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THE EMERGENCE OF THE CONCEPT OF GENOCIDE

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Yavorska V.G. The emergence of the concept of genocide.

The article analyzes the emergence of the concept of genocide from the beginning of the formation of the idea regarding the need to introduce criminal liability to its use in scientific literature and legal practice.

The purpose of the study is to determine the emergence of the concept of genocide in history, its introduction in scientific literature and use in proving the guilt of persons who committed genocide, and to analyze the periods of improvement of criminal liability for genocide.

The concept of genocide arises from a natural or acquired position about the inequality of certain groups or communities and the desire to obtain the resources of one group at the expense of another. This perceived inequality of groups has led to the beginning of more than one genocide in human history.

The concept of genocide arose thanks to the lawyer of Jewish-Polish origin Raphael Lemkin.

In the process of committing the crime that Lemkin defined, there is oppression, disempowerment of a certain group, mockery of moral values and the use of physical attacks, the group becomes disempowered and it is easier to impose a national model of the oppressor. This process can be followed in practice.

The commission of genocide requires extensive preparation, coordination of actions to fulfill the intent to destroy a specific group, as defined in law. The premeditation of genocide and the use of a large number of methods of committing the crime indicate the intent to destroy a specific group.

It is concluded that the intention to define the concept of genocide and responsibility for committing the crime began in 1933, the concept was defined in 1943, the concept of genocide was first used in the work "The Rule of the Axis Powers in Occupied Europe", and in 1945-1946 the concept of genocide was used in practice. The definition and consolidation of the concept of genocide took place in the Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948.

Accordingly, a long period of defining the concept of genocide has passed, from the moment of the emergence of the specified concept to the introduction of responsibility for the commission of genocide in international law. The concept of genocide has changed since its emergence. At present, there is a need to improve this concept in criminal legislation.

Key words: crime, genocide, international crime, intent, destruction.

Яворська В.Г. Виникнення поняття геноцид.

У статті проведений аналіз виникнення поняття геноциду від початку формування задуму відносно необхідності запровадження кримінальної відповідальності до використання в науковій літературі та юридичній практиці.

Мета дослідження полягає у визначенні виникнення поняття геноциду в історії, запровадження в науковій літературі та використанні у доказуванні винуватості осіб, які вчинили геноцид, проведення аналізу періодів вдосконалення кримінальної відповідальності за геноцид.

Виникнення поняття геноциду відбувається з причини природної чи надбаної позиції про нерівність певних груп або спільнот і бажання здобути ресурси однієї групи за рахунок іншої. Від цієї явної нерівності груп відбувається початок не одного геноциду в історії людства.

Поняття геноцид виникло завдяки юристу єврейсько-польського походження Рафаелю Лемкіну.

В процесі вчинення злочину, який визначив Лемкін, наявне пригноблення, знесення певної групи, знущання з моральних цінностей та застосування фізичних посягань, група набуває знесення і можна простіше нав'язати національну модель гнобителя. Вказаний процес можна прослідкувати на практиці.

Вчинення геноциду потребує великої підготовки, налагодження дій з метою виконання наміру на знищення певної групи, визначеного в законі. Продуманість геноциду та використання великої кількості способів вчинення злочину вказує на намір знищити певну групу.

Зроблені висновки, що намір визначення поняття геноциду та відповідальності за вчинення злочину почався у 1933 р., визначене поняття у 1944 р., вперше поняття геноцид застосоване в праці «Правління держав Осі в окупованій Європі», у 1945-1946 роках поняття геноцид використане на практиці. Визначення та закріплення поняття геноциду відбулося у Конвенції про запобігання злочину геноциду та покарання за нього, 9 грудня 1948 р.

Відповідно пройшов довгий період визначення поняття геноцид, з моменту виникнення вказаного поняття до запровадження відповідальності за вчинення геноциду в міжнародному праві. Поняття геноциду з періоду виникнення змінювалося. В даний період наявна потреба вдосконалення цього поняття в кримінальному законодавстві.

Ключові слова: злочин, геноцид, міжнародний злочин, намір, знищення.

Statement of the problem. The concept of genocide is officially enshrined in the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 (hereinafter referred to as the Convention). Scholars rightly note that genocide involves a fairly large number of legal concepts that are commonly understood under this concept [1, p. 39].

