Part II

Perspectives on the Development of Historiography and Contemporary Public Law

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Historiography in Jurisprudence: Interactive Interdisciplinary Spaces

Abstract. The article examines the interdisciplinary origins of historiography as a relatively new direction in terms of its positioning in the sectoral and disciplinary structure of legal science. Particular attention is focused on the interdisciplinary foundations and directions of historiographic research in socio-humanitarian studies as projected onto the sphere of research of a state-legal nature in jurisprudence. At the same time, areas of communicative interactions between historiography in jurisprudence and other social and humanitarian sciences can be identified in the context of their significance and influence on the spectrum of historiographic research in the juridical sciences.

Keywords: social and humanitarian sciences; historiography in social and humanitarian studies; historiography in scientific and cognitive activity; historiography in the structure of jurisprudence; legal historiography; interdisciplinarity of legal historiography

The development of modern jurisprudence is characterised by the emergence of new research directions that arise at its intersections with other scientific disciplines and areas of knowledge. One of these directions in modern legal sciences, whose main research contours have been delineated in recent years, is historiography (Kodan 2020). At the same time, we note that contemporary approaches to historiographic research in jurisprudence have already been quite clearly articulated (Gorban 2024). However, such attention to the emerging historiographic direction in modern Russian jurisprudence poses a number of problems requiring a special focus on issues directly related to this problematic. In what follows, we will focus on only one of these aspects: the interdisciplinary nature of legal historiography.

1. The interdisciplinary origins of the historiographic direction in socio-humanitarian studies and jurisprudence are closely interconnected. The main progenitor of historiography, within whose framework the present understanding of this phenomenon was formed, was historical science. This can be considered in a broad sense, i.e., as the evolution of historical science as a whole and of the individual scientific disciplines that comprise it, as well as in a narrow sense, i.e., as a set of historical studies on a specific era, topic, problem, or related to national historical science in a particular country. Thus, in developing and evolving from its origins in Classical thought, historiography not only determines the theoretical and methodological foundations for studying processes in historical science, but also influences the study of the history of the development of other sciences. In the European and then Russian science of the 19th and 20th centuries, a tradition of working with historiographic sources emerged and then stabilised: while explicitly relying on the works of their predecessors, scientists presented critical analysis informed by their own particular fields of knowledge.

In the 20th century, historiography transcended the boundaries of historical science to become a driving force for research in existing and newly emerging branches of scientific knowledge. The historiographic direction was positioned in the philosophy of science and science studies, as well as in works on the history of individual branches of scientific knowledge and scientific disciplines. Numerous methodological turns in the second half of the 20th cen-

tury in the social and humanitarian sciences led to the definition of new problem fields and interdisciplinary approaches, resulting in the formation of new research directions – the historiography of intellectual history, biographical historiography, source studies of historiography, etc. By the beginning of the 21st century, the understanding that historiography reflects the development of science as a whole, as well as its individual branches and scientific disciplines, research areas, themes and problems, had already become axiomatic.

In modern socio-humanitarian studies, historiography acts as a type of synthetic knowledge to define general and relatively universal theoretical and methodological foundations for working in the historiographic spaces of science, representing individual branches of knowledge and scientific disciplines in various research areas and projections of specific studies both in the disciplinary environments themselves and in interdisciplinary interactions between special sciences.

Although already taking form during the 19th and 20th centuries, ***historiography*** is currently in the process of assuming its proper place, role, tasks and functions, as well as its positioning in the structure of Russian jurisprudence. By absorbing and adapting historiographic developments from various social and humanitarian sciences, contemporary legal science forms its own understanding of the role and significance of the development of historiography within the framework of its object of knowledge. The terminological designation of this direction as *legal historiography* (Kozhevina 2023) has entered scientific circulation. And although such a designation of historiography in jurisprudence has a certain degree of conventionality, the more concrete positioning of this direction and scientific discipline in jurisprudence is associated with the state-legal sphere of social life and the study of legal science. And, while historiographic research in modern jurisprudence in the generally understood sense is primarily characteristic of historical and legal sciences, it is also beginning to appear in industry-specific areas of scientific understanding.

