THE HERITAGE OF WWII IN THE BALTIC STATES

RESTORING JUSTICE FOR NAZI CRIME VICTIMS

A JOINT REPORT
BY NON-GOVERNMENTAL ORGANIZATIONS

- FOR DEMOCRACY AND HUMAN RIGHTS INTERREGIONAL MOVEMENT
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Introduction

In 2018, the Baltic states, Latvia, Lithuania and Estonia, celebrate one century of their statehood. In reality, the statehood of these states has not yet lasted that long. The countries emerged from the ruins of the Russian Empire, destroyed by World War One and the revolution, to lose their sovereignty after some twenty years, in 1940, to Soviet Union, in which they were included as 'republics'. After the Soviet Union collapsed in the early 1990s, Latvia, Lithuania and Estonia regained their sovereignty and joined the UN.

Russian policymakers see Latvia, Lithuania and Estonia as newly emerged states that came to existence following the collapse of the Soviet Union, whereas the Baltic states believe their modern statehood to be identical to their pre-Soviet statehood. This very concept, introduced in terms of international law as the so-called *continuity of state* theory[1], is used to portray the Soviet era in those countries as the times of "Soviet occupation", as well as, in their home policies, to legitimize local political elites and their grasp at political and economic power[2].

It is worth noting that the Baltic version of *continuity-of-state* theory differs from such long-standing con-

1 For a most logically consistent rendering of the theory, see: Mälksoo L. Sovetskaya anneksiya i gosudarstvenniy kontinuitet: mezhdunarodno-pravovoystatus Estonii, Latvii i Litvy v 1940 — 1991 gg. Issledovanie konflikta mezhdu normativnost'u i siloy v sovremennom mezhdunarodnom prave. Tartu, 2005. For a critical analysis of the "state continuity" theory, see: Guschin V. Reshenie Konstitutsionnogo suda Latviyskoy Respubliki (Suda Satversme) jn 29 noyabrya 2007 g. i doktrina "mezhdunarodno-pravovoy nepreryvnosti" Latviyskogo gosudarstva s 1918 g. po 1991 g.// Zhurnal rossiyskih i vostochnoyevropeyskih istoricheskih issledovaniy. 2015. № 1 (6). S. 134–154.

cept of international law as *state succession*; Estonian lawyer Lauri Mälksoo used the Snow White metaphor to describe it, comparing the Baltic States to the fairy-tale character that took death from a poisonous fruit (in 1940) and came back to life long afterwards[3]. The question for the countries is: what about the period between their death and resurrection?

The standard answer of the Baltic countries is well known: only the authorities of the states which were in control of the Baltics starting from 1940, the year they lost their independence, are responsible for all that happened then, i.e.: the Soviet Union (1940 till 1941); the Nazi Germany (1941 till 1944); and then again the Soviet Union (1944 till 1991).

However, what the governments of the Baltic nations do is not exactly what they declare. Riga, Vilnius and Tallinn, perhaps too explicitly, sympathize with pro-Nazi collaborators who fought against the Soviet Union on Hitler's side. Despite the fact that those people were involved in major crimes and crimes against humanity (Holocaust, the siege of Leningrad, punitive actions in Belorussia, Russia and Ukraine), the Baltic governments celebrate them as their "national heroes", protect them from prosecution and, as they say, "propagandist attacks"[4]. Almost none of the local Nazi criminals have been brought to justice, but quite a lot have been commemorated. Sometimes Nazi victims' relatives came across state-sponsored memorial plates devoted to the perpetrators of the crimes exactly

2 Nikiforov I. Prontsip "kontinuiteta" kak osnova sovremennoy politiki istoricheskoy pamyati v Estonii// Zhurnal rossiyskih I vostochnoyevropeyskih istoricheskih issledovaniy. № 1 (6). S. 155-159.

3 : Mälksoo L. Sovetskaya anneksiya i gosudarstvenniy kontinuitet... S. 17.

4 For details, see Sections 1 (b) and 2 (a) of this Report.

where their families' execution had taken place[5]. At the same time, the victims of Nazis and their collaborators in the Baltic states face legal restrictions preventing them from getting back their property, taken away by Nazis and their collaborators[6].

This paper analyses the actions taken by the Baltic governments with regard to Nazi collaborators and their victims from the standpoint of the existing international law, as well as gives recommendations on how to correct the current state of affairs.

The authors of this paper believe that justice for the victims of Nazi and collaborator crimes in the Baltic states can be obtained.

5 I.e. Rifkin M. Holocaust Remnants in Latvia. URL: https://www.algemeiner.com/2012/03/27/holocaust-remnants-in-latvia/ (06.10.2018).

6 For details, see Section 3 (c) of this Report.

Problem No.1

The (Non-) Prosecution of Nazi War Criminals

a) International Legal Basis for the Prosecution of Nazi War Criminals

War crimes and crimes against humanity perpetrated during WWII by Nazis and their collaborators are qualified internationally as "crimes against peace and security". The prosecution for those crimes is subject to international law both regarding individuals (as part of international criminal law) and states (as part of international responsibility). Experts note that traditional international responsibility and criminal liability neither merge nor exclude each other. They differ in their applications[7].

The major source of international criminal law as a field is the Charter of the International military trials for the prosecution and punishment of the main war criminals from the European part of the Axis (which later became known as the Nürnberg Trials)[8], established on August 8, 1945 In London by the Soviet Union, the United States, Great Britain and France[9]. It was this document that first determined the main provisions on war crimes and crimes against humanity corpus delicti, which later became part of international law, as well as general principles of prosecution for those crimes.

7 David E. Printsipy prava vooruzhennyh konfliktov. M., 2011. S. 681.

8 *The Axis* is the term used to describe the military alliance of Nazi Germany. Italy, Japan and other nations that fought against the anti-Hitler coalition in WWII.

9 Sbornik deystvuyuschih dogovorov, soglacheniy i konventsiy, zaklyutchennyh SSSR s inostrannymi gosudarstvami. M., 1955. Vyp. XI. S. 165 — 172.

The IMT Charter defined war crimes as a "violation of laws and customs of war", including, but not limited to, "murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity."

As for crimes against humanity, the IMT Charter defined them as "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 in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

The IMT Charter provided for individual criminal responsibility for war crimes and crimes against humanity, both for organizers and actual perpetrators and their accomplices. "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."[10]

Later the UN General Assembly in its resolutions 3 (I) of February 13, 1946 and 95 (I) of December 11, 1946 unanimously "affirmed the principles of international law recognized by the Charter of the Nürnberg

10 Nurenbergskiy tribunal. M., 1961. T. VII. S. 368.

Tribunal and the judgment of the Tribunal". In 1950, the UN International Law Commission formulated the so-called Nürnberg principles (full title *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*) which finally affirmed the IMT Charter provisions in international law.[11]

Only crimes perpetrated by individuals acting "in the interests of the European Axis countries" were within the jurisdiction of the International Tribunal, according to the IMT Charter. This provision made it possible to prosecute Nazis and their collaborators, but did not help prevent war crimes or crimes against humanity from happening in the future. That is why additional international legal acts were adopted: The Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 and the four Geneva conventions of August 12, 1949 (For the Amelioration of the Condition of the Wounded in Armies in the Field; For the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea; Treatment of Prisoners of War; Protection of Civilian Persons). Contrary to the widespread misperception, these international legal acts did not enhance the legal basis for the prosecution of Nazis and their collaborators; neither the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 nor the Geneva conventions of August 12, 1949 were retrospective in their nature.[12]

11 Report of International Law Commission Covering in Second Session, 5 June — 29 July 1950, Document A/1316 // Yearbook of International Law Commission. 1950. Vol. II. P. 374-380.

12 The only time when the UN Genocide Convention was enforced with regard to Nazi criminals was the Eichmann case in the District Court of Jerusalem in 1961. The verdict by the District Coourt of Jerusalem referred to the Convention as a result of codification of certain international customary legal norms that arose after WWII, an attempt to circumvent the problem of the retroactive enforcement of the Convention (Shany Y. The Road to the Genocide Convention and Beyond // The UN Genocide Convention. A Commentary. Oxford, 2013. P. 16–18). Later, such interpretation never came up.

Nürnberg International Military Tribunal convicted the main perpetrators of war crimes from the European Axis countries; lower-ranking criminals were prosecuted by national courts. This was provisioned by the IMT Charter which said, "Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any allied territory or in Germany for the trial of war criminals". However, in the mid-60s the West German government repeatedly raised the issue of the inability to further prosecute the unpunished criminals due to expiry of the period of limitation.