The problem of committing the crime of genocide is of great importance for the international community [2, p. 578] and, given the events in Ukraine, is becoming increasingly widespread, which requires proper qualification.

The Preamble to the Convention states that the UN General Assembly has recognized genocide as a crime that violates the norms of international law and from which humanity must be saved through international cooperation [3]. Accordingly, the need for international cooperation is emphasized, which is explained by the great threat of this crime.

The emergence of the concept of genocide occurs due to the natural or acquired position about the inequality of certain groups or communities and the desire to obtain the resources of one group at the expense of another [4]. From this imaginary inequality of groups, more than one genocide in the history of mankind begins. Accordingly, the deep meaning of inequality and the redistribution of resources lead to the commission of a crime. The importance of resource acquisition can be explained by analyzing cases of genocide in history, namely, to understand the question of whether resources are a cause or a consequence of genocide.

While the law is constantly directed towards respect for human rights, the history of various states is characterized by manifestations of the crime of genocide. All the numerous manifestations of genocide have necessitated the adoption of international documents on this issue.

The issue of the international definition and consolidation of the concept of genocide was resolved on December 9, 1948 by the Convention on the Prevention and Punishment of the Crime of Genocide.

Responsibility for the commission of genocide is determined at the international and national levels, and the subject of the crime may be individual individuals, officials, or the state.

However, despite the legal regulation of genocide in international law, unresolved issues remain regarding international criminal responsibility for the commission of genocide and the responsibility under the criminal law of the state in which genocide was committed, which are increasing despite the constant increase in cases of this crime in practice.

Purpose of the study. The purpose of the study is to determine the emergence of the concept of genocide in history, its introduction in scientific literature and its use in proving the guilt of persons who committed genocide, and to analyze the periods of improvement of criminal liability for genocide.

Status of the study of the issue. The concept and manifestations of genocide from the perspective of international law were studied by scientists: Andrushko A.V., Bem M.M., Bushak V.O., Gerasimenko M.M., Kobzar V.V., Khaustova M.G., Strokova I.I., Fedulova S.O.

Andrushko A.V. analyzed Rafal Lemkin's concept of the crime of genocide, in particular, taking into account the modern meaning of this concept. Rafal Lemkin's international legal views were defined by Bem M.M. in his study. Bushak V. O. and Kobzar V. V. examined genocide from the perspective of committing a crime during wartime.

Criminal liability for genocide was analyzed by M.M. Gerasimenko, the concept of genocide was studied by M.G. Khaustova, criminal liability for genocide was provided for in the works of I.I. Strokova, and the problems of legal qualification of the crime of genocide were identified by S.O. Fedulova.

Responsibility for committing the crime of genocide is provided for in the Criminal Code of Ukraine and international documents; for over eighty years, this concept has been used in science, however, despite all measures to combat this crime, there are known cases of genocide in different periods and in different countries, in particular the genocide of the Ukrainian people during the full-scale war that began on February 24, 2022.

The concept of genocide is derived from the Greek word "Genos" – "people" and the Latin "cīdere" – "to kill" [4]. In the meaning of international documents, genocide acquires a broader concept.

Presentation of the main material. The concept of genocide arose several years before the adoption of the Convention, the introduction of this concept is due to the lawyer of Jewish-Polish origin Raphael Lemkin, who worked as an advisor to the US War Department during World War II [1, p. 39]. The Convention was adopted four years later. However, in the absence of an appropriate concept, genocide was periodically committed in the history of various states, in particular during war or even in peacetime.

But the research of R. Lemkin's scientific activities, conducted at the dissertation level by Bem M.M., gives reason to believe that the scientist explained the concept and derived the concept of genocide much earlier, namely in 1933-1939, and by 1944 the concept of genocide was completed [5, p. 3]. Accordingly, the formation of the concept of genocide took place over a fairly significant period of time, until the introduction of this concept in international documents.

In publications on the history of the emergence of the concept and criminal liability for genocide, Professor Andrushko A.V. revealed certain contradictions and inaccuracies that may be interesting for modern study, as they may help improve criminal legislation in this direction, increase the effectiveness of criminal law norms on liability for committing genocide [6, p. 570]. The inaccuracies point to possible broader options for preventing genocide, proposed by Lemkin, that are not fully reflected in international documents.

