

ABSTRACT

of dissertation of Alina Kuanyshbekovna Adibaeva submitted for Doctor of Philosophy (PhD) in major "6D030200 - International Law" on the topic: "The UN Convention on Genocide and its Implementation in the Criminal Legislation of the Member States"

General characteristics of the study. The dissertation is devoted to a comprehensive study of the normative content of the special UN Convention on Genocide and the practice of its application in the context of the fulfillment by the participating States of their obligations. Particular attention is paid to the legal analysis of the corpus delicti of genocide taking into account new political, humanitarian, social factors and circumstances, as well as the mechanisms of the actual implementation of the norms of the Convention within the framework of national criminal laws, including the relevant regulatory legal acts of the Republic of Kazakhstan.

Relevance of the research topic. One of the main and at the same time deliberative bodies of the UN - the General Assembly, in accordance with Resolution 260, with almost unanimous support of the member states, on December 9, 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted (in the English version: Convention on the Prevention and Punishment of the Crime of Genocide). The convention entered into force on January 12, 1951. The first state to submit the relevant document to the depositary - the UN Secretary General - was Ethiopia on July 1, 1949. The former USSR became a party to the Convention since March 18, 1954 on the basis of the Decree of the Presidium of the Supreme Council of the country on its final approval. January 12, 2015 marks 65 years since the entry into force of the international treaty in question. Today, 150 states are its participants, including almost all post-Soviet republics. And, by the way, so far the last state to join the Convention in May 2019 is Dominica. In September of the same year, the General Assembly, during the 69th session, referring to Resolution (A / RES / 69/323), decided to proclaim December 9 as the International Day of Remembrance for the Victims of Genocide, honoring their dignity and preventing this crime.

It can be said without exaggeration that this universal international treaty, taking into account the results of the activities of the Nuremberg and Tokyo International Military Tribunals, for the first time at the legal level contributed to the criminalization of a relatively new type of socially dangerous act - genocide, that is, it recognized this crime, committed both peacefully and wartime guilty and dangerous, criminally punishable, and also in sufficient detail defined in the legal form the signs of its composition, and in addition, normatively consolidated responsibility for its commission. Numerous UN documents have repeatedly noted that terminologically genocide emerged as a neologism denoting an old crime known to international criminal law. For example, in a special Resolution of the General Assembly of the World Organization 96 (1) of December 11, 1946, which preceded the adoption of the Convention, it was specifically defined that "genocide

is the denial of the right to life of an individual ...". The merit of the concluded Convention lies in the fact that it unified and ensured the conformity of various acts and omissions that fall under the concept of the crime of genocide.

At the same time, it should be noted that the Convention, concluded more than 60 years ago, was not designed to meet new challenges, threats, dangers and risks in the field of socially dangerous acts against the security of mankind. Just as the Convention itself has not been revised, the very legal concept of genocide itself has not been subject to any changes and additions since then, despite the fact that attacks on an object protected by the relevant norms regularly acquire additional qualifying features. It, in turn, requires the attention of scientists, specialists, as well as legislators and law enforcement officers both at the international and domestic levels. This means that the "formalized" provisions of the Convention no longer reflect the realities of our time, but also do not fully guarantee the prevention of actions with the intent to destroy in whole or in part any national, ethnic, racial, religious group or other demographic community that differs its uniformity and isolation. Here we can also say: about new (newest) forms and types of genocide that actually exist outside the Convention (for example, about socio-economic and cultural genocide; ethnocide, humanitarian tragedy, democide, politicide, the commission of which took place and , unfortunately, continue to take place in Afghanistan, Azerbaijan, Myanmar, Sudan, the Gaza Strip of the Palestinian Authority, on the territory of the XUAR in China); about the so-called mutant ways of manifesting indirect genocide - that is, about actions preceding the commission of direct genocide; not included in the Convention, except for the direct object of its regulation, other punishable forms - the prohibition of the propaganda of genocide, the dissolution of organizations that have recently been actively speaking with nationalist, ultra-right and racist calls; about the gap in establishing the responsibility of legal entities for committing genocide or complicity in it (in this case, we can speak, in particular, about the involvement of a German chemical corporation in the genocide in Iraqi Kurdistan).