That issue was raised in the UN. The UN Commission on Human Rights emphasized in its Resolutions of April 9, 1965 and March 29, 1966 that "prosecution and punishment of Nazi criminals were meant to prevent others from committing similar crimes, help protect human rights and fundamental freedoms, strengthen confidence between nations, safeguard peace and international security." The Commission specified that the issue of punishment for Nazi war criminals should be regulated on international legal rather than national level[13]. As proposed by the UN Commission on Human Rights, the United Nations Economic and Social Council demanded on August 5, 1966 that all necessary measures should be taken not to allow the statute-of-limitation practice and to get all individuals, responsible for Nazi war crimes, arrested, extradited and punished.[14]

13 Ledyah I.A. Natsistskie prestupniki i sudebnaya praktika v FRG. M., 1973 S. 103–105.

14 Ibid.

Other nations followed that call. On November 26 1968, the 23rd meeting of the UN General Assembly voted overwhelmingly for the non-applicability of statutory limitations in cases of war crimes and crimes against humanity. Article I of the Convention says that such limitation is not applicable to war crimes and crimes against humanity (as defined in the IMT Charter of August 8, 1945 as well as GA Resolutions 3 (I) of February 13, 1946 and 95 (I) of December 11, 1946, as well as the Geneva Conventions on Protection of War Victims of August 12, 1949 and Convention on Prevention and Punishment of the Crime of Genocide of December 9, 1948. Not only did direct perpetrators of war crimes and crimes against humanity (regardless of whether those were wartime or peacetime crimes) fall under the Convention, but also their accomplices, instigators and state officials that allowed these crimes to take place[15].

This is how the provision regarding the non-application of the statute of limitation towards perpetrators of war crimes and crimes against humanity, i.e. Nazis and their collaborators, became an international legal norm. It is because of the 1968 Convention that even elderly Nazi criminals nowadays have to hide from justice.

However, it is worth noting that the 1968 Convention, contrary to the common mistake found anywhere in the literature, never attributed retroaction to any international legal documents. The 3rd Section of the European Court of Human Rights (ECHR) emphasized this point

15 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968. URL: http://www.un.org/en/genocideprevention/documents/ atrocity-crimes/Doc.27_convention%20statutory%20limitations%20warcrimes.pdf (access date 06.10.2018).

in its ruling of July 24, 2008 regarding Kononov v. Latvia case. The regulation stated that the convention only regulated the issue of statute limitation but says nothing on retroactivity[16]. The international legal basis for the prosecution of Nazis and their collaborators who had committed war crimes and crimes against humanity still was the IMT Charter, rather than the UN Convention on Prevention and Punishment of the Crime of Genocide of December 9, 1948, or the Geneva Conventions of August 12, 1949, or any other acts of international law. The only effect of adopting the 1968 Convention was that it affirmed, in international criminal law, provisions of non-applying the statute of limitation to crimes against humanity committed by Nazis and their collaborators.

16 Politika protiv istorii. Delo partizana Kononova. M., 2011. S. 38.

b) Legal Action against Nazi War Criminals in the Judicial Practice of Today's Baltic States

In the early 90s the Baltic nations, after over 50 years of being a part of the Soviet Union, gained their national independence. This event raised hopes and aspirations that the Baltic Soviet Republics would turn into modern democratic and rule-of-law states, which, unfortunately, never came true. One of the pillars for the new political regimes in Latvia and Estonia was the policy of stripping potentially "disloyal" groups of their civil, cultural and partially economic rights[17]. The substantiation for the basic human right violation was obsession with the past among the countries' political elites,

17 For details see: Sovremennaya evropeyskaya etnokratiya. Narucheniye prav natsional'nyh men'chinstv v Estonii i Latvii. M., 2009; Buzayev V. Legal and social situation of the Russian-speaking minority in Latvia. Riga, 2013; Russkoyazychnoe naselenie Estonii i prava natsional'nych men'chinstv. Tallin, 2014.

attempts to "rehash", in retrospect, the events that had led to the inclusion of the Baltics in the USSR[18]. Another effect of this obsession with the past were repeated attempts to glorify the Balic Nazi collaborators who had fought against the Soviet Union, regardless of their crimes.

That glorification was, of course, the tip of the iceberg. With monuments and memorial plates celebrating the contributors to the Holocaust and other Nazi crimes against humanity[19], the Baltic governments, at the same time, did their best to let killers of the Jewish population flee from justice.

The earliest — and the most dramatic — example of this was Alexandras Lileikis case. Lileikis was head of Vilnius district police forces during Nazi occupation. The investigation by the Office of Special Investigations at the U.S. Department of Justice showed that Lileikis was a direct participant in the mass murder of Jews. Despite the fact that the investigation was hampered by the Central Intelligence Agency — the organization that helped Lileikis naturalize in the U.S. and made him their agent in 1952 — the Department of Justice managed to initiate legal action. On summer 1996 Lileikis was stripped of American citizenship and sent back to his native Lithuania.

Apparently, the Office of Special Investigations hoped there would be criminal investigation in Lithuania, resulting in a proper punishment for the murderer. However, reality did not meet their expectations. Later, a confidential study by the CIA stated, "the Lithuanian

18 Dyukov A.R., Simindey V.V. V plenu u etnokratii: O politicheskoy angazhirovannosti latviyskoy ofitsial'noy istoriografii // Svobosnaya mysl'. 2012. № 1-2.

19 For details see: Section 2 (a) of this Report.

Government declined to take any action against Lileikas… he was greeted with a hero's welcome, and the Lithuanian state prosecutor's interrogations were friendly despite his well-documented background. The Lithuanians still took no action against Lileikas and, in fact, reversed Soviet-era court convictions of other Lithuanians charged with collaboration with the Nazis as "frame-ups.""[20].

Eli Rosenbaum, head of the Office of Special Investigations, repeatedly tried to get from the Lithuanian government a decision on starting a legal prosecution against Lileikis, but every time he tried to do so he faced a wall of misunderstanding. As Rosenbaum learned in 1999 that Lithuanian lawyers found Lileikis medically unfit to face trial, the OSI director exclaimed, "this is an outrage. The US Government has specific, verified information that Lileikas has been feigning illness. He is fit to stand trial." [21] Strong American pressure made Lithuanians start a criminal investigation against Lileikis, but hearings were constantly postponed. As a result, the former Vilnuis district security police chief died unconvicted on September the 26th, 2000.

Kazys Gimzauskas, deputy head of Vilnius district police who had been directly subordinate to Lileikis in the past, came back to Lithuania in 1994 and was stripped of American citizenship two years later. He was also directly involved in the mass murder of Lithuanian Jews; the process over him featured delays similar to those of the Lileikis case. It was only in February that the court finally came up with the judgment. Gimzaukskas was found

20 Ruffner K. Eagle and Swastika: CIA and Nazi War Criminals and Collaborators. Washington, DC: History Staff Central Intelligence Agency, 2003. Ch. 21.

21 Ibid.

guilty, but no penalty or punishment was imposed due to, as they said, the defendant's "incapacity".

Another Lithuanian security police official, Algimantas Dailide, was stripped of American citizenship in 2003. Three years later, Vilnius district court found him guilty of involvement in the killing of Jews and Polish Resistance members. As with Gimzauskas, no punishment was imposed on Dailide since he was in his senile years[22].

Gimzauskas and Dailide, though unpunished, were at least found guilty of their crimes. This is quite a rare occasion. According to Efraim Zuroff, the director of the Simon Wiesenthal Center office in Jerusalem, a total of 15 ex-Nazi collaborators have come to Lithuania since the collapse of the Soviet Union, perpetrators of war crimes during WWII who later remained unpunished[23]. The Lithuanian authorities held no investigation of crimes committed by a thousand of other Lithuanian perpetrators which Joseph Melamed, lawyer and chairman of the Association of Lithuanian Jews in Israel, included in his lists. Moreover, after 10 years, when most of those on the lists were dead, the Lithuanian prosecutor's office followed the demand of the countries' parliamentary members to launch investigation against the lawyer itself, for the "slander" of "anti-Soviet resistance fighters"[24].

In Latvia, none of the Nazi collaborators, among them members of the Latvian SD Auxiliary Police, Latvian police battalions and other forces within the Latvian SS Legion, were convicted from 1991 till 2018. The only exception is

22 Lithuania: 85-year-old Nazi evades prison. URL: https://www.ynetnews.com/ articles/ 0,7340,L- 3232961,00.html (access date: 05.05.2018).

23 Vanagayte R., Zuroff E. Svoi. Puteshestvie s vragom/ Per. s Litovsk. A. Vasil'kovoy. M., 2018. S. 223.

24 Litva vozobnovila presledovaniya izrail'tyan, voevavshih s natsistami // izrus.co.il, 11.02.2010.

the case of Konrads Kalejs, who was in charge of Salaspils camp security and took part in the mass murder of Jews with the Latvian SD Auxiliary Police (Sonderkommando Arajs). Latvia sent a request to Australian judicial authorities regarding his extradition, which was well overdue. The court had made such a decision only in 2000, a year before Kalejs died, and not in 1994 when all the details of Kalejs' wartime background became known and when the US stripped him of American citizenship. That ping-pong of a deportation process, involving US, Canada, Great Britain and Australia, as well as procrastination with the Latvian request, let a war criminal evade justice, no matter how many clear traces of himself he had left[25].

