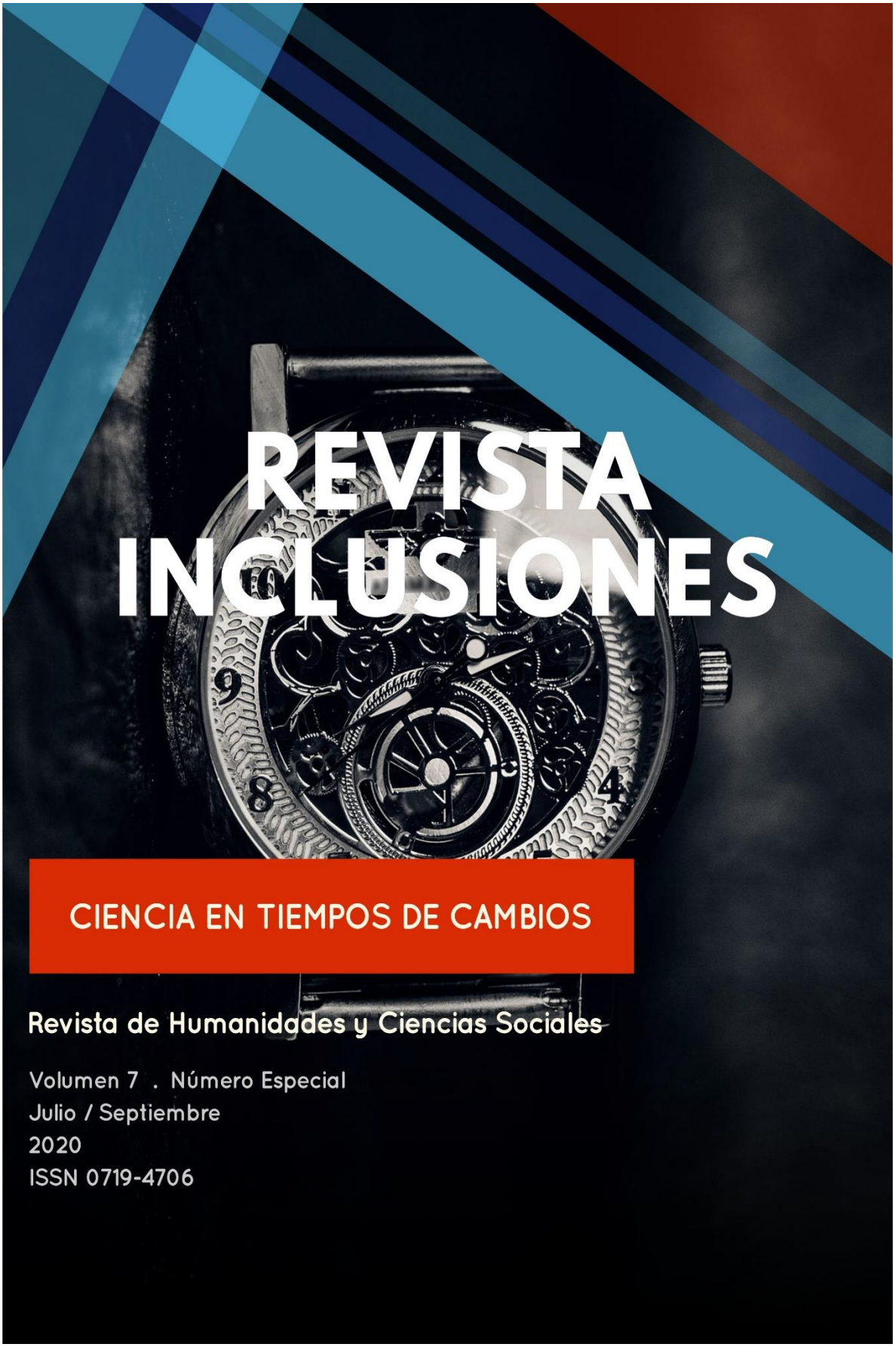

REVISTA INCLUSIONES

CIENCIA EN TIEMPOS DE CAMBIOS

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial
Julio / Septiembre
2020
ISSN 0719-4706