The beginning of the formation of the intention to introduce criminal liability for crimes that undermine social order took place in 1933 at a conference in Madrid, when Lemkin proposed in his theses two crimes in international law, namely "acts of barbarity" and "acts of vandalism" [6, p. 571]. This position was not supported, but research into the need for criminal liability for harm to a group when an attack on an individual had already begun. More than ten years would pass from that time before the concept and meaning of the crime of genocide were formed and the concept was further introduced into international documents. But even decades after this, genocide continues to be committed and requires research and improvement in order to effectively bring the perpetrators to criminal responsibility, questions of qualification, correctness of evidence, etc. constantly arise. The beginning of the study of crimes against a group when attacking a person begins with the study in 1933.

In order to correctly understand the emergence of the concept of genocide, it is necessary to examine the professional activities of Raphael Lemkin. During his professional career, Lemkin lectured at universities in Europe and the United States, including after emigrating to Sweden at Stockholm University, then at Duke University Law School, Yale University, and Rutgers Law School. In the United States, Lemkin learned that a significant number of his relatives had died in concentration camps. This fact forced the scientist to fully investigate genocide. The scientist first used the concept of genocide in 1944 in his work «The Rule of the Axis Powers in Occupied Europe.»

In 1945-1946, Lemkin was a US delegate to the Nuremberg Trials, where the concept of genocide was used by prosecutor Robert Jackson [6, pp. 570-571]. It can be noted that the scientific consolidation of the concept of genocide occurred in 1944, and the procedural one in 1945.

Raphael Lemkin explains genocide in a reasoned manner regarding the underlying purpose of the crime: "genocide does not necessarily mean the immediate destruction of a nation, except in cases where it is carried out by mass murder of all members of the nation. Rather, it is intended to denote a coordinated plan of various actions aimed at destroying the essential foundations of the life of national groups, with the aim of destroying the groups themselves. The goals of such a plan would be

the disintegration of political and social institutions, culture, language, national feelings, religion, and economic existence of national groups, as well as the destruction of the personal security, freedom, health, dignity, and even the lives of people belonging to such groups. Genocide is directed against a national group as a whole, and the corresponding actions are directed against individuals not in their individual capacity, but as members of a national group" [6, p. 572]. Accordingly, we can distinguish the first option for committing genocide, which involves the mass murder of all members of a nation, which is quite difficult to do, particularly in the case of a large nation, conditions for ensuring security, and the availability of international assistance. A vivid example of the commission of many cases of genocide is the second option, which is defined by the destruction of the essential foundations of the life of a group, which is carried out consistently using encroachment on the institutions of society, culture, language, religion, economy, security, freedom, health, dignity, and human life. The above-mentioned encroachments are clearly visible in cases of genocide in Ukraine. The question arises as to whether there was a consistency in the use of these measures in the process of genocide.

Having analyzed foreign researchers who studied the issue of genocide, it can be noted that Lemkin understood genocide as a process that consisted of two stages. The first stage was characterized by the destruction of the national model of the oppressed group, for example, concerted actions to slowly suppress the group. They were mainly directed against culture, language, religion, physical integrity [7, pp. 423-424]. In this case, scholars also note that physical destruction does not occur immediately, genocide begins with the impact on the national model. Physical destruction occurs mostly partially and along with oppression. This makes it clear how complex, prepared and thought out the crime of genocide is.

The second stage involves the imposition of a national model of the oppressor [7, pp. 423-424]. There is a certain regularity of actions in the process of committing a crime, which was identified by R. Lemkin, because after oppression, weakening of a certain group, mockery of moral values and physical attacks, the group becomes weakened and it is easier to impose a national model of the oppressor. This process can be traced in the case of genocide in practice.

Starting in 1946, Raphael Lemkin worked at the UN, discussing the crime of genocide with scientists and public figures. As a result of this ongoing scientific work, on December 11, 1946, the UN General Assembly recognized genocide as an international crime and began preparing a convention [8].

R. Lemkin's proposals regarding the methods of committing genocide, which were summarized in his study by M.M. Bem, can be called quite justified, in particular the following proposals: «expanding the specific list of groups whose existence may be the object of genocide by including cultural, social and other groups; prohibiting «cultural genocide»; applying the principle of universal jurisdiction to persons guilty of committing this crime; creating an institutional mechanism for preventing and combating the crime of genocide» [5, p. 3].