For these reasons, in recent years - already in 90. XX century and in the first decade of the XXI century in terms of preventing and punishing genocide, the activities of ad hoc international criminal tribunals began to play a significant role (apart from the International Criminal Tribunal for the former Yugoslavia, this is a similar institution for Rwanda, the so-called mixed, hybrid or internationalized courts (tribunals) for Sierra Leone, Cambodia, Lebanon, Iraq, etc.), as well as the permanent International Criminal Court, created on the basis of the Rome Statute on July 17, 1998. Undoubtedly, the sentences passed by the aforementioned jurisdictional bodies contribute to the improvement of the Convention requirements and thereby establish a correlation with the latter. But at the same time, it should be noted that the understanding of genocide disclosed in the decisions of these institutions does not always coincide with the conceptual essence of a socially dangerous act contained in the Convention and it is either restrictive or expansive. In addition, it should be borne in mind that the case law of international and mixed tribunals does not have legal force for the law enforcers of the States parties to the Convention. The latter, perhaps, can only refer to it when

qualifying genocide for the purpose of interpreting the relevant international legal norm.

The criminal legislation of most of the States Parties to the Convention recognizes and enshrines the protection of universal values as a priority. In this regard, the implementation of the provisions of the 1948 UN document should serve as a legal basis for the development and improvement of national criminal law.

One of the ways to increase the effectiveness of the Convention is the fulfillment by the States parties of their obligations to bring domestic legislation in line with its norms. This can be clearly seen, for example, on the basis of a comparison of the definitions of genocide enshrined in the relevant articles of the criminal codes of the participating States and Art. II of the Convention: it shows the presence of some differences, which appear to have arisen mainly as a result of "not careful" implementation of the conventional signs of genocide into domestic criminal laws. In this aspect, we can also talk about the need to solve the problem associated with the establishment of a correlation between international legal norms and the norms of national criminal legislation on criminal responsibility for genocide, the need to recognize in the criminal codes the unlawfulness of a conspiracy to commit genocide, direct and public incitement to committing it and complicity in genocide as independent signs of the objective aspect of this crime. In this series, it should be noted the expediency of revising the norms of criminal codes in the direction of expanding the list of protected "stable" and "stable" communities and the criminalization of new / newest forms and types of genocide, which were not taken into account by legislators, not least because of the outstripping practice of existing ones, unchanged norms. It follows from this that the legislative elimination of shortcomings and contradictions, as well as the filling of gaps, serves as a guarantee of strengthening the international legal mechanism for protecting the demographic groups indicated in the dispositions of the relevant articles.

When choosing a topic of work and determining its relevance, it is important to pay attention to the fact that in the legal science of Kazakhstan there are practically no special studies devoted to the doctrinal analysis of the corpus delicti of genocide and its international legal significance. In the few published works of the general criminal plan, domestic authors mainly pay attention to the very composition of this socially dangerous act as only one of the crimes against the peace and security of mankind. Therefore, taking into account not so much the legal, but also the political, historical, economic and humanitarian aspects of the problem, it is necessary to carry out in this work, as far as possible, a comprehensive and interdisciplinary understanding of the nature of genocide.

The object of the research is international relations related to the conclusion and practical application of the 1948 UN Convention on the Genocide.

The subject of the research is the system of international legal principles and norms that constitute the normative content of the 1948 UN Convention on Genocide and the internal criminal acts of the member states adopted in its execution.

Purpose of the study. This dissertation research aims to comprehensively analyze the prerequisites for the development and adoption of the UN Convention on Genocide and its current version, as well as assess the current state and future prospects for the implementation of the provisions of this international treaty, taking into account the existing problems, shortcomings and gaps, including on the basis of the criminal laws of the member states. At the same time, this general goal determines the development of specific conclusions, proposals and recommendations.