REVISTA
INCLUSIONES
REVISTA DE HUMANIDADES
Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA
EDITORIAL

REVISTA INCLUSIONES
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CUADERNOS DE SOFÍA EDITORIAL

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REVISTA INCLUSIONES
REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES

Indización, Repositorios y Bases de Datos Académicas

Revista Inclusiones, se encuentra indizada en:

BIBLIOTECA UNIVERSIDAD DE CONCEPCIÓN

REVISTA INCLUSIONES
REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA EDITORIAL

ISSN 0719-4706 - Volumen 7 / Número Especial / Julio – Septiembre 2020 pp. 63-74

THE STRATEGIC DIRECTIONS OF LEGAL POLICIES FOR ENSURING INTERNATIONAL SECURITY AND PROTECTING PEACE AND HUMANITY FROM THREATS IN THE CONTEXT OF GLOBALIZATION

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Fecha de Recepción: 10 de marzo de 2020 – **Fecha Revisión**: 13 de abril de 2020

Fecha de Aceptación: 22 de junio de 2020 – **Fecha de Publicación**: 01 de julio de 2020

Abstract

The article deals with the legal framework for ensuring international security in the context of protecting peace and humanity in the conditions of the intensification of international life and the negative consequences of globalization processes. The initiation of codification by the international community of international means of human protection is due to the growing trend of the threat of war. In the context of the globalization of international life, new conditions for ensuring international security were predetermined by the growing number of subjects in international relations and the presence of mass destruction weapons in countries. As a result, the problem of creating restrictive mechanisms to ensure effective counteraction to foreign aggression was brought to the forefront. New threats and risks to the peace and security of mankind are caused by a sharp decline in the level of the population's welfare in different countries, the quality of life among the population, the growing pace of internal crisis in states, aggravation of the demographic situation and the development of migration flows. Among the negative phenomena as consequences of the globalization of international life is the search for new sources of resources.

Keywords

Legal policy – Security of peace and humanity – Genocide – Ecocide

Para Citar este Artículo:

Avdeev, Vadim Avdeevich; Addeeva, Olga Anatolievna; Shagieva, Rosalina Vasilevna; Mashkin, Nikolay Afanasevich; Borisova, Natalia Evgenievna y Shirshikov, Vladislav Borisovich. The strategic directions of legal policies for ensuring international security and protecting peace and humanity from threats in the context of globalization. Revista Inclusiones Vol: 7 num Especial (2020): 63-74.

Introduction

There is a need to ensure the priority of international legal standards in the formation of national legislation with the globalization of international relations.

The problem is that modern polycentric development taking into account the existing political and legal, socio-economic, religious, cultural and other peculiarities of modern states inevitably affects the content of legal norms and legal responsibility measures.

The emerging regulation of international standards for the protection of human rights and state and public interests is characterized by the complexity of political and legal processes due to the diversity of national systems that convey the plurality of religious, legal and cultural values[1].

New threats and risks to the peace and security of mankind are caused by a sharp decline in the level of the population's welfare in different countries, the quality of life among the population, the growing pace of internal crisis in states, aggravation of the demographic situation and the development of migration flows[2].

Among the negative phenomena as consequences of the globalization of international life is the search for new sources of resources. This has a negative impact on the development of socio-economic and political-legal interstate relations[3].

The intensification of political-legal and socio-economic interstate development predetermines the necessity to solve the problem of unification on legal policy of states at the transnational level.

In this regard, the harmonization of norms at the interstate level is becoming more and more relevant, facilitating the regulation of legal and the unification of organizational and practical means to ensure security for peace and humanity. As a result, it becomes expedient to analyse the correlation between international and national principles to ensure security of the world and humanity in the context of globalization of national legal systems[4].

Given the current global tensions, it should be recognized that one of the pressing problems is the harmonization of inter-state legal policy to counter encroachments on the security of the world and humanity.