As a result, it can be stated that, for jurisprudence, the historiographical direction of research is essentially interdisciplinary in nature; moreover, historiography is present in one way or another in all branches and disciplines of legal sciences. In this

regard, we emphasise that the general and basic theoretical and methodological parameters, models and structures for studying the historiographic space for legal science are established by socio-humanitarian studies. Accordingly, historiography in jurisprudence – as in other socio-humanitarian sciences – consists in a system of interrelations with historiographic knowledge in socio-humanitarian studies, which sets the basic theoretical and methodological parameters, models and structures for studying the historiographic space.

2. The interdisciplinarity of the subject of historiography in modern socio-humanitarian studies and jurisprudence is connected with its general direction being identical to theirs – it refers to the history of individual branches of science and scientific disciplines to cover, as L.A. Markova emphasises, "various forms of historical and scientific reconstructions that depict the real historical process of development of science on the basis of research methods, methods of selection, description and interpretation of scientific texts, discoveries, and scientific theories that correspond to the place and time" (Markova 2009: 333-334).

The *objectives of historiography*, which are generally determined by its subject focus, are associated with the selection, analysis and provision of information on the existing array of scientific research as a reflection of the historical development of a separate area of knowledge involving the activity of scientists, along with their theoretical approaches, methodology, methods and technologies for studying historiographic information carriers, in order to ensure educational, research and law enforcement practices.

The *subject focus of legal historiography*, which consists in the specified projections, is oriented towards studying cognitive processes of state and legal phenomena and institutions through the works of legal scholars, involving the study of their scientific biographies and creative process, including mechanisms for accumulating, preserving and transmitting historiographic information, as well as other issues of a historiographic nature in jurisprudence according to various research areas and projections.

The *objectives of legal historiography* are related to the selection, analysis and provision of information on the existing array of scientific research as a reflection of the history of the development of a separate field of knowledge, including scientific activities,

theoretical approaches, methodology, methods and technologies for studying historiographic information carriers to support research and educational practices. The *tasks and functions of historiography in jurisprudence* are structured accordingly.

The ***positioning of historiography in the system of legal sciences*** appears to be one of the important problems of understanding its place in the space of the latter. Here a problem arises in terms of the poorly defined status of historiography in the structure of jurisprudence and clear need to identify a special group of sciences within it, e.g., ancillary sciences by analogy with auxiliary/special disciplines in historical science, literary criticism, etc. By their very name and content focus, ancillary legal sciences are of an auxiliary or subsidiary nature, the object of whose study consists in a set of problems related to jurisprudence, science studies, methodology, historiography and source studies in legal science. Ancillary legal sciences thereby discuss the development of legal science as a whole and its individual disciplines, which represent for them "knowledge about knowledge", by means of which "the system of coding, reproduction and transmission of certain skills, experience, and knowledge" functions, in whom "the ability of a person to possess the knowledge of the universe and the sources of this knowledge that he has achieved and to reproduce them in time and space is expressed and reproduced" (Mamardashvili 1982: 42).

The grounds for the disciplinary demarcation of ancillary legal sciences, which are determined by their specific features – subject focus, place in research and educational programs, significance for the formation and development of a scientist as the subject of scientific activity, correspond to the criteria for "isolating a body of knowledge into a separate independent branch" of legal knowledge (Syrykh 2012: 108-111). As it develops, legal historiography has the capability to "grow" to the status of an independent legal scientific and educational discipline along with others – legal science studies, history of jurisprudence, legal methodology, and studies of legal sources (Kodan 2020).

In conclusion, we may note that legal historiography as a new research direction and future scientific discipline is beginning to develop its own cognitive space. For this purpose, theoretical and methodological historiographic knowledge accumulated during the development of social and humanitarian sciences should be

thoroughly elaborated and adapted to the specifics of legal science at the industry-specific and other disciplinary levels to create basic theoretical and methodological grounds for the allocation of legal historiography in the structure of legal science.

3. Interdisciplinary interactions of socio-humanitarianism and jurisprudence in historiographic research are manifested according to two main projections: the *foundations of knowledge in the field of historiography* and the *directions of historiographic research*, which have already been sufficiently well reflected in a number of scientific fields. Thus, in terms of jurisprudence, the development of such interdisciplinary interactions becomes necessary for the development of legal historiography.