To achieve the stated goal, the research sets the following interrelated tasks:

1. To reveal the legal content of the concept of "genocide" prior to the adoption of a special UN Convention on Genocide;
2. To trace the main stages of the conclusion of the UN Convention on Genocide, taking into account historical, political and other accompanying circumstances;
3. To carry out a comprehensive theoretical analysis of the UN Convention on Genocide in the aspect of improving the mechanisms for combating international crime;
4. To designate the special place and significance of the UN Convention on Genocide in the systems of national criminal legislation and law enforcement practice of the member states, including the Republic of Kazakhstan.

Research methods. In the study of the topic, a combination of general scientific and special methods of scientific knowledge was used. In particular, synthesis, analogy, deduction, structural, comparative, formal-logical methods, as well as methods of modeling and system analysis were used.

The theoretical (normative and empirical) basis of the research is constituted by the 1948 UN Convention on Genocide itself, individual international legal acts in the form of treaties, conventions, resolutions, national normative legal acts of the member states (criminal codes, special acts (laws), independent and collective scientific developments (monographs, dissertations, textbooks, study guides, analytical and informational articles) of researchers on the chosen topic of work, constituent, reference, program and other materials of international organizations. The content of the dissertation work is also supplemented by international law enforcement and domestic rule-making practice, statistical data having direct relation to the issues analyzed in the study.

The degree of elaboration of the research topic. In general, the issues of counteracting crimes against the peace and security of mankind are practically not developed in the international legal science of Kazakhstan. To date, there are, perhaps, only the jointly duplicated works of S.M. Rakhmetova, S.A. Kremontsov and A.Sh. Ormanova devoted to this topic. Some of its aspects and, in particular, with regard to genocide indirectly found their coverage mainly in the monograph by M.A. Sarsembayev, textbooks on criminal law by A.N. Agybaev, edited by I.I. Rogov, K. Zh. Baltabaeva, A.I. Korobeyev, as well as in scientific articles by M.K. Samaldykova, S.M. Apenova, S.A. Akhmetova, S.N. Kemalova, J.G. Kalisheva, D.A. Aydin and B. Nurmukhanov. Much attention was paid directly to the legal analysis of genocide as an international crime against human rights and freedoms. Zabikh in his dissertation research (Almaty, 2010) Among the authors specializing

in this direction in recent years, one can single out A.N. Agybaeva, S.M. Rakhmetova, I.I. Rogova, S.V. Sayapin and I. Sh. Borchashvili. These domestic authors, when studying the causes and factors contributing to the commission of genocide and its composition, not without reason, believe that it is necessary to take into account both the rather long and rich experience of applying the previous Soviet criminal legislation, and the new value system of objects of criminal law protection.

A significant contribution to the structuring and development of not only general, but also specific conceptual foundations of the content of the UN Convention on Genocide was made by Soviet / Russian lawyers - international affairs, among whom A.N. Trainin, M. Andryukhin, as well as P.S. Romashkina, Yu.G. Barsegova, Yu.A. Reshetova, A.I. Poltorak, R.A. Rudenko, I. I. Karpets, P. Radoinov, I. Sotnikov, S. Volodin, V.A. Marukhyan. Undoubtedly, in this regard, the works of a new generation of numerous Russian lawyers-researchers are also of interest: I.V. Moshenskaya, T.G. Daduani, E. D. Pankratova, I. Yu. Bely, V.M. Vartanyan, Y. Solomatin, I. Novikova, V. Ovanesyan, V.A. Batyr, S. Dmitrievsky, I. Solomonenko, A. Kibalnik, E.N. Trikoz, A.G. Volevodza, N.A. Shulepova, A.N. Tarbagaeva, G.L. Moskaleva, S.M. Kochoi and A.V. Serebrennikova, in which they raise topical issues on improving the provisions of the Convention and not only. Some problematic aspects of the application of the Convention are reflected in the works of other well-known, as well as modern Russian scientists, such as A.B. Barikhin, V.P. Panov, I. I. Lukashuk, A. V. Naumov, G.G. Shinkaretskaya, G. Ginzburg, A. Ya. Ostrovsky, S.V. Glotova, S.V. Chernichenko, I.I. Kostenko. Representatives of scientific schools from the post-Soviet republics paid special attention to the nature and mechanisms of implementation of the obligations under the Convention in the national criminal laws of the participating States. In particular, in the works of K. Vrtanyasyan, A. Palyan, A.K. Kurmanova, R.M. Karaeva, I. Fisenko, O. A. Alieva, T.F. Musaeva, L. Arbur, G. Karakhanyan, S.N. Medvedeva, O. N. Shibkova, Kh.A. Khasan, D.E. Vitus, B.V. Volzhenkina, M.A. Harutyunyan, A. Klimchuk, N.A. Safarov, contains a critical analysis of various ways of implementing the norms of the UN Convention in relation to the current editions of the criminal codes of specific countries.