[1] A. A. Ivanov; R. V. Shagieva y L. Y. Grudtsina, "The main issue of criminology: A view through the prism of history", International Journal of Environmental and Science Education num 11 (2016): 12971-12981.

[2] V. I. Afanasyeva, "The legal nature of the subjective right to an invention", Interuniversity collection of scientific papers num 3 (2006): 30-35.

[3] W. L. Goldfrank, "Paradigm Regained? The Rules of Wallerstein's World-System Method", Journal of World-Systems Research Vol: 6 num 2 (2000): 150-195.

[4] E. Y. Levina; A. R. Masalimova; N. I. Kryukova; K. A. Renglikh y R. V. Shagieva, "Structure and content of e-learning information environment based on geo-information technologies", Eurasia Journal of Mathematics, Science and Technology Education Vol: 13 num 8 (2017): 5019-5031.

Methods

The use of techniques and methods of systematization of regulatory legal acts (accounting, consolidation, incorporation, codification) is updated. Mastering the legal technique is evidence of the high general and legal culture of legislators, their professionalism, competence and allows you to create effective regulatory legal acts.

The legal foundations for international security were laid in the second half of the nineteenth century. The First Geneva Convention of 1864 is the first international agreement to establish humanitarian rules for the conduct of war regulating the provision of medical care to the wounded on the battlefield. However, it was preceded by a relatively long period of doctrinal reflection on international relations between nations and peoples[5].

The analysis of economic and political situation in the world allowed the famous German philosopher I. Kant to present a number of treatises. A treatise «The Idea of universal history in the world-civil plan» was published in 1784 which noted that to achieve a just domestic structure requires the outside world. I. Kan's treatise «To eternal peace» was published in 1795 where the first known German philosopher proposed the world system of international relations.

The analyzed treatise of I. Kant «To eternal peace» is issued as an international treaty on interstate eternal peace. The main points of this treatise are the following:

1) initially, wars contributed to cultural progress but as the Earth is settled they become an obstacle to this process;

2) the globalization of politics reflects the unjust actions of one state when it has external problems and internal problems of other states;

3) a higher level of domestic political development is possible without war;

4) education and development of reforms in domestic political practice is connected not only with education but also with the activity of citizens who are subjects of their own history;

5) constitutions are the basis for the formation of such an institutional policy goal as ensuring equality and freedom of people;

6) there is a need for global guarantees of personal security and international law in the context of the development of interstate legal ties.

This treatise criticizes the Basel peace treaty of 05.04.1795 which was provided for: 1) the evacuation of French troops from the legal bank of the Rhine; 2) the temporary occupation of the left bank of the Rhine by French troops pending the establishment of peaceful relations between Germany and France; 3) the rejection by Prussia of hostile actions against states occupied by the French army including Holland; 4) the annexation of

[5] V. A. Avdeev, “Current issues of organized crime counteraction on the legislative and law-enforcement levels (round table summary)”, Russian Journal of Criminology num 3 (2013): 5-24.

the left bank territories to France entailed appropriate compensation from the republican government[6].

I. Kant presents the draft of the world political order, the concept of structure and the state of relations between sovereign states regulated by law excluding the grounds for military clashes.

In 1797 I. Kant published «Metaphysics of morals» where he was rejected due to the difficulties of governing the world republic. The existence of a number of unions is equated to the state of war. As a result, I. Kant's conclusion that the idea of eternal peace was not feasible becomes reality. The author recognizes eternal peace as an ideal to which everyone should aspire.

Thus, modern international organizations such as the United Nations and the Council of Europe are partially implementing the concept of a world federation of states as proposed by I. Kant.

The Kantian concept of political, moral and intellectual freedom is currently being updated which is a key factor in the development of a civil society based on the rule of law. These doctrinal developments have proved to be in demand by the international community.