The ***foundations of historiographic knowledge*** are based on a spectrum of knowledge that displays the multidimensionality of the historiographic space to provide a necessary and sufficient basis for the research practices of the legal historiographer. These can be designated as follows.

The *cultural and cognitive foundations of legal historiography* act as initial scientific and ideological guidelines for conducting historiographic research. Here it will be necessary to consider the interaction of historiography with such sociocultural phenomena as scientific memory, scientific heritage, intellectual reception, scientific traditions, and continuity in science. These phenomena mediate the influence of the specified socio-cultural factors on scientific knowledge by including their own ideological attitudes and research practices.

While built on relevant developments in socio-humanitarian studies as a whole, the *theoretical foundations of legal historiography* are adapted to the specifics of historiography in jurisprudence and transferred to the level of individual groups and legal-scientific disciplines to create a basis for historiographic research that considers their subject specifics. Here it will be important for the legal historian to turn to knowledge regarding the subject area, tasks, functions, research models and structures for studying historiography and other general issues that permit their application to the study of historiographic processes in jurisprudence.

The *methodological foundations of legal historiography* are formed in the context of general knowledge having a methodological nature in the historiography of socio-humanitarian studies in

relation to the tools for conducting historiographic research in jurisprudence. Here the researcher must rely on principles, methods, approaches, techniques and technologies capable of producing accurate, reliable and verifiable results of the study of historiographic phenomena, processes, arrays of scientific literature and sources, as well as conducting their qualitative analysis, etc. Considering historiographic experience in the social and humanitarian sciences, such resources can be used construct and develop a methodological toolkit for legal historiography.

The ***directions of historiographic research*** reveal the contours along which historiographic material is studied to create scientific works in this area. Each of these can be used, whether individually or in their various combinations, to define research strategies for historiographic studies. Based on literature analysis and the study of research practices in various branches of the social and humanitarian sciences, the following areas of historiographic research can be identified.

The *historiographic and scientific studies* research direction involves the study of the history of the development of knowledge in legal science as a whole, as well as in its individual branches and scientific disciplines, within the study of their genesis, development trends and structuring, including the mechanisms of interpersonal and collective transfer of knowledge, the experience of scientific activity and the functioning of scientific schools, along with their foundations and systems of scientometric indicators, etc. This line of research finds expression in the form of various thematic studies at the "junction" of historiography and the corresponding social, humanitarian and legal sciences. For jurisprudence, research in this area can contribute to identifying and developing the new scientific discipline of legal science.

Thus, the *historiographical-intellectual direction* refers to the study of various types of creative human activity in jurisprudence, their genesis and development, intellectual creativity in various scientific fields, the experience of assimilation and transformation of their ideas in society according to retrospective projections, as well as to modernity in actual cultural and social contexts. Historiographic research in this area can be related to various aspects of intellectual history, including the history of ideas, the history of social, political, philosophical, historical, state and legal thought,

the history of elites, etc. Of particular importance for jurisprudence here are works on the historiography of the philosophy of law, the history of teachings on the state and law, theories of the state and law, as well as historiographic aspects of branch sciences.

The *historiographic problematic* is traditionally aimed at studying individual directions, themes and problems in legal science at the sectoral, disciplinary and specific research levels. It can be implemented through analysing the development of the subject and problematic in the scientific literature for the preparation of monographs, dissertations, scientific projects, conducting literature reviews on individual topics and problems within the framework of various sciences, including jurisprudence. Accordingly, work in this direction not only examines the degree of elaboration of individual issues in legal literature, but also reveals the contours of new, unexplored areas of jurisprudence to assess their theoretical relevance and practical significance for the development of jurisprudence.

The *historiographic and biographical direction* refers to the study of the specific contribution made by individual thinkers to legal science. Their contributions to scientific knowledge and heritage can be studied through the prism and against the background of their life paths in the context of factors, actors and situations that arose to influence their scientific activity. This direction finds expression in various forms of research – biographical reports, analytical works of biographical problems, intellectual biographies, etc. As well as personalising jurisprudence, the indicated direction in jurisprudence demonstrates the preservation of longstanding scientific traditions on the basis of specific examples, preserving research continuity and revealing the formation and development of scientific schools, the place and role of leading scientists in them, etc.