However, the Convention provided for methods of committing genocide that are aimed at the physical destruction of members of the group. The specified approach in the Convention was the result of a compromise of national interests and ideological approaches [6, p. 574]. The question arises as to how correct is the partial recognition of the methods of genocide for the effective prevention of this crime, because cultural genocide significantly affects the further use of the means of committing this crime and negatively affects the group. In this case, the compromise is not fully justified.

The study of genocide should be carried out taking into account the historical aspects of the specified crime, the commission of the crime in states in different periods, similar and distinctive properties of genocide, and changes in the process of commission [9]. The concept of genocide in international documents has undergone a long period of improvement, scientific and practical proposals, adapted to the needs of practice, but is not without justified discussions and shortcomings that need to be taken into account, investigated and tried to correct.

We must agree with R. Lemkin's statement that the practice of committing genocide has turned into a «complex, almost scientific system.» The commission of the crime of genocide defined «one of the most complete and vivid illustrations of the violation of international law and the laws of humanity» [7, p. 424]. Unlike most crimes, genocide requires extensive preparation and coordination of actions to carry out the intent to destroy a specific group, as defined in law. The premeditation of genocide and the use of a large number of methods of committing the crime indicate the intent to destroy a specific group, the need to prepare and ensure the implementation of the intent to commit the crime.

In different periods, genocide is known for its manifestations: in ancient times, the male population was killed during the war, the massacre of Armenians in 1915 by the Ottoman Empire is often called

genocide, the famine in Ukraine in 1932-1933, the murders of Jews and Roma by Germany during World War II [1, pp. 39-40]. In this list, the crimes of genocide were committed during wartime and peacetime, but there is always cruelty in the desire to destroy a certain group, and the methods chosen to commit the crime, which even decades later remind the entire international community of the consequences of genocide. For this reason, genocide must be studied to prevent the crime from being committed in the future. Unfortunately, the war in Ukraine has shown the inevitability of a recurrence of genocide, but bringing the perpetrators to justice is necessary to prevent the commission of this crime.

It is now impossible to even determine the number of victims of the famine in Ukraine in 1932-1933. Moreover, the impossibility is explained by a number of factors. In particular, regarding the famine, V. Serhiychuk pointed out the underestimated losses from the genocide, which do not take into account people who fled and were shot at the border. V. Marochno, researching the genocide of the Ukrainian people during the Holodomor period, found that archival documents mention a much larger number of genocide victims [10, p. 131]. Accordingly, genocide is a crime that is often directed at a significant number of victims, and in many cases their number cannot even be named, which is significantly complicated during wartime, as it is often impossible to provide assistance to the victims.

The commission of genocide can be determined even when killing one person, if there is an intention to destroy the group. Khaustova M. G. and Fedorovska M. A. note that when qualifying genocide, which consists in killing members of a national, ethnic, racial or religious group, they mean the commission of genocide against one or more persons belonging to the specified group [11, p. 74]. But at the same time, the intention to destroy a certain group is noted, with the help of this feature it is possible to distinguish the commission of genocide from other crimes.

By analyzing the works of scientists, one can understand the periods of improvement of criminal liability for genocide based on the activities of international tribunals or the adoption of documents on this issue:

- the period of the Nuremberg and Tokyo Tribunals (the introduction and legal consolidation of the concept of genocide);
- the period after the Nuremberg Tribunal (the consolidation of the concept and grounds for criminal liability for committing genocide at the international level);
- the Hague period (the problems of qualifying genocide were identified and ways to solve them were proposed);
- the period of the creation of the International Criminal Court, which prosecutes for the commission of genocide [12, p. 176].

Conclusions. The concept of genocide was formed as a result of the positions of scientists and procedural aspects after the tribunals on issues of bringing to justice for the commission of a crime.

The concept of genocide in history arises from the moment the intention to introduce criminal liability for crimes that undermine social order began to form in 1933. The concept of genocide was introduced into scientific literature in 1944 in Raphael Lemkin's work «Axis Rule in Occupied Europe.»

In 1945-1946, the concept of genocide was used by prosecutor Robert Jackson to prove the guilt of those who committed genocide.

The concept of genocide was officially enshrined in the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948.

Periods of improvement of criminal responsibility for genocide are based on the activities of international tribunals or the adoption of documents on this issue.