Results

Main Stages of Implementation of the Legal Framework for Ensuring International Security

The initiation of the codification in international military legislation is due to the growing trend of the world war threat. New conditions for ensuring international security were predetermined by the growth in the number of actors in international relations and the presence of mass destruction weapons in countries. As a result, the problem of creating restrictive mechanisms to ensure effective counteraction to foreign aggression became more acute[7].

To solve this problem, an international conference on the codification of customs and laws of war was held in Brussels (Belgium) in 1874 with the participation of fifteen most developed states. The participating countries sought to reduce human suffering during armed conflicts. The proposed draft Convention on the laws and customs of war on land regulated certain rules for its conduct and limited suffering and disasters. The draft provided for the specification of rights, the order of communication between belligerents, the regulation of the question of reprisals. The said draft was rejected by the majority of the conference participants. The idea that the war could be restricted by international rules raised doubts.

[6] V. A. Avdeev, “Purposes of punishment optimization in the context of crime prevention”, Russian Journal of Criminology num 2 (2013): 41-53.

[7] V. A. Sergevnin; V. A. Avdeev y O. A. Avdeeva, “Harmonization of Russian correctional policy in the field of sentencing and the execution of punishment”, Russian Journal of Criminology Vol: 9 num 1 (2015): 78-93.

As a result, the draft Convention was transformed into the so-called Brussels declaration, a document which has a recommendatory nature[8]. The international community was not ready at that stage to adopt a binding convention. The significance of the conference was that for the first time at the international level an attempt was made to codify the customs and laws of land warfare. The outcome of the Brussels conference was developed in subsequent international forums including the session of the Institute of international law in Ghent (Belgium) in 1875 and the Hague conventions and declarations of 1899.

Conventions «On the peaceful resolution of international hostilities», «On the laws and customs of war on land», «On the application to naval warfare began the Geneva convention on 10th of August in 1864» were adopted by 26 member states during the 1899 First Hague conference. Also at this conference the declarations «On the prohibition for five years of throwing projectiles and explosives from balloons or by other similar new methods», «On the use of projectiles with the sole purpose to spread suffocating or harmful gases», «On the use of bullets which expand or flatten easily in the human body» were adopted.

Thus, in view of the growing global military threat at the turn of the XIX-XX centuries, the international community in the framework of the conference adopted documents that recognized the ban on the use of certain types of weapons and the need to limit the arms race.

The Second Geneva convention of 1906 established rules for the conduct of hostilities at sea and on land.

The Second Hague conference in 1907 which was attended by forty-four participating countries addressed the issue of the international community's attitude towards the global problem of war. The conference adopted 13 conventions and a declaration «On the prohibition to throw projectiles and explosives from balloons». Among the adopted conventions, the following deserve close attention: «Convention on the peaceful solution of international clashes», «Convention on the discovery of warfare», «Convention on the laws and customs of war on land», «Convention on maritime bombardment in time of war», «Convention on the rights and obligations of neutral powers and persons in the event of war on land», «Convention on the emplacement of submersible, automatically exploding landmines» and others. The international arbitration system was also subject to registration at this conference.

The result of the Hague conventions was regulation by the world community: 1) the procedure for declaring war; 2) the conduct of hostilities; 3) the duties and rights of neutral states. The unquestionable achievement of these conventions is the establishment of the Permanent court of arbitration whose activities were aimed at the peaceful settlement of inter-state disputes and conflict situations. The peaceful coexistence of states was interrupted by the beginning of The First World War on 28.07.1914 when the population of 38 countries, where 70% of the world's population lived, suffered hardships and hardships during the struggle of states for world influence. The main reasons for the outbreak of the war were the strengthening of nationalistic sentiment and the desire to return lost territories. The economic, political, territorial and other claims of the states' governments tried to be solved by military means.

[8] V. A. Kartashkin y E. A. Lukasheva, International instruments on human rights: Collection of documents. 2-nd ed. add. (Moscow: Norma: INFRA-M, 2002).