After years of fruitless effort to make the Baltic authorities put aides in Holocaust on trial, Efraim Zuroff acknowledged that the Baltic countries had become "a refuge for Nazis living out their days"[26]. Putting Nazi collaborators on trial for their crimes is obviously not a priority in these countries; when some academics say such an approach reveals the political choice of the Baltic prosecutors and governments[27], this actually makes sense.

c) The Need of Universal Jurisdiction for the Prosecution of Nazi War Criminals

One legal norm in customary international law is the obligation of a state to investigate, within its jurisdiction, international crimes and conduct the prosecution

25 See, i.e.: Barkham P. Konrad Kalejs. Latvian Nazi lieutenant who resisted all efforts to bring him to justice. URL: https://www.theguardian.com/news/2001/nov/12/guardianobituaries.warcrimes (access date: 06.10.2018); Krasnitskiy A. Kaleys v otvate za gibel' 296 uznikov Salaspilsa// Chas. Ezhednievnaya russkaya gazeta Latvii. № 113 (1139). 16.05.2001.

26 Tsentr Vizentalya nazyvaiet Pribaltiku "raiem dlya dozhivauschih vek natsistiv". URL: https://ria.ru/ society/ 20080104/ 95314610.html (access date: 07.05.2018).

27 Pettai E.-C., Pettai V. Transitional and Retrospective Justice in the Baltic States. Cambridge, 2015. P. 88.

of individuals suspected of such crimes. The IMT Charter describes war crimes and crimes against humanity committed by Nazis and their collaborators as international crimes. However, the Baltic nations have long demonstrated their unwillingness to take efficient legal action against their citizens responsible for such international crimes.

Technically, the Baltic governments agree that it is necessary to prosecute Nazi war criminals in full accordance with international legal norms. In reality, the Baltic governments do their utmost to prevent the legal punishment of collaborators in Nazi war crimes and crimes against humanity. Neither other countries' diplomatic effort, nor statements by international organizations can change that practice. Such policy, carried out by Baltic countries regarding local Nazi criminals and their collaborators, contradicts the basic principle of criminal law, which is unavoidability of punishment, giving a sense of impunity to the criminals.

One way to solve this situation is to apply universal (international) jurisdiction to the investigation of Nazi war crimes and crimes against humanity committed by those who are now Baltic citizens. This exclusive international legal mechanism allows to put all suspects of having committed war crimes, or crimes against humanity, on trial in every nation's court or tribunal[28].

The best known example of applying universal jurisdiction to the investigation of Nazi crimes is the case of

28 Bushe-Sol'nie F. Prakticheskiy slovar' gumanitarnogo prava/ Per. s frants. M., 2017. S. 915.

Adolf Eichmann, one of the main organizers of the mass murder of Jews. After the end of WWII Eichmann fled to Argentina where Israeli secret services found him and brought to Israel. Eichmann's defense tried to challenge the Israeli court jurisdiction, since the crimes with which their defendant was charged had been committed beyond the borders of Israel, as well as long before that state appeared on the map. However, Jerusalem District Court found the Eichmann case compatible with international criminal law. Based on GA Resolution 96 (1) of December 11, 1946 as well as the advisory opinion of the international court dated 1951, the District Court stated that, since the mass murder of Jews had been an international crime, universal jurisdiction could be applied to investigate it[29].

Universal jurisdiction comes out of the Geneva conventions of 1949. The Rome Statute of the International Criminal Court[30] determined the following conditions for universal (international) jurisdiction with regard to international crimes:

— the state that has jurisdiction over an international crime is unwilling or unable genuinely to carry out the investigation or prosecution (Clause 1 (a), Article 17);

— the national court of the state that has jurisdiction over an international crime has made a decision aimed at shielding the person concerned from criminal prosecution (Clause 2 (a) Article 17);

— the state that has jurisdiction over an international crime allowed an unjustified delay in the proceedings

29 Shany Y. The Road to the Genocide Convention and Beyond. P. 16–17.

30 Rimskiy statut mezhdunarodnogo ugolovnogo suda. URL: http://www.un.org/ru/law/icc/rome_statute(r).pdf (access date: 06.10.2018).

which in the circumstances is inconsistent with an intent to bring the person concerned to justice (Clause 2 (b) Article 17);

— the proceedings in the national court of the state that has jurisdiction over a certain international crime were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice. (Clause 2 (c) Article 17).

The abovementioned conditions of universal jurisdiction with regard to international crimes are nowadays generally accepted; scholars say the principle of universal jurisdiction "is the most efficient prosecution procedure at the international level"[31].

What the Baltic governments do about the investigation of Nazi war crimes and crimes against humanity, meets all the conditions of universal jurisdiction listed above. It is worth noting that the Rome Statute was ratified by the Baltic nations as early as 2002–2003.

The Russian Federation follows a conservative approach to exercising universal jurisdiction[32], considering it to be a well-established international legal norm. Russia believes it is only possible to exercise universal jurisdiction on the basis of a negotiated agreement, i.e. in line with international treaties acknowledged by Russia. In particular, this point of view is embodied in the Criminal Code of the Russian Federation. Clause 3 of

31 Bushe-Sol'nie F. Prakticheskiy slovar' gumanitarnogo prava. S. 917.

32 This approach can be found in a report by Charles C. Jalloh, presented at an international law workshop as part of the UN International Law Comission meeting in July 2017. The text of the report was published and can be found under this link: http://legal.un.org/ilc/reports/2018/russian/annex_A.pdf (access date: 21.11.2018).

Article 12 of the Code says foreign nationals and stateless persons who are not permanent residents of Russia and who have committed crimes outside the Russian territory are subject to criminal prosecution "in case the criminal offence is directed against the interests of the Russian Federation, or a citizen of the Russian Federation, or a stateless person who is a permanent resident of the Russian Federation, also as stipulated by an international treaty of the Russian Federation or any other international document containing obligation that the Russian Federation acknowledges[33]".

33 Russian Federal laws, versions 27.07.2006 No. 153-ФЗ and 06.07.2016 No. 375-ФЗ.

This conservative approach to exercising international jurisdiction does not mean, however, that Nazi criminals are impossible to prosecute. As the legal successor of the Soviet Union, Russia can initiate criminal investigations on crimes committed by Nazis on the Soviet territory. In particular, the Investigative Committee of the Russian Federation used this approach to initiate the prosecution of Vladimir Katryuk, a former serviceman of Ukrainian Schutzmannschaft Battalion 118 who had taken part in the Khatyn massacre. In its official statement, the Russian Investigative Committee said, "In accordance with Artcile 1 The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted November 26, 1968, no statutory limitations are applicable to any war crimes as determined in the Nürnberg Charter of August 8, 1945, including killings of civilians on an occupied territory. Russia, as the le-

gal successor of the USSR, has taken upon obligations to prosecute Nazi criminals and is aimed at obtaining extradition for Katryuk, a Canada resident[34].

Thus, Russia is able to initiate criminal investigation against Nazi collaborators based on its national legislation; moreover, universal jurisdiction over those crimes may be exercised by states that have previously ratified the Rome Statute of the ICC.

34 Vozbuzhdeno ugolovnoie dielo v otnoshenii Vladimira Katriuka, pronimavshego uchastiye v ubiystvah zhiteley derevni Khatyn' vo vremya Velikoy Otechestvennoy voyny. URL: https://sledcom.ru/news/item/924577/?print=1 (access date: 24.12.2018).

Problem No. 2

The Glorification of Nazi War Criminals and their Collaborators

a) Nazi Criminals and Collaborators Glorification Practices in the Baltic States

On May 20, 2012, a ceremony was held in the Resurrection church graveyard in Kaunas to rebury the ashes of Juozas Ambrazevičius, ex-head of the so-called "Lithuanian interim government" created in the summer of 1941. Ambrazevičius died in Connecticut in 1974, and after a little less that 40 years the funeral urn containing the ashes of the man in exile was committed to the ground in the deceased's home country with all military honors and celebrations, including the Lithuanian national anthem.

The events devoted to the reburial of the ashes of Ambrazevičius lasted ten days. There was an international memorial conference held at Vytautas Magnus University; a documentary was released devoted to the prime-minister of the "interim government". Both the reburial and the memorial events were state-funded, a clear evidence of the deceased's merits to the Lithuanian nation.