The concept of genocide has been established for a long time, but there remains a need to study all aspects of this crime in order to improve genocide prevention.

The concept of genocide remains relevant due to the commission of the crime and becomes a great threat during the war.

REFERENCES:

1. Fedulova S.O. (2022). Problemy pravovoi kvalifikatsii zlochynu henotsydu. [Problems of legal qualification of the crime of genocide. Science, technology, innovation]. Nauka, tekhnolohii, innovatsii. № 3. S. 39–43. [in Ukrainian].
2. Bushak V.O., Kobzar V.V. (2024). Henotsyd yak apofeozy viiny: pohliad u kryminalno-pravovu doktrynu. [Genocide as the apotheosis of war: a look at criminal law doctrine]. S. 574–579.

- The 5th International scientific and practical conference «Current challenges of science and education» (January 15-17, 2024) MDPC Publishing, Berlin, Germany. 612 p. [in Ukrainian].
3. Konventsiiia pro zapobihannia zlochynu henotsydu i pokarannia za noho vid 9 hrudnia 1948 r. [Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948]. Prevent Genocide International. URL: <http://www.preventgenocide.org/ua/konventsia.htm> [in Ukrainian].
 4. Korinnia henotsydu. [The roots of genocide]. Vikipediia. URL: <https://uk.wikipedia.org/wiki/%D0%93%D0%B5%D0%BD%D0%BE%D1%86%D0%B8%D0%B4> [in Ukrainian].
 5. Bem M.M. (2014). Mizhnarodno-pravovi pohliady R. Lemkina. [International legal views of R. Lemkin]. Avtoreferat dysertatsii na zdobuttia nauk. stupenia kand. yuryd. nauk. ...spets. 12.00.11. Odesa. 14 s. [in Ukrainian].
 6. Andrushko A.V. (2025). Kontseptsiiia zlochynu henotsydu Rafala Lemkina: stanovlennia, transformatsiia, suchasne znachennia. [Rafal Lemkin's concept of the crime of genocide: formation, transformation, modern meaning]. *Elektronne naukovye vydannia «Analitychno-porivnialne pravoznavstvo»*. 2025. Vypusk. № 1. S. 569–577. [in Ukrainian].
 7. Matthew Lippman. (1998). The Convention on the prevention and punishment of the crime of genocide: Fifty years later. *Arizona Journal of International and Comparative Law*. Vol. 15, No. 2. P. 415–514.
 8. Rafael Lemkin i stvorennya Konventsii proty henotsydu. [Raphael Lemkin and the creation of the Genocide Convention]. Tsentr Dnistrianskoho. 9 hrudnia 2023. URL: <https://dc.org.ua/news/rafael-lemkin-i-stvorennya-konvencyi-proty-genocydu> [in Ukrainian].
 9. Ihor Bihun, Larysa Zarichniak transkrytp i pereklad. (2015). Holodomor. Svitova istoriia henotsydu. Lektsiia Normana Naimarka. [Holodomor. A World History of Genocide. Lecture by Norman Naimark]. Istorychna pravda. 15.10. URL: <https://www.istpravda.com.ua/articles/560d25602670e/> [in Ukrainian].
 10. Herasymenko M.M. (2020). Deiaki aspekty prytiahnennia do kryminalnoi vidpovidalnosti za vchynennia henotsydu. [Some aspects of criminal prosecution for genocide]. *Visnyk penitentsiarnoi asotsiatsii Ukrainy*. 2020. № 3 (13). S. 130–136. [in Ukrainian].
 11. Khaustova M.H. ta Fedorovska M.A. (2019). Sutnist poniattia zlochynu henotsydu v mizhnarodnomu pravi. [The essence of the concept of the crime of genocide in international law]. *Porivnialno-analitychne pravo*. 2019. № 1. S. 73–76. [in Ukrainian].
 12. Strokova I.I. (2010). Kryminalna vidpovidalnist za henotsyd (porivnialnyi analiz). [Criminal liability for genocide (comparative analysis)]. ...Dys. na zdobuttia nauk. stupenia kand. yuryd. nauk. z spetsialnosti 12.00.08 – kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo. Kyivskyi natsionalnyi universytet vnurishnikh sprav. Kyiv. 228 s. [in Ukrainian].