Also, in some cases, the development of conclusions and proposals for the implementation of the provisions of the Convention and the improvement of its procedures are touched upon in the research of specialists representing other humanitarian and economic areas of science. So, in the works of such sociologists as Yu.V. Chernovitskaya and I.P. Merkulov, political scientists - M. Gefter, A. Merezhko and A.S. Panarin, globalists - V.A. Lisichkin, L.A. Shelyapin, E.K. Kochetov, I.P. Merkulov, E.V. Bryzgalin, geneticists - A.G. Shatalov, G.I. Mendina, B.G. Yudin and I.K. Liseev contains essential elements of the theoretical and practical understanding of the legal foundations of the fight against the latest forms and types of genocide.

Foreign experts from non-CIS countries and, first of all, R. Lemkin, and then J.P. Sartre (J. Sartre), S.K. SC Grover, A. Papamichail, H. Partis - Jennings, J. Leach, A. Rachovitsa, A. Cassese (A. Cassese), W. Shabas (William A. Shabas),

H. Singh (H. Singh), Yves. I. Ternone, M. Konvitz, K. Gregory, James Gow, M. Kaldor, M.A. Hoare, M. Shaw, N. Cigar, S. Mestrovic, T. Cushman, F. Shonfeld, S. Power, T.E. Sainatti (T.E. Sainatti), A.A. Sampaio, M. McEvoy, A. Galbagher, G. Lancaster, G. Cole, H. Radich, A. Di Giovanni, L.J. L.J. Leblanc, F. Chark, K. Jonansson, B. Van Schaack, Eng Kok-Thay, E. Hitzer (E. Hitzer, K. Nahapetian, L. Fletcher, J. Cotec, P. Rigulo, L. Heckle, S. Kifer, L. Quigley, W. Churchill, Di Brown, D. Stannard, R. Thornton), H. Coning, Jan R. Carew, M.J. M.J. Kelly, R. McCartney, J. Wouters, S. Verhoeven, M.S. Berlin (M.S. Berlin), O. Hathaway, B.A. B.A. Simmons, A. Moravcsik, V.O'Conner, J. Delisle, S.M. Mitchel (S.M. Mitchel), E.J. E.J. Powell, R.S. R.C. Clarke, V. Sewpaul, D. Lindebaum, Dame - De D.A. Jong (Dam - de Jong DA), L. Kazyrytski, J. Kyriakakis, Jillian Triggs, H. J Van der Merwe give in their writings a detailed presentation of the state, problems and prospects for the further application of the UN Convention on Genocide in the context of new geopolitical (political), economic, social, humanitarian circumstances in the XXI century and, in addition, offer their own recommendations to improve the effectiveness of legal force and the importance of a universal international treaty in the system international legal measures to combat crimes against human security.

The scientific novelty of the thesis lies in the fact that for the first time in the science of international law of Kazakhstan, it presents a comprehensive interdisciplinary analysis of theoretical and some applied problems of the conclusion and operation of the special UN Convention on Genocide of 1948, taking into account its actual implementation and assessment within the framework of the criminal laws of the member states ...

Some of the most important innovations include:

- criteria for determining the legal content of the concept of "genocide" in the aspect of developing the conceptual foundations of a special UN Convention;
- study of the composition of the crime of genocide, taking into account the specifics of international law and, in particular, the case law of international criminal tribunals;
- a comprehensive analysis of the ways of introducing and implementing the provisions of the Genocide Convention in the system of national criminal legislation of the member states;
- international legal assessment of the state of ensuring the provisions of the 1948 UN Convention on the example of the criminal codes of Kazakhstan.