Statements by the Lithuanian authorities, as well as press coverage looked fitting and proper; in reality, the events organized by the Lithuanian authorities were

highly controversial. Every self-respecting historian knows quite well that the "interim government" headed by Ambrazevičius in 1941 was a collaborationist government actively cooperating with the Nazi occupiers of Lithuania. Moreover, the "interim government" and its chairman were direct participants in the extermination of Lithuanian Jews. On June 30, 1941 the "interim government of Lithuania" headed by Ambrazevičius decided to build a concentration camp for Jews in Kaunas. The protocol of the meeting signed by Ambrazevičius made it to the present day, and it has been published. The protocol says, "The Cabinet hereby resolved… to approve the establishment of a Jewish concentration camp"[35].

Following that decision, the Jewish camp was located in the Seventh Fort of Kaunas, which the militants controlled by the 'interim government of Lithuania' had already turned into a place of mass murder by the time[36]. That was the first concentration camp on the Nazi-occupied Soviet territory.

This information is impossible to find in Lithuanian history textbooks. The school textbook published shortly after Ambrazevičius' reburial explains: "In spite of the several discriminating laws which the Interim government adopted, it cannot be called a collaborationist government. It used to put national interests first"[37].

The formal celebratory reburial of a person responsible for the first Jewish concentration camp in Lithuania

35 Dieckmann C., Sužiedėlis S. Lietuvos žydų persekiojimas ir masinės žudynės 1941 m. vasarą ir rudenį = The Persecution and Mass Murder of Lithuanian Jews during Summer and Fall of 1941. Vilnius, 2006. P. 233–234.

36 Bubnys A. Lietuvių saugumo policija ir holokaustas (1941–1944) // Genocidas ir rezistencija. 2003. № 1 (13).

37 Navickas V., Svarauskas A. Istorija. Vadovėlis 12 (IV gimnazijos) klasei. Kaunas, 2015. P. 101.

was not accidental. Juozas Ambrazevičius was not the first organizer of Jewish massacres to be celebrated by the Lithuanian authorities.

In 1997, Lithuanian president Algirdas Brazauskas posthumously awarded Jonas Norejka, a Forest Brothers leader, with the First Class Order of the Cross of Vytis. They named a school after him, the town of Šiauliai got a memorial stone, and the Academy of Sciences in Vilnius received a memorial plate on its façade. Of course it was not in the spotlight that it had been Norejka's order to build a Jewish getto in Žagarė on August 22, 1941. Silvia Foti, an American journalist and Norejka's granddaughter, bitterly admits her grandfather was a killer of Jews responsible for more than ten thousand deaths[38]. However, Norejka is still a hero for the Lithuanian authorities.

In 1999 the next Lithuanian president, Valdas Adamkus, posthumously awarded the Cross of Vytis to a Catholic priest named Jonas Zvinys, who was the commander of a 'national partisan' formation. This man took part in 1200 killings of Jews, which was revealed years later[39]. At the same time, the guilt of another Nazi accomplice, Juozas Krikštaponis, an officer in the 2nd Lithuanian battalion of the Auxiliary Police, a participant of the Holocaust and killer of Belorussian civilians, had been fully proved long before 2002 when president Adamkus posthumously promoted him to the rank of colonel in the Lithuanian army. These facts from Krikštaponis' past never got in

38 Foti S. My grandfather wasn't a Nazi-fighting war hero — he was a brutal collaborator // Salon.com, 14.07.2018.

39 Jackevičius M. Ką slepia kunigo didvyrio praeitis: kas prisidėjo prie 1200 Molėtų žydų sunaikinimo? // delfi.lt, 26.02.2016.

the way of the president, who held the awards ceremony. Moreover, a monument to Krikštaponis was erected in Ukmergė, on a square named after him[40].

Such glorification of Nazi collaborators was carried out, to some extent, due to the personal preferences of Lithuanian leaders. In the final days of WWII president Adamkus had an opportunity to serve, as aide-de-camp, with Major Antanas Impulevičus, the commander of the 2nd Auxiliary Police Battalion responsible for bloody massacres of Jewish community both in Lithuania and Belorussia[41]. Adamkus apparently felt no shame about this part of his background. But perhaps ideological reasons prevailed over personal ones: Adamkus' predecessor Brazauskas also awarded murderers of Jews, once not only a loyal Soviet citizen, but, no less, First Secretary of the Lithuanian Communist Party. Adamkus' successor Dalja Grybauskaite whom some Lithuanian journalists suspect, not without reason, of cooperation with the Soviet KGB, also got on with that policy[42]. It was on her permission that Ambrazevičius' reburial took place.

Unfortunately, Lithuania is no exception; other Baltic nations also render a lot of state-level effort to protect Nazi collaborators responsible for crimes against humanity. One example is the Declaration on Latvian Legionnaires in World War II adopted by the Saeima on October 29, 1998, a document meant to glorify members of the Latvian SS Legion. The declaration falsely stated

40 Plukis A. Tieh li geroiev my chtim? // Obzor.lt, 29.09.2014.

41 Byvshaya uznitsa getto nazvala eks-presidenta Litvy souchastnikom ubiystv evreev // eadaily.com, 29.01.2016.

42 Janutienė J. Raudonoji Dalia. Nuslėpti Dalios Grybauskaitės biografijos puslapiai. Vilnius, 2013.

that "the aim of conscripted and voluntary legionnaires was to protect Latvia from the renewal of Stalin's regime. They never took part in Hitler's punitive acts against peaceful inhabitants."[43]. This statement is, of course, a lie, since historians are aware of war crimes committed by members of the Latvian Legion of the SS[44]. However, historical credibility is something the Latvian government could care less for; Karlis Kangeris of the Latvian presidential historians' commission admitted that the Saeima Declaration was meant to "protect the legionnaires from attacks in the press, local and — especially — foreign, calling them 'Nazis', killers' and 'war criminals'»[45]. Later, Latvian SS legionnaires got social benefits from the Latvian government as 'victims of Soviet political repressions, including allowances, higher pensions, as well as additional payments from the national military budget[46]. The posthumous glorification of Nazi collaborators also took place in Latvia: in November 2000, a memorial dedicated to Latvian SS legionnaires was unveiled in the village of Lestene, with vocal support of the government and on donations from the Daugavas Vanagi rightwing organization[47].

While watching Nazi collaborators being glorified in the Baltic countries for more than a quarter of a century, one can get the impression that absolutely nothing can be done about it. Those involved in war crimes and crimes against humanity long ago live happy lives until their very last days with no fear of criminal prosecution.

43 Latvijas Vēstnesis, 10.11.1998. Nr. 336 (1397).

44 See, for instance: Dyukov A., Simindey V. The Latvian SS Legion and the Nuremberg Tribunal's Decisions // International Affairs. 2011. № 4.

45 NRA, 15.03.2012.

46 Simindey V.V. Ogniom, shtykom i lest'u. Mirovye voyny i ih natsionalisticheskeye interpretatsiya v Probaltike. M., 2015. S. 158–160.

47 Ibid. S. 165.

Their already dead fellow offenders are posthumously celebrated as national heroes, awarded with state decorations, commemorated with monuments and plates. They get to serve as examples for younger generations, with their crimes buried in the past.

The Baltic nations carry out their Nazi collaborator glorification politics despite protests from international organizations as well as the UN Resolution on Combating the glorification of Nazism, Neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance[48] which the UN adopt annually and overwhelmingly. The resolution of the EU Parliament on the rise of neo-fascist violence in Europe dated October 25, 2018 also describes the Latvian Waffen SS legionnaires glorification problem as a negative example of neo-fascist practices[49].

b) The Law of International Responsibility. Attributing Wrongful Conduct to a State

The principle of individual responsibility for the committed war crimes and crimes against humanity, which was the basis for the Nürnberg trials, certainly could not rule out the responsibility of state for the same crimes. The IWT Charter said that one and the same crime shall involve both individual criminal responsibility and international legal responsibility of a state[50]. Naturally,

48 Rezolutsiya, priniataya General'noy Assamblieey OON 19 diekabrya 2017 g. 72/156. Bor'ba s geroizatsiyey natsizma, neonatsizma i drugiye vidy praktiki, kotoryie sposobstvuyut eskalatsii sovremiennyh form rasizma, rasovoy diskriminatsii, ksenofobii i svyazannoy s nimi neterpimosti. URL: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/156&Lang=R (access date: 06.10.2018).

49 European Parliament resolution on the rise in neo-fascist violence in Europe (2018/2869(RSP)). URL: http://www.europarl.europa.eu/ sides/ getDoc.do? type= TA&reference= P8-TA- 2018-0428 &format= XML&language= EN (access date: 21.11.2018).

50 Sbornik deystvuyuschih dogovorov, soglacheniy i konventsiy, zaklyutchennyh SSSR s inostrannymi gosudarstvami. M., 1955. Vyp. XI. S. 165–172.

this approach led to the development of the law of international responsibility in postwar years.