The *historiographic and source studies* direction is aimed at studying the carriers of historiographic information in jurisprudence – complexes of documents and materials, including various published and archival documents, sources of personal origin, periodicals and journals related to the history of the development of individual branches of legal-scientific knowledge and disciplines, along with the individual and collective activity of scientists, its conditions, creative processes and searches, results obtained, and other aspects of the development of the science. This direction is

presented in the form of reviews, descriptions of individual sources and their types or complexes, and other information carriers of a legal and historiographic nature. In jurisprudence, these issues can also be worked out within the framework of legal source studies.

In conclusion, we emphasise that legal historiography as a research space requires from the historiographic researcher a fairly wide range of knowledge, which forms the necessary basis for conducting high-quality research in this area. Reliance on historiographical theoretical and methodological developments and research directions that have developed in various humanities create the opportunity for their use when working with historiographical material in jurisprudence to obtain new results that significantly expand the understanding of state and legal phenomena in terms of their institutions according to a variety of projections. Accordingly, legal biography can assert itself as an independent scientific and educational discipline to take its appropriate place in jurisprudence.

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Politics of Memory in the Strategic Planning Documents of the Russian Federation

Abstract. The article analyzes key strategic planning documents of the Russian Federation, including the addresses by the President to the Federal Assembly, in order to assess the adequacy and comprehensiveness of regulations governing the implementation of politics of memory in the Russian Federation. The analysis reveals several critical issues. Firstly, there is a lack of legislative definitions regarding objects of legal protection within the framework of Russia's politics of memory. Secondly, an institutional foundation for implementing this concept into memory policy remains unformed. Thirdly, the delimitation of competences related to politics of memory implementation – both among federal bodies and between the federal authorities of the Russian Federation and its constituent entities – has not been resolved. Furthermore, there is no clearly defined mechanism outlining the content of memory policy, including specific measures and activities. As a result, tracking the effectiveness of the implementation process is challenging. The necessity for expert and analytical support for legal decisions related to the protection of historical truth is also pressing. The article concludes by recommending to develop and adopt a comprehensive concept of *politics of memory*, which should outline general principles for implementation of memory policy in the Russian Federation; the rights and obligations of federal and regional authorities; a detailed set of measures and activities aimed at protecting the historical truth and preventing its distortion; specific measures of accountability; and indicators to evaluate the concept's effectiveness.

Keywords: historical truth; strategic planning; national security; national interests; sovereignty; historical enlightenment; education; civil identity

In recent years, the rhetoric of strengthening state sovereignty, defending national interests, enhancing Russia's global position, and opposing unfriendly states and territorial entities has come to the forefront of the discourse among Russian politicians. The key themes underlying these trends were articulated in the constitutional reform of 2020, which formalized the constitutional identity of the Russian Federation. This reform fastened ed ideological foundations, sociocultural values, and political-legal ideals, as well as established a hierarchy of values that underpin both civil and cultural identity. This model of the constitution has been addressed as a "social value" in scholarly discourse (Khabrieva 2021: 8), emphasizing the institutionalization of value orientations within the Russian state and society.

It was during the 2020 reform when *historical truth* was introduced into the constitution as a category, thereby granting constitutional recognition to the function of protecting historical truth (Part 3, Article 67 of the Constitution[1]). The constitutionalization of this category entails certain legal consequences: 1) *historical truth* as a value receives constitutional-legal protection; 2) the status of constitutional-legal value indicates that this category becomes a measure of law; 3) the Constitutional Court may rely on this category to argue for the preeminence of specific values.