The development of the research topic made it possible to formulate and substantiate a number of **basic provisions for defense**:

1. Analysis of all relevant factual circumstances dictates the need to extend the definition of genocide to those not named in Art. Group II Convention and taking into account all objective and subjective criteria when considering "stable (" stable ") groups" based on the consistency of the the direct object of the crime. As a result, what was said determines the addition of Art. II of the Convention in the part that reveals the object of genocide by other new protected demographic groups, indicating not only their common generic characteristics, interpreting them

in the light of the appropriate context, taking into account the specific conditions of a particular society and state. This approach should be considered the most acceptable, given that the Convention, as shown by modern law enforcement practice, still has great potential and it has not yet been exhausted.

2. Considering that the majority of the drafting states of the Convention did not attach any special meaning to the term "genocide" and that when highlighting certain specific forms of genocide, individual states parties resorted to additional means of interpretation, including the preparatory materials and the circumstances of the conclusion of the 1948 Convention years, and also bearing in mind that such actions are permissible in accordance with Art. 32 of the 1969 Vienna Convention on the Law of Treaties, it was proved that the list of forms of genocide formally provided for by the Convention is, nevertheless, not exhaustive. This means that, with the exception of physical genocide, biological genocide, one can also speak of national-cultural genocide (in the modern sense of cultural genocide), as well as the fourth independent form - socio-economic genocide. This circumstance not only allows for a broad interpretation of the provisions of the Convention in this part, but also provides an opportunity to take into account, within its framework, the subsequent practice of their application: that is, both individually and in aggregate, such previously "unknown" forms of direct genocide as deportation, ethnic cleansing, humanitarian tragedy, ethnocide, democide, politicide.

3. There are other gaps in the text of the current Convention that should be included in the obligations of States parties. Replenishment of the latter also serves to counteract the preconditions for committing genocide. It is especially important that among the subjects for the commission of this crime or complicity in it should be provided directly to legal entities without the formal presence of the state. This position can be justified, firstly, by the provision that, taking into account sufficient factual and legal grounds, many transnational corporations and companies still avoid criminal liability within the framework of Art. III Convention; secondly, the solution of this issue will allow within the UN to develop not only its own standards and norms, arguing the objectivity of the application of punishments to legal entities, but also the missing precedents. The implementation of the proposal under consideration is possible, in particular, by revising the Convention, which is allowed by Art. XVI of the Treaty either by concluding an additional protocol to the Convention, which, with the consent of the States Parties, may have the force of the provisions of the main part of the treaty. In the future, the establishment of dual responsibility for genocide can be consolidated within the framework of national jurisdictions.

4. The factor of criminalization of the crime of genocide sets the task of modernizing the national criminal law in order to ensure its compliance with the provisions of the Convention. In this regard, only the legal formal adaptation of the provisions of the Convention is insufficient.

The theoretical significance of the study. From a theoretical point of view, the significance of the thesis in a broad sense lies in the fact that on the basis of the main provisions and conclusions based on a detailed analysis of the UN Convention on Genocide, as well as additionally international legal, scientific,

informational and reference material, the case law of international criminal tribunals reveals the content of the above universal international treaty and defines its problems and prospects in the field of combating genocide as one of the gravest crimes against humanity. In a narrow sense, the theoretical significance of the study consists in the possibility of further scientific development of certain issues of improving the mechanisms of combating genocide in the system of modern international law and within the framework of the criminal laws of the participating States.