By the time the WWII was over, the principle of state responsibility for international crimes had not been fully developed or codified[51], although it already started to shape.

As early as 1907 the Fourth Hague Convention with Respect to the Laws and Customs of War on Land stated that 'a belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.' (Article 3).

After the League of Nations, the first world's universal organization, was established in 1919, it took the first steps towards the doctrinal codification of international responsibility of states. The provision that an internationally wrongful act generates international legal responsibility, found itself in a number of international legal codification projects of the interwar period, official and unofficial, such as: the draft international treaty on the responsibility of state by Professor Strupp, a resolution of the Institute of International Law (1927), a Hoover University project (1929), a project by the German International Law Association (1930) and other documents[52].

Profound and dedicated effort in codifying the law of international responsibility started after the International Law Commission was established by the United

51 Sazonova K.L. Teoretiko-kontseptual'noie obosnovaniye miezhdunarodno-pravovoy otvetstvennosti kak otrasli voiennogo prava. Monografiya. M., 2016. S. 12–15.

52 Kuris P. Otvietstviennost' gosudarstva i eie osnovaniye v sovremiennom miezhdunarosnom pravie. Avtoreferat dissertatsii... d.u.n. M., 1973. S. 7.

Nations. During its first meeting, it put international responsibility on the list of issues meant for codification, but it took more than 50 years for the idea to came true[53]. It was only in 2001 that the UN International Law Commission adopted draft Articles on Responsibility of States for Internationally Wrongful Acts (DARS). By General Assembly Resolution 56/83 of December 12, 2001, the United Nations took those articles into consideration, "without prejudice to the question of their future adoption or otherappropriate action"[54].

DARS have not resulted in a full-fledged international convention so far; in 2014, the meeting of the Sixth Committee of the UN General Assembly decided that the decision on them should be postponed till the next meeting. Nevertheless, some provisions of DARS are actively used by international courts and arbitral authorities. For example, the ECHR judgment regarding Kotov v. Russia case refers to DARS as "codified principles developed in modern international law in respect of the State's responsibility for internationally wrongful acts."[55]

According to DARS, "every internationally wrongful act of a State entails the international responsibility of that State" (Article 1); The characterization of an act of a State as inter-nationally wrongful is governed by international law, not the internal law of the state (Article 3)".

DARS determined two interconnected elements of an internationally wrongful act necessary to establish such an act.

53 Keshner M.V. Pravo miezhdunarodnoy otvietstviennosti. Uchebnik. M., 2017. S. 12–16.

54 Rezolutsiya General'noy Assamblieey OON 56/83 ot 12 diekabrya 2001 r. Otvietstviennost' gosudarstv za miezhdunarodno-protivopravnyie dieyaniya // Rossiyskiy ezhegodnik miezhdunarodnogo prava. 2002. S. 361–376.

55 Keshner M.V. Pravo miezhdunarodnoy otvietstviennosti. S. 19–20.

Firstly, the conduct, meaning action or inaction, should be attributable to the State by under international law.

Secondly, the conduct should mean a violation of an international legal obligation of this State.

Attribution as a normative act means establishing the fact that the wrongful act is an act of the State. The general rule is, the conduct of the state governing bodies, or other entities acting on behalf or under control of such bodies, shall be attributed to the State itself. The same is true for the conduct the State acknowledges and accepts as the conduct of its own.

c) The Attributability of the Wrongful Conduct of Nazi Collaborators to the Baltic States Themselves

Some actions of the Baltic governments regarding the glorification of Nazi collaborators make it possible to attribute the wrongful conduct of those collaborators to the Baltic states.

First and foremost, it is the position which the Lithuanian government holds with regard to the Lithuanian Activist Front (LAF) and the so-called Lithuanian interim government formed in 1941. In September 2000, the Lithuanian Saeima followed the initiative of Vitautas Landsbergis and officially legitimized the "interim government". The decision angered the international

community so much that members of the Lithuanian parliament had to step back and declare that the law adoption procedure was far from completion and the law itself was still in the process of adoption, with lots of things to be improved[56]. This, however, did not change the attitude of the Lithuanian authorities towards the participants of the so-called "June uprising" of 1941 and members of the "interim government" whom they continued to honor as heroes. In 2011, they celebrated the 70th anniversary of the "June uprising" with a number of events in which high-ranking officials took part; in 2012, the Lithuanian authorities arranged a formal ceremony to celebrate the reburial of the 'interim government' leader, Mr. Ambrazevičus.

In total, one may consider these symbolic acts regarding LAF and the "interim government" of Lithuania to be a legitimization campaign aimed at acknowledging these organizations as defenders of their country's independence; in its turn, such an acknowledgement paves the way for attributing the wrongful acts by those organizations to Lithuania. The acts include:

— organizing the persecution of Jews through the deprivation of civil rights and property, as well as isolating them in ghettos;

— organizing out-of-court mass killings of Jews and pro-Soviet Lithuanians.

The IMT Charter characterizes such actions as war crimes and crimes against humanity, i.e. as international

56 Vodo V. Litva predala Hitlera, orkazavchis' ot svoiego vremiennogo pravitel'stva. URL: https://www.kommersant.ru/doc/158550 (access date: 06.10.2018).

crimes. Since the perpetrators were Nazi accomplices, no statute of limitation exists for those crimes. There appears to be a new issue on the international agenda of today, an issue of Lithuanian international legal liability for the above-listed wrongful acts by Nazi collaborators.

One can observe a similar situation in Estonia. The official webpage of the president of the Estonian Republic says the official bearer of the state continuity was Jüri Uluots[57], the last Estonian Prime Minister before the republic joined the Soviet Union who was also proclaimed 'interim president' in April 1944. Prof. Lauri Mälksoo from Estonia argues that such an account of Uluots status by the modern Estonian authorities should be legally construed as the "position of state regarding itself"[58].

Meanwhile, the 'interim president' Uluots is known not for his combat operations against German occupiers, nor for anti-Nazi appeals. He is known for his radio address dated February 7, 1944 in which he invited Estonians to join new Nazi collaboration forces. Apart from the radio address, Jüri Uluots also took a trip around South Estonia, in a campaign in which he was asking people to come to recruiting centers, supported by his aides who campaigned in other counties at the same time. As a result of Jüri Uluots' activity, Germans received 32,000 Estonian recruits who joined frontier guard regiments, police forces and the SS. The German occupation authorities even thought of appointing him head of the Estonian autonomy, however, Dr. Hjalmar Mäe who was

57 Yuri Uluots. Prem'er-ministr s polnomochiyami presidenta. URL: https://www.president.ee/ru/republic-of-estonia/heads-of-state/5129-jueri-uluots/layout-headofstate.html (access date: 06.10.2018).

58 Mälksoo L. Sovetskaya anneksiya i gosudarstvenniy kontinuitet... S. 182.

holding the post at that time was in much better repute at Reichskommissariat Ostland, so Uluots did not get the promotion. Historically, 'pro-Nazi collaborator' is the term mostly fit to describe Uluots[59].

The fact that the Estonian authorities formally recognize Uluots as a legitimate "interim president" can change historical narrative a lot, meaning that it was a legitimate head of state, not an individual Nazi sympathizer, who collaborated with the Nazis. Thus, it turns out that the legitimate Estonian authorities organized and supported the Nazi military recruitment campaign among Estonian residents. It also turns out that Estonia was a de-facto Nazi ally who fought against the anti-Hilter coalition.

International legal implications of the recognition of Uluots as the legitimate 'interim president', are yet to be determined by lawyers. This would make it possible to charge modern Estonia with reparation payments as a Nazi ally in the war between Nazi Germany and the USSR. Anyway, it will not be much of a challenge to attribute the wrongful acts committed by Uluots to Estonia.

Meanwhile, attributing wrongful acts by Latvian collaborators to Latvia, what lawyers tried to do as part of the so-called Berkovich case not long ago, seems to be a quite a problem.

The case is as follows. On July 18, 1941, members of a local Latvian 'self-defense' force shot dead 175 Jews, including the Berkovich family, in a small town of Akniste.

59 Dyukov A.R. "Pravitel'stvo" Otto Tiyfa: chto eto bylo? URL: http://www.stoletie.ru/ekskliuziv/otto_2008-09-30.htm (access date: 06.10.2018).

Since, by that time, Nazi occupation authorities had not taken control over the town yet, the perpetrators were local inhabitants acting on their own accord, who later took possession of their victims' belongings. When more than half a century later the Soviet Union collapsed and Latvia gained independence, Mozus, the only surviving member of the Berkovich family, applied for the restitution of their former family house which was national property then. However, the Latvian court denied him the restitution claiming that the Latvian state obtained it in a lawful way. Neither were successful his attempts to get financial compensation for the loss of property. When Berkovich relatives came to visit Akniste they found a memorial sign devoted to one of the murderers, Vilis Tunkelis, less than a hundred meters from were the execution took place. The sign read, "You gave your life for Latvia fighting against the Communist occupation regime"[60]. The Latvian court rejected another lawsuit from Berkovich in which he demanded that they would remove the sign celebrating the killers and bring back his family property[61].

