі прикладів з ХХ ст.

Крім того, в роботі розглядається діяльність деяких міжнародних трибуналів. Акцентується увага на окремих статтях конвенцій і декларацій.

Ключові слова: геноцид, визнання, політицид, Конвенція про геноцид, Всевірменська декларація.

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**ГЕНОЦИД КАК МЕЖДУНАРОДНОЕ ПРЕСТУПЛЕНИЕ
И ПРОБЛЕМЫ ЕГО ПРИЗНАНИЯ**

Резюме

В статье рассмотрен вопрос о геноциде как международном преступлении, исследована проблема признания геноцида международным преступлением. Особое внимание уделяется анализу различных научных подходов к определению понятия «геноцид» в международном праве и рассмотрению спорных вопросов его признания на основании примеров из ХХ ст.

Кроме того, в работе рассматривается деятельность некоторых международных трибуналов. Акцентируется внимание на отдельных статьях конвенций и деклараций.

Ключевые слова: геноцид, признание, политицид, Конвенция о геноциде, Всеармянская декларация.