The period of the First World War was marked by the combined efforts of twenty-five states against Germany. The treaties regulated the redistribution of state territories of Albania, Austria, Turkey and a number of other states. The creation of military alliances led to a significant growth of military structures, new governing and government bodies, increased state interference in the economy, labor relations, education and science. The end of the First World War was accompanied by the development of the Versailles treaty system.

After the end of the First World War on 11.11.1918 the activity of the international community intensified. The official end of the First World War was connected with the ratification of the Versailles peace treaty on 10.01.1920. As a result, the abolishment of universal conscription was regulated in Germany, the armed forces were limited to a Reichswehr of 100,000 to protect state borders and police service. It was prohibited for Germany to have an air force of submarine fleet. The navy was limited to a small number of ships.

The said ratification of the peace treaty also became the basis for the formation of the League of Nations which led the leaders of the developed world powers to rethink the legal basis for ensuring international security. The League of Nations is recognized as the first world organization focused on preserving peace and developing international cooperation. The Statute of the League of Nations was adopted by states parties. The seat of the League of Nations is Geneva (Switzerland).

Discussion

Members of the League of Nations have been given the duty to exchange comprehensive and frank information on the scope of arms, air, sea, military programmes and the state of industry. At the same time, countries pledged to oppose any external invasion that violated political independence and territorial integrity. Each member of the League of Nations is entitled to bring to the attention of the Council or Assembly a circumstance that poses a real threat to the existing peace that could shake the harmony between nations.

In order to avoid a new world war and to avoid a new global conflict, the contracting countries have made a number of commitments, including:

1) not to resort to war;

2) to maintain international relations in full transparency which were based on honor and justice; 3) to comply with the prescriptions of international law recognized as the rule of government conduct; 4) to establish good faith compliance with obligations in relations between organized peoples taking into account the domination of justice. A list of procedures limiting the use of force was subject to detailed elaboration in the Statute of the League of Nations. The emergence of a dispute that could complicate international relations necessitated: a) recourse to arbitration for legal settlement; b) submission of the case for consideration by the Council of the League of Nations. In the event of a dispute, the parties could not go to war. Moreover, the parties agreed not to go to war during the period of calming the parties which is three months after the decision of the court, the arbitration, the report of the Council of the League. These restrictions applied only to the outbreak of war.

The main problem with this Status was the impossibility to apply it in order to prevent wars because there is no a definition to the act of aggression in the document. This uncertainty led to the adoption of the 1924 Protocol which excluded the possibility of war under which states were obliged to submit for arbitration the contradictions arising. The Protocol recognized as an aggressor any state that refused arbitration consideration of a dispute or did not agree with the verdict rendered. However, this definition of the aggressor was not supported by the international community.

It is worth paying attention to the draft Treaty on mutual assistance of 1923, the Geneva protocol for the peaceful settlement of international disputes of 1924, the Lokarin peace pact of 1925 which introduced a definition of aggression that was assessed as an international crime. The 1924 Geneva protocol prescribes that the parties will not go to war except in cases of: a) resistance to acts of aggression; b) action with the permission of the Assembly or Council of the League of Nations.

The Treaty on the refusal of war as a tool of national policy was signed in Paris on 27.08.1928 in order to restrict the right to start a war. The Treaty was aimed at condemning the resolution of international disputes through war and the expediency of resolving any interstate conflicts by peaceful means.

On the basis of the Third Geneva convention of 1929, the customs and laws of war were to be extended both to the citizens of the countries that ratified it and to all categories of people regardless of their nationality. The failure of the state to accept its obligations under the convention did not exclude the liability of citizens in the event of war crimes.

States also had the duty to refrain from aggressive warfare under a number of non-aggression covenants and the three London conventions of 1933. These instruments recognized as attackers in an international conflict a state that committed the first of the following acts: a) declaration of war to another state; b) invasion of the territory of another state by armed forces; c) attacking the aircraft or territory of another state by its air, sea or land forces; d) naval blockade of the ports and coasts of another state; e) support for an attack against a state.