Lawyer Mikhail Ioffe believes that the refusal to pull down a monument to killers of Jews as well as restitute the victims' property shows that the Latvian authorities consider the killings lawful[62]. However, this means jumping to conclusions. No information has ever emerged so far proving that the killers of the Berkoviches acted under control of some authority or some persons officially

60 Rifkin M. Holocaust Remnants in Latvia. URL: https://www.algemeiner.com/2012/03/27/holocaust-remnants-in-latvia/ (access date: 06.10.2018).

61 Novoselova E. Vmeste igrali v skautov. K Latvii vrepvyie pred'yavlen isk za prestupleniya Holocosta. URL: https://rg.ru/2012/01/19/latviya.html (access date: 06.10.2018).

62 Rasstriel evreev v Akniste: na ch'yey storonie vlasti Latvii? URL: http://www.iarex.ru/news/22902.html (access date: 06.10.2018).

acknowledged by the modern Lativian government as legitimate representatives of Latvia.

Meanwhile, some wordings in the Saeima Declaration on Latvian Legionnaires in World War II[63], a document of October 29, 1998 which has not been withdrawn so far (and contains, in particular, false statements like "the aim of conscripted and voluntary legionnaires was to protect Latvia from the renewal of Stalin's regime. They never took part in Hitler's punitive acts against peaceful inhabitants", as well as an obligation taken by the national government to "prevent insults against the honor and dignity of Latvian soldiers in Latvia and abroad") make it easier to have a closer look on international legal basis for assigning Latvia with the wrongful acts committed by the Latvian SS Legion (the 15th Waffen Grenadier Division and the 19th Waffen Grenadier Division as well as Latvian police battalions and regiments) who took part in punitive acts on the Russian and Belorussian territory, as well as the siege of Leningrad[64].

There is another academic opinion that it worth noting[65]. It says that the Baltic authorities — while pursuing their revisionist course regarding the meaning and the results of WWII and symbolically implanting the idea of an allegedly just war by Nazi-built military and police forces against the Soviet Union for an independent Latvia, Estonia, or Lithuania — have actually labeled their nations as 'enemy states', according to Article 107 of the UN Charter: "Nothing in the present Charter shall inval-

63 The full-text Russian version of the parliamentary declaration was published in: Simindey V.V. Istoricheskaya politika Latvii: materialy k izucheniyu. M., 2014. S. 41–43; officially published in: Latvijas Vēstnesis, Nr. 336 (1397), 10.11.1998.

64 Dyukov A., Simindey V. The Latvian SS Legion and the Nuremberg Tribunal's Decisions // International Affairs. 2011. № 4. For war crimes and crimes against humanity committed by certain units attached to the Latvian SS Legion, see, i.e.: "Zimnee volshebstvo". Natsistskaya karatel'naya operatsiya v belorussko-latviyskom pogranich'ye, fevral'-mart 1943 g. Dokumienty I materialy. M.; Minsk, 2013; "Dannyie zlodeyaniya proizvodila gruppa, vydelennaya iz kazhdoy roty". Novyie svidetel'stva uchastiya v nasilii and mirnym naselieniem voiennosluzhaschih 19-y latushskoy grenaderskoy divizii Waffen-SS // Zhurnal rossiyskih I vostochnoyevropeyskih istoricheskih issledovaniy. 2015. № 1 (6). S. 162–169.

65 I.e.: Diemurin M.V. Kazus Estonii // Politicheskiy klass. 2007. № 5. S. 50–63.

idate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action."

According to Article 53 of the UN Charter, "enforcement action" in regard of such "enemy state" can be taken even without any authority from the UN Security Council.[66] Despite being treated as obsolete by most of the states, Article 107 has never been removed from the UN Charter so far.

66 Ustav OON, glava XVII (stst'i 106–107), glava VIII (статьи 52–54). URL: http://www.un.org/ru/stat-united-nations/ (access date: 06.10.2018).

Problem No.3.
Nazi Crimes Damage Reparation

a) Traditional Approaches to Nazi Crimes Damage Reparation

The liability of a state for an internationally wrongful act is a long-standing and universally recognized international legal norm today.

According to DARS, the state responsible for the internationally wrongful act is obliged to cease that act and offer proper guarantees of its non-repetition (Article 30), as well as make full reparation for the injury caused by this internationally legal act (Article 31).6

Reparation can take the form of:

— *restitution* (meaning reestablishing the situation which had been there before the wrongful act was committed;

— *compensation* (in case the damage from a wrongful act cannot be repaired by restitution);

— *satisfaction* (may consist in an acknowledgment of the breach, an expression of regret, a formal apology, etc.).

Despite the fact that DARS are relatively new, the principles from these documents have been used in international practice for long, including for the reparation of damage from Nazi war crimes and crimes against humanity.

The main injury reparation form after WWII were reparations imposed on Germany, Italy, Finland and other Axis countries by the anti-Hitler coalition's decision. The principles upon which the reparations were taken turned out to be moderate. Firstly, they implied only a partial reparation of the damage, in order not to undermine the peaceful economies of the defeated countries. Secondly, payment in the form of currency was optional, in-kind compensation, in the form of current exported industrial goods from the defeated countries, their foreign assets, as well as the transfer of dismantled arms factories from the territory of those countries.

The exact amount of reparations imposed on Germany after WWII was not confirmed at the international level. Western scholars have calculated that the Soviet Union seized, from its occupation zone and later from the German Democratic Republic, a total amount of 66,4bn Germans marks in assets (or $15,8bn)[67]. Comparable were the amounts of reparations taken by the US, Great Britain and France from their occupation zones[68]. We can compare figures given by the Extraordinary State Commission for ascertaining and investigating crimes perpetrated by the German–Fascist invaders and their accomplices, the direct material damage the Soviet economy alone, done by the war and Nazi occupation, made 679bn in 1941 Soviet rubles (more than $128bn)[69].

Both West Germany and East Germany stopped paying reparations in the early 1950s. After that, the form

67 Semiryaga M.I. Kak my upravlyali Germaniey. M., 1995. S. 134.

68 Vasilenko L.V. Reshenie problemy germanskih reparatsiy soiuznikami po antigitlerovskoy koalitsii (1945-1953 rr.) // Vestnik Nizhnievartovskogo gosudarstvennogo universiteta. 2009. № 2.

69 Sbornik materialov Tchrezvychaynoy Gosudarstvennoy Komissii po ustanovlieniyu i rassledovaniyu zlodeyaniy nemetsko-fashistskih zahvatchikov i ih soobschnikov. M., 1945.

of damage reparation for Nazi crimes was determined either by a bilateral treaty between the perpetrator state and the victim state, or by the national legislation adopted by the perpetrator state itself.

Examples of treaties determining the form of injury reparation were the agreements between the Federal Republic of Germany and Israel, Norway, Greece and Italy. Under the so-called Luxemburg agreement of September 1952 between West Germany and Israel, the government of the Federal Republic of Germany was obligated to pay 3bn marks of compensation to Jews who suffered the Holocaust within a 14-year period.[70] The 1959 West German- Norwegian bilateral treaty obliged the former to pay 60m marks of compensation to Norwegian citizens who suffered from Nazi persecution. Similar treaties were signed by West Germany with Greece in 1960 (the compensation was 115m marks) and with Italy in 1961 (the compensation was 40m marks).

Forms of injury reparation were written in the West German national legislation, such as the law of equalizing obligations (1952), for the compensation of the victims of National Socialist persecution (1953), of restitution (1957), of the payment of damages (1969), of injury reparation for Nazism victims (1994)[71]. In 2000, West Germany adopted a law on establishing the Remembrance, Responsibility and Future foundation to pay compensations to forced labor victims and some other categories of Nazi crime victims. The activity of that state-funded foundation

70 Bazyler M. Holocaust, Genocide, and the Law. A Quest for Justice in a Post-Holocaust World. Oxford, 2016. P. 158.

71 Sazonova K.L. Teoretiko-kontseptual'noie obosnovaniye... S. 69.

resulted in €4.4bn of compensations for 1.66m people living in Russia, Poland, Czech Republic, etc.

West Germany made several decisions on one-time payments to different categories of Holocaust victims. In total, West Germany paid over $70bn of compensations within the period of 1952 — 2012.[72]

72 Bazyler M. Holocaust, Genocide, and the Law. P. 160.

European allies of Nazi Germany were charged with relatively low liability. Under the Paris Peace Treaties of 1947, Italy, Romania, Hungary, Bulgaria and Finland were obligated to pay $1.33bn in reparations, the largest part of it ($0.9bn) meant for the Soviet Union. However, those reparations have not been paid in full. As early as 1948 the Soviet Union cut down the sums yet to be paid by Finland, Romania and Hungary (by 50 percent for each country). The reduction was significant, with Finland, for example, paying $226.5m in reparations instead of $300m to the Soviet Union[73].