The practical significance of the study is determined by the fact that the results obtained during its implementation can be used both in the development of an appropriate international legal assessment, approaches and positions of states, including the Republic of Kazakhstan, and in international cooperation in specific areas of combating genocide. The research results can also be used in scientific work, in the teaching of international and international criminal law; they can become the basis for the development of individual special training courses in higher educational institutions of the Republic. The materials and conclusions of the dissertation, in addition, can serve as a basis for further, in-depth re-approbation of work. The main provisions of the dissertation were reported, discussed and published in the framework of collections of materials of the following international scientific and practical conferences: Eurasian Union of Scientists. Materials of the XIII International Scientific and Practical Conference "Modern Concepts of Scientific Research" "New (modern) forms of direct genocide and the special UN Convention of 1948" // Moscow, April 29-30, 2015 №4 (13) / 2015. -FROM. 23-25; "The essence and general normative content of genocide are as the International Crime" // Collection of Conference Papers International Scientific-Practical Conference "Urgent Problems of Science and Technology: Yesterday, Today, Tomorrow" (14-15.05.2015. The United Kingdom, London) –P.6-10; Materials of the XV International Multidisciplinary Conference "Actual problems of science in the XXI century" October 31, 2016 "Fulfillment of obligations under the UN Convention on the 1948 Genocide by the States Parties: a separate legal aspect" // - M.: International Research Organization "Cognitio", 2016. - S. 138-142 (RSCI); // Qualification of the objective side of the crime of genocide under the Criminal Code of the Republic of Kazakhstan "Actual problems of the application of the criminal legislation of the Republic of Kazakhstan at the present stage: issues of theory and practice", Doctor of Law, Professor Kairzhanov Yelegen Iztleuovich September 16, 2017 - the Ministry of Internal Affairs of the Almaty Academy named after Makan Esbulatov - p. 113-117 and in the form of scientific articles in the following specialized legal journals recognized by the Committee for Control in Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan mandatory:

1. "The UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948: the main stages of development and adoption within the framework of the bodies of the world organization" // Bulletin of KazNU im. al-Farabi. Series "International relations and international law". - Almaty: "Kazakh University" 3 (71) 2015. - P. 16-26;

2. "Definition of the concept of the crime of genocide and its main forms in the light of modern legal analysis of the special UN Convention of 1948" // Bulletin of KazNU im. al-Farabi. Series "International relations and international law". - Almaty: "Kazakh University" 4 (72) 2015. - P. 196-204;
3. "Improvement of international criminal jurisdiction in the context of the UN Convention on the Prevention and Punishment of the Crime of Genocide in 1948" // Bulletin of KazNU named after al-Farabi. Series Legal. - Almaty: "Kazakh University" 3 (75) 2015. - P. 398-406;
4. Indirect genocide and its de facto existing forms (general political and legal analysis) // Bulletin of the L. Gumilyov ENU. Humanities Series. - Astana. - No. 3 (112) 2016. - P.382-386;
5. Implementing mechanisms of the UN Convention on genocide in the criminal legislation of the participating States: general comparative analysis. (Implementing mechanisms of the UN Convention on Genocide in the criminal laws of the states parties: general comparative analysis). Article in English. language // "News of NAS RK. Series of social and humanitarian sciences". - 2018. - No. 5 (321) (September-October). - S. 39-43.
6. The 1948 UN Convention on Genocide and its significance in the criminalization of a criminal act. Kostanay Academy of the Ministry of Internal Affairs named after Sh.Kabyldaev. International scientific journal "Science" No. 3 2019 (jointly with A.N. Agybaev) as well as an article in a foreign edition included in the international databases of scientific journals of the Scopus company: "Implementation of the UN Genocide Convention of 1948 in the National Laws of the State Parties" // Journal of Advanced Research in Law and Economics. - 2017. - Vol. 7. - Iss. 6 - P. 1263-1271. The total scope of work was 4.5 pp. search on this topic.

Information about the completeness of publications. A total of 11 scientific papers have been published on the topic of the dissertation, including 1 in the materials of international conferences, 3 of them foreign, 5 in Kazakhstani publications and 1 in a foreign journal included in the international database of the Scopus company. They fully reflect the content of the thesis, 9 are independent, 2 are published in co-authorship.

The volume and structure of the thesis. The total volume of the thesis is 162 pages of a computer set. The structure of the thesis consists of designations and abbreviations, an introduction, a main part, which includes 3 sections and 9 subsections, a conclusion and a list of sources used.