Thus, international law had codified norms of conduct in armed conflicts at the outbreak of the Second World War. However, the problem was the lack of a procedure for bringing to justice violations of the rules of conduction provided for in the conduct of hostilities.

The Agreement on the establishment of the International military tribunal was concluded at the London conference in August 1945. The purpose of the Statutes of the International military tribunal adopted on 08.08.1945 was to ensure prompt and fair trial and punishment of the main war criminals of the European axis countries (Article 1). For the trial and punishment of the main war criminals of the European countries the Statute established: a) the crimes subject to its jurisdiction; b) the procedure of judicial investigation. The Statute of the International military tribunal regulated the responsibility of those found guilty in: 1) planning and unleashing aggression; 2) violation of customs and laws of war; 3) crimes against humanity (Article 6).

The UN Security Council adopted Resolution 3 (I) «Extradition and Punishment of War Crimes» on 13.02.1946 which recommended that members of the United Nations and

countries not included in this international organization take the necessary measures to arrest and expel to the states where war crimes were committed the criminals for trial and punishment.

The League of Nations ceased to exist on 18.04.1946 as a result of formation the United Nations. The principles of the United Nations are aimed at ensuring the development of international cooperation and world order. The activities of the international community are complicated by new challenges. The UN General Assembly Resolution № 170 (II) «Extradition of war criminals and traitors» on 31.10.1947 recommends that the UN member states continue with tireless vigour to carry out the duties of extradition and trial of war criminals. In 1947, the UN General Assembly tasked the international law Commission with drafting a Code of crimes against the peace and security of mankind.

The struggle against genocide was recognized as the main task by the UN General Assembly Resolution 260A (III) of 09.12.1948. The Convention on the prevention and punishment of the crime of genocide entered into force on 12.01.1961. The commission of genocide in wartime or peacetime is considered to be a violation of the norms of international law against which states parties undertake to take preventive and punitive measures. Persons accused of genocide will be brought to criminal responsibility by the court of the state where the said crime was committed or by an international criminal court. The parties undertake to extradite those responsible for genocide and related crimes in accordance with national legislation and existing treaties. Disputes concerning the application and interpretation the provisions of the Convention are subject to referral to the International criminal court (Articles I-IX) including the state's responsibility for genocide or a related crime.

The Convention on the non-applicability of Statutory limitations to war crimes and crimes against humanity adopted on 26.11.1968 by resolution 2391 (XXIII) of the UN General Assembly (entered into force on 11.11.1970) excluded the application of statutory limitations regardless of the time of commission to the following crimes: 1) war crimes; 2) crimes against humanity.

Resolution 3074 of the UN General Assembly of 03.12.1973 proclaims the following principles of international cooperation in relation to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity: 1) crimes against humanity and war crimes are subject to investigation, suspects, accused-search, arrest, prosecution and perpetrators-punishment regardless of the time and place of their Commission; 2) each state is granted the right to convict its citizens for crimes against humanity and war crimes; 3) inter-state cooperation is accompanied by the adoption of necessary international and domestic measures aimed at preventing and suppressing crimes against humanity and war crimes; 4) in order to detect, arrest and bring to justice persons suspected of committing these crimes, states provide each other with the necessary assistance; 5) persons who have evidence of committing crimes against humanity and war crimes are subject to judicial responsibility and those found guilty of these crimes are punished at the place where the act was committed; 6) inter-state cooperation involves the collection of investigative materials and information that help to bring the perpetrators to justice; 7) the possibility of granting asylum by states to persons who committed crimes against humanity and war crimes is excluded; 8) states may not adopt legislative or other measures that are detrimental to their obligations in relation to the detection, arrest, extradition or punishment of persons guilty of crimes against humanity and war crimes; 9)

interstate cooperation in the search for and prosecution of persons found guilty of crimes against humanity and war crimes is carried out on the basis of the UN Charter and the Declaration on principles of international law relating to friendly relations and cooperation.