73 Surzhik D.V. Reparatsii Sovetskomu Soyuzu posle Velikoy Otechestvennoy voiny // Velikaya Otechestvennaya voina. 1941–1945: Entsiklopediya, 2-e izd., ispr. i dop. M., 2015.

b) The Terezin Declaration. Shaping a New Approach to Damage Reparation in favor of Nazi Crime Victims

As mentioned above, one of the forms to repair damage from internationally wrongful acts is restitution, that is bringing seized property back to its owners. This form of damage reparation was used after WWII. Thus, the Paris Peace Treaty obligated the Italian government with giving back property previously seized from victo-

rious countries or reimburse the losses. Similar clauses were included in the 1947 Treaties with Bulgaria, Hungary and Romania[74]. The 1955 Treaty for the Re-Establishment of Free and Independent Austria contained an obligation taken upon by the country's authorities, to return the assets seized after March 13, 1938 or reimburse it[75]. After several years, in 1957, West German authorities adopted the special law on restitution, providing for the return of private assets seized by Nazis. Thus, restitution and compensation were carried out by the former Axis countries.

However, starting from the 1990s, one can see a deep transformation of approaches taking place, regarding the restitution of Nazi-confiscated assets that used to belong to Holocaust victims. In 1998, Washington hosted an international conference on Holocaust-era assets that resulted in the so-called *Washington principles* signed by 44 states who undertook to return unlawfully seized cultural treasures to Holocaust victims who used to own them before, even on the expiration of the formal limitation period. About a decade later, on June 20, 2009, forty-six nations, among them almost all Central and East European countries, signed the Terezin declaration that developed the "Washington principles"[76].

The Terezin declaration called for joint effort to guarantee 'either in rem restitution or compensation' of the former Jewish communal assets, religious objects, Holocaust and other Nazi victims' private property. The governments of the member states were recommended

74 Andrianov V. Problemy restitutsii v miezhdunarodnom pravie i praktike Konstitutsionnogo suda Rossiyskoy Federatsii // Konstitutsionnoye parvo: Vostochnoievropeyskoie obozreniye. 1999. № 4. S. 249–253.

75 Giyar E.-K. Vozmescheniye uscherba v sluchaie narucheniya miezhdunarodnogo gumanitarnogo prava // Miezhdunarodniy zhurnal Krasnogo Kresta. 2003. № 849-852. S. 270.

76 Terezin Declaration. URL: http://www.holocaustera-assets.eu/ files/200000215-35d8ef1a36/TEREZIN_DECLARATION_FINAL.pdf (access date: 06.10.2018).

to consider "implementing national programs to address immovable (real) property confiscated by Nazis, Fascists and their collaborators."

Since neither the Washington principles, nor the Terezin declaration were internationally legally binding, a number of East European member states were reluctant at returning Nazi crime victims property.

The fact that the member states failed to fulfill the Terezin declaration was so embarrassing that on May 9, 2018 President Trump signed an act named JUST (Justice for Uncompensated Survivors Today), under which Department of State was obliged to prepare a report on former Jewish property in the member states. Under that law, US Department of State shall urge member states to return the property to rightful owners or Jewish organizations. Where the property cannot be returned, the state shall take care 'of comparable substitute property or the payment of equitable compensation to the rightful owner in accordance with principles of justice and through an expeditious claims-driven administrative process that is just, transparent, and fair'[77].

What American actions under this law may look like, one can see from what happened to France not long ago, that was urged to pay compensations to Holocaust victims who had been deported from France to Nazi camps.

In 2001, several Holocaust victims' descendants filed a lawsuit in a French court against the government of France and the SNCF, the state-run railroad company.

77 S.447 — Justice for Uncompensated Survivors Today (JUST) Act of 2017. URL: https://www.congress.gov/bill/115th-congress/senate-bill/447/text (access date: 06.10.2018).

The plaintiffs demanded a financial compensation for the transfer of their families to Nazi concentration camps carried out by the SNCF (a total of about 76,000 Jews were deported from France to Nazi camps during the war). The court dismissed the case several times based on the assertion that the SNCF had been controlled by Nazi occupational authorities during the war. Besides, they said the postwar France cannot be responsible for what collaborators from the Vichy government had done.

However, archive studies have shown that the SNCF used to issue bills to the French government for the transfer of Jews, meaning it made profit. In 2006, the District Court of Toulouse came to the conclusion that the French government and the SNCF were partners in the crime against humanity, charging them with a €60,000 compensation in favor of the plaintiff: two thirds of the sum from the state and one third of it from the SNCF.

Despite the fact that France's highest administrative court withdrew the decision made by the district court due to technical discrepancies[78], this decision gave a start to a whole series of new lawsuits from Holocaust victims' relatives against the French government and the SNCF, which were considered, first of all, by American courts. In order to avoid trials, France signed an agreement with the US in December 2014 regarding $60m compensations for the Holocaust victims and their families deported from France during the war and now living in US[79].

78 SNCF lawsuits (re Holocaust). URL: https://www.business-human-rights.org/en/sncf-lawsuits-re-holocaust (access date: 06.10.2018).

79 Bazyler M. Holocaust, Genocide, and the Law. P. 167-168.

This successful example of how the US solved the issue of the French payments to some Holocaust victims shows that the enforcement of the Terezin Declaration among its member states, as envisaged by JUST, has a lot of potential. In its turn, this means that the Declaration should be understood not only as simply a declarative act, but also as a potential source of international law ready for application, that can change the existing way of repairing damage in favor of Nazi crime victims.

The Terezin Declaration is a clear evidence of the transformation we witness today, regarding the notion of international legal responsibility for crimes against humanity committed by Nazis and their accomplices during WWII. Earlier, the restitution of Nazi victims' property was carried out only by the Axis countries. Today, countries not directly responsible for the Nazi wrongful acts, but getting material profit from those acts, thus being continuators of the wrongful acts as far as the Holocaust and other Nazi crimes are concerned, can also bear responsibility.

c) Can the Baltic States Fulfill the Terezin Declaration? Exploring the Scope of Possibilities

For the vast majority of Central European and East European countries, the adoption of the Terezin Declaration in 2009 was not the first step in the process of returning the property that used to belong to the victims

of the Holocaust and other kinds of Nazi persecution to rightful owners and their legal successors[80].

For example, the Hungarian government linked Holocaust victims' property restitution process to its obligations as a surrendered Axis member under the Paris Peace Treaty of 1947. Therefore it already started to settle the issue of restitution in the early 1990s. These steps taken by the Hungarian government led to signing an agreement with local Jewish communities in 1997 that allowed them to receive annual indemnification payments.

In 2001, the Slovakian authorities created a special fund to pay compensation to Holocaust victims and their heirs. Besides, the owners and their legal successors received back more that 300 non-movable assets. Czech Republic demonstrated a similar approach, establishing the Endowment Fund for the Victims of the Holocaust and returning over 100 communal Jewish property items. The same year, the Austrian authorities signed an agreement with Jewish organizations on property restitution and social payments for Holocaust victims living abroad. The total amount of the agreement made $480m, where $210m were compensations for property losses.

The Baltic nations had quite a different story. In Estonia, the Jewish community was relatively small before the war, so the Jewish property restitution issue was settled relatively quickly. In Latvia and Lithuania, however, efforts to return Jewish property met with wide opposition from the local political elites.

80 See more about restitution of confiscated property of Holocaust victims on the site of the World Jewish Restitution Organization: https://wjro.org.il/our-work/restitution-by-country/ (access date: 06.10.2018).

As early as 2006, the Latvian government prepared a draft Latvian Jewish Community Support Law that provided for a €45m compensation to the Council of Jewish Communities of Latvia, as well as the restitution of 14 of 270 non-movable items that used to belong to Jewish civic and religious organizations. However, this lawmaking effort was blocked by rightwing parties in the Saeima. Only the so-called 'Russian' parties comprising the political opposition (*For Human Rights in a United Latvia* and the *Consent Center*) supported the law. The attempt to settle the Jewish property restitution issue was put to rest for long; signing the Terezin Declaration did little to change the situation.

In 2012, Latvian PM Valdis Dombrovskis, in an answer to the call from the Latvian Council of Jewish Communities, demanded that Minister of Justice Gaidis Bērziņš set a workgroup to make in inventory of property items that used to belong to Jewish religious and civic organizations before June 17, 1940. However, the minister refused to follow the order and resigned in an act of protest. The idea of creating a workgroup that was to identify Jewish property entitled for restitution was put aside[81].

In September 2015, after three weeks of Latvian presidency in the EU Council and one day before Foreign Minister Edgars Rinkēvičs was in Washington on a formal visit, a law was proposed in the Latvian Saeima regarding the return of a number on prewar non-movable property items, that used to belong to Jewish organizations of

81 Gluhih A. Nezakonchennaya istoriya. Pochemu Latvia nie vozvraschayet sobstviennost' zhertvam Holocosta. URL: http://rus.delfi.lv/news/daily/latvia/nezakonchennaya-istoriya-pochemu-latviya-ne-vozvraschaet- sobstvennost- zhertvam-holokosta.d?id=45531276 (access date: 06.10.2018).

Latvia, to their legal successors. This law took account of only 5 of 270 real estate items seized from Jewish organizations in the past. The ruling coalition had no problems adopting the law in the Saeima, since it was clear even for the rightwing nationalists that the law was only a PR stunt meant to strengthen the Latvian positions on the international stage, rather than part of an orderly restitution process.

Today's Latvia belongs to a small minority of countries that did almost nothing with regard to Holocaust victim's property restitution. The situation cannot be changed through either American diplomatic effort of European Parliament resolutions. Latvian ethnocratic elites keep holding their stand, rejecting all the efforts of orderly restitution of communal and private property of Holocaust victims.

Lithuania may serve as a little more positive example, as compared to Latvia. With rightwing elite opposition to Holocaust victims property restitution being as strong as in Latvia, the Lithuanian parliament still managed to adopt a law on goodwill compensation for pre-Holocaust Jewish real estate in June 2011[82], under which Lt128m (approx. $53m) compensations were to be paid from 2013 till 2023 for the lost communal property. Despite the fact that the document contained a clear reference to the Terezin Declaration of 2009, the adjective "goodwill" in its title revealed Lithuania's unwillingness to acknowledge its legal liability for the unlawful possession of Holocaust

82 The Law on Good Will Compensation for the Real Estate of Jewish Religious Communities. URL: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.406297 (access date: 06.10.2018).

victims' property. This, paying compensations was described as an act of Lithuania's "goodwill" rather than an attempt to restore justice.

Lithuania's "goodwill", however, did not include the restitution of Holocaust victims' *private* property. Under Lithuanian legislation, only persons who are now citizens of the country had the right for such restitution. Those Holocaust survivors who left Lithuania after WWII, as well as heirs to the Jews massacred by Nazis and their accomplices were deprived the right to claim back their lost property. This situation still lingers on, despite vocal criticism from US State Department[83].

The reasons why such situation with private Holocaust victims property restitution became possible in Lithuania is not only government's unwillingness to pay compensations from the state budget. Another reason is that not only Nazi occupation forces but also collaborationist formations in control of the so-called "interim government of Lithuania' were responsible for Jewish property seizure during the summer and autumn of 1941. It was as early as 1941 that the Lithuanian administration of Kaunas issued an order on the resettlement of Jews to a ghetto and the requisition of their real estate in favor of the city autonomy[84]. After a couple of weeks, instructions on the Jewish status approved by the 'interim government' underpinned such practice as legally appropriate[85]. Also, regional Lithuanian authorities practiced seizures of Jewish property a lot. "The Lekeciai district

83 SCHA davyat na Litvu: nuzhna restitutsiya perezhivshim Holocost evreyam. URL: https://www.7kanal.co.il/News/News.aspx/197183 (access date: 06.10.2018).

84 Dieckmann C., Sužiedėlis S. Lietuvos žydų persekiojimas ir masinės žudynės... P. 239.

85 Ibid. P. 241-243.

is now absolutely Jews-free," head of the district police reported to the Kaunas police department. "No jewelry or money to be found by them. The rest of movable and non-movable assets were accepted and stored by the Lekeciai autonomy."[86]

If the mass restitution of Holocaust victims' property really took place it would reveal a lot of stories like this one. The 'interim Lithuanian government', and the structures in its charge, were directly responsible for both the seizure of property and the persecution and killing of Jews. Since modern Lithuanian authorities portray the members of the 'interim government' as national heroes acting for the benefit of their country, this means that the wrongful acts committed by those 'national heroes' can be attributed to Lithuania as a state.

86 Ibid. P. 258.

Restoring Justice for Nazi Crime Victims in the Baltic States. Recommendations

Restoring justice with regard to war crimes and crimes against humanity, committed by Nazis and their collaborators in the Baltics during WWII, calls for an integral approach including political and judicial measures, historical expert account and educational activities. This is why we propose the following measures for consideration and implementation:

1. **Collecting evidence of the crimes committed by Nazis and their collaborators.** Russian and foreign archives contain a great array of documents on both the perpetrators, which are Nazis and their accomplices, and the victims of the Nazi extermination policy, as well as specific circumstances of the war crimes and crimes against humanity. The Federal Archive Agency of the Russian Federation, the Federal Security Service Central Archive, other federal, departmental and regional archives, in cooperation with academic community and public organizations could intensify, even to a larger extent, the identification, declassification and publication of archive materials in the UN working languages that bear relation to Baltic collaborators and nationalists during WWII. Digi-

talizing the documents of the Soviet Extraordinary State Commission for ascertaining and investigating crimes perpetrated by the German–Fascist invaders and their accomplices would be also useful, regarding the information on districts, towns and villages where Baltic nationalists were active during the Nazi occupation, as well as documents of the Nürnberg trial and other trials over Nazi criminals. We also expect international cooperation on that issue to broaden, particularly between the Federal Archive Agency and the Russian Ministry of Foreign Affairs Historical and Documentary Department.

2. **Assessing the damage from the actions of Nazi criminals and their collaborators.** One important step in analyzing and summarizing archive documents may be the assessment of the damage made by the Baltic collaboration forces on the territory of Russia and Belorussia, which is now the Union state of Russia and Belarus. The Chamber of Accounts of the Russian Federation in cooperation with their Belorussian colleagues and research organization working in this field of study could make successful efforts to assess the size of damage from the actions taken by Estonian, Latvian and Lithuanian Nazi allies, draw public attention to those facts and demonstrate them on international stage in available formats. Russian research and public organizations could contribute a lot

in making inventories of property that used to belong to the victims of Holocaust and other Nazi crimes in the Baltic countries.

3. **Monitoring the glorification process regarding Nazi criminals and their accomplices.** Multiple celebrations of Nazi collaborators in Lithuania, Latvia and Estonia, which romanticize the fact of joining the SS and other pro-Nazi collaborator structures and use the language of hate towards Jews and Russians, need to be accurately recorded, analyzed and reported at international events. One needs to identify, publicly mark and sanction all individual persons and officials engaged in those hostile activities. Strengthening interaction between the Russian Ministry of Foreign Affairs central personnel and foreign missions, human rights organizations and journalists could create a cumulative effect in this issue.

4. **Declaring a principled stand.** The Baltic parliamentary rhetoric aimed at the justification of Hitler's accomplices cannot go without response. The Federal Assembly of the Russian Federation has huge opportunities to declare principled approaches aimed at the accurate assessment of the actions of punitive squad members in the Baltic countries and the size of damage brought by them. Informing the MPs from other countries, as part of interparliamentary cooperation,

would raise awareness of the fact that Nazi accomplices deserve no kind of glorification whatsoever.

5. **Immortalizing the victims.** At the former crime scenes where German Nazis actively involved their Baltic accomplices, memorial signs are needed to be installed in situ, as well as all the open documents devoted to the tragic events needed to be put on the Internet. Strong interaction between the Russian Ministry of Culture, regional authorities, historians, museum curators and local history specialists on this issue could be fruitful.

6. **International solidarity.** It seems to be quite important, with the assistance of Foreign Ministry as well as specialists in international law, to fully employ all the UN mechanisms to emphasize the problem of the unjust and hostile conduct of the Baltic nations wherever the historical assessment of WWII events, as well as the infringement of the rights and lawful interests of Nazi victims, heroes of the anti-Nazi war and their descendants is meant.

7. **Indemnifying the injury.** The principles of injury indemnification for victims of the Holocaust and other Nazi crimes expressed in the "Washington principles" and the Terezin Declaration must be implemented in the Baltic countries. This means it would be useful

to include, in the agenda of the next Putin–Trump negotiations, the issue of charging Latvia with compensations for the property of the Jews killed in the Holocaust. Russian state bodies as well as research and public organizations have ample opportunities to intensify cooperation with international Jewish organizations on that issue.

8. **The prosecution of Nazi accomplices.** Russian and foreign public organizations need to insist on the investigation of crimes committed by Nazi criminals and their accomplices on the Baltic territory, which can be done by the Russian Investigative Committee and the law enforcement agencies of the countries that once ratified the Rome Statute of the International Criminal Court. It seems useful to coordinate these efforts together with such international organizations as the Simon Wiesenthal Center.

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