The Declaration on the right of peoples to peace adopted on 12.11.1984 by the UN General Assembly resolution 39/11 notes that the main goal of the UN is the maintenance of security and international peace. The Declaration aims to exclude war and prevent a world nuclear catastrophe given that the establishment of lasting peace is a key condition for the preservation of the existence of human civilization considered as a sacred duty of each state. In this regard, the guidelines for state policy become: 1) elimination of the threat of war including nuclear war; 2) exclusion of the use of force in interstate relations; 3) settlement of arising international disputes by peaceful means.

On the initiative of the UN General Assembly the work on the draft Statute of the Permanent international criminal court was resumed which was adopted on 16.07.1998 in Rome at the Diplomatic conference of plenipotentiaries and ratified by 66 countries. Thus, the International criminal court which has been in force since 1.07.2002 in Hague becomes the successor to the Permanent court of arbitration. The policy of genocide and other crimes against humanity is suppressed by this court and justice is served in cases of war crimes.

Conclusions

Summing up the study on the stages of regulation of international security measures, the establishment of the Rome Statute of the International criminal court has helped to bring the international community together.

Crimes against peace and humanity represent a real threat to security and universal peace which should be considered as crimes of an international character[9].

The merit of the international community lies in the creation of the Rome Statute which establishes and regulates the functioning of the permanent International criminal court which is competent to try persons prosecuted for the most dangerous international crimes[10].

The International criminal court is endowed with the necessary legal capacity and international legal personality to exercise its functions and achieve its stated objectives. The functioning of this court is allowed in the territory of a member state and in the territory of any other state by special agreement (Articles 1-4).

The Statute of the International criminal court notes the list of crimes of international concern to which it refers: 1) crimes of genocide; 2) crimes against humanity; 3) war crimes; 4) crime of aggression.

[9] V. A. Avdeev; O. A. Avdeeva; O. P. Gribunov y V. A. Sergevnin, “Punishment in the system of criminal law measures of counteracting corruption: Interaction of legal systems in the conditions of international life's globalization”, Russian Journal of Criminology Vol: 10 num 2 (2016): 301-312.

[10] V. A. Avdeev y O. A. Avdeeva, “Criminal legal concept of the Russian Federation: main directions of criminal law improvement and crime counteraction measures optimization”, Russian Journal of Criminology num 1 (2014): 12-24.

Genocide is the following acts aimed at the destruction of a racial, national, ethnic or religious group: 1) murder of the members of the group; 2) causing mental disorder or bodily harm to the members of the group; 3) intentional creation of such living conditions for the group which will lead to its partial or complete physical destruction; 4) measures designed to exclude the possibility of childbearing in the group; 5) forced transfer of children from one group to another.

A crime against humanity is any act committed as part of a systematic or widespread deliberate attack against civilians. Such acts include: murder, enslavement, extermination, forced displacement or deportation, torture, severe deprivation of physical liberty, imprisonment, rape, forced prostitution, sexual slavery, forced sterilization, forced pregnancy, certain forms of sexual violence, persecution of a particular group on racial, political, ethnic, national, gender, religious, cultural grounds, the crime of apartheid, enforced disappearance and others[11].

An attack is considered to be sustained conduct characterized by the repeated implementation of these acts in order to implement a particular policy of the state or organization. Extermination forms a deliberate creation of living conditions designed to destroy part of the population by excluding access to medicines, food and etc.

War crimes include intentional killing; inhuman treatment or torture; intentional infliction of suffering, harm to health, serious bodily injury; unlawful large-scale appropriation or destruction of property not caused by military necessity; coercion of a prisoner of war to serve in the armed forces of an enemy power; intentional deprivation of a war prisoner for a fair trial; unlawful deprivation of liberty, displacement or deportation; h) taking hostages and etc.

Acknowledgements

The article was prepared in the course of the Scientific school «Scientific support of the effectiveness of the implementation of modern criminal law policy (taking into account the criminological characteristics of the northern region)» of research of the federal state budgetary educational institution of higher education «Ugra State University» (Khanty-Mansiysk, Autonomous Okrug–Yugra).

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