To enhance the normative framework for strategic approaches to politics of memory, this article aims to accomplish the following tasks: 1) to analyze the role of strategic planning documents in shaping historical policy; 2) to assess the completeness and adequacy of the existing regulations; and 3) to propose potential pathways for improving regulatory practices in this area. These tasks are primarily addressed within the framework of political science research (Miller 2020; Rusakova 2023; Fishman 2024). However, in these cases, the legal constructs and terminology are interpreted through a specific lens: for instance, the norm regarding the state's opposition to the spread of destructive ideology is classified as the exclusion of citizens who do not adhere to traditional values from the legal sphere (Golovashina 2024: 43). Additionally,

[1] *Constitution of the Russian Federation (1993, with amendments approved during the nationwide voting on July 1, 2020). Official Internet Portal of Legal Information*, available at: http://pravo.gov.ru/proxy/ips/?docbody=&nd=102027595 (accessed October 30, 2024). (in Russ.).

such concepts as *memory politics regime* and *historical memory regime* are examined, but from a perspective distinct from the familiar legal term *legal regime* (Rusakova 2023) and others. Given the multifaceted nature of politics of memory issues, only a dialogue among researchers can ensure a consensus on the commemorative practices implemented by the state.

A systematic strategic planning document that would define politics of memory in Russia is definitely lacking; its foundations are laid by a collection of documents developed within the frameworks of forecasting, goal-setting, planning, and programming, including national projects and state programs. This article focuses on the documents developed within the goal-setting framework, particularly on Presidential addresses to the Federal Assembly, as they outline the priorities of tasks and propose algorithms for their resolution.

The Strategy for National Security puts significant emphasis on the protection of *historical truth*[2]. The document under analysis includes paragraph 93, in which the tasks related to the protection of historical truth are listed alongside those concerning the safeguarding of traditional values. This indicates that the category of historical truth, while not explicitly mentioned among the values that form the foundation of civic identity, is nevertheless associated with them.

According to this document, the protection of historical memory is carried out through the establishment of various tasks related to both historical and moral identity: strengthening civil unity, fostering civic consciousness, achieving interethnic and interfaith harmony, preserving the uniqueness of the Russian Federation; ensuring continuity in the development of the state and its historically established unity, countering the falsification of history; maintaining continuity among generations of Russians; enhancing the role of traditional values in public consciousness while rejecting externally imposed destructive ideas; developing the education system as the foundation for shaping socially responsible individu-

[2] Strategy of National Security of the Russian Federation, approved by the Decree of the President of the Russian Federation dated July 2, 2021, No. 400, *Collection of Legislation of the Russian Federation*, 2021, no. 27, art. 5351. (in Russ.).

als; patriotic upbringing of citizens; strengthening cultural sovereignty; popularizing the achievements of Russian figures in various fields; and protecting society from external ideological and value-based expansion (paragraph 93). An analysis of these tasks suggests that the function of protecting historical memory is implemented through diverse measures within the frameworks of identity, language, migration policies, as well as policies in education, sports, culture, and the preservation of traditional values, among other policy areas.

The Strategy for State National Policy of the Russian Federation for the period up to 2025[3] introduces the definition of civic consciousness and proposes a model of a solidarized community with shared value foundations – namely, *the Russian nation*. While the Strategy does not provide a precise list of these foundations, it is possible to infer from the text that they include patriotism, a unified cultural code, the historical and cultural heritage of different ethnic groups of Russia, service to the home country, family, constructive labor, humanism, social justice, mutual assistance, collectivism, and others. The Strategy also pays attention to values of a historical nature. Among these are pride in Russia's history and respect for Russian history and culture. The historical heritage of different ethnic groups of Russia forms the basis of civic unity and is part of the singular cultural (civilizational) code of society. The Russian people are viewed as the foundational element for the unity these groups. The preeminent role of the Russian people should be emphasized within the context of implementing memory policy in education, sports, science, and other spheres.

The term *historical truth* is not used in the Strategy, yet the measures for implementing national policy aimed at strengthening the civic unity of the Russian nation and supporting the ethno-cultural and linguistic diversity of Russia are closely linked to politics of memory. Notably, the analyzed Strategy was adopted in 2012, a year that marked the foundations of contemporary politics of memory in Russia, including the establishment of *the Russian Historical Society* and *the Russian Military Historical Society*, as

[3] Strategy of State National Policy of the Russian Federation for the Period Until 2025, approved by the Decree of the President of the Russian Federation dated December 19, 2012, No. 1666, *Collection of Legislation of the Russian Federation*, 2012, no. 52, art. 7477. (in Russ.).

well as the initiation of projects that led to the creation of thematic parks such as *Russia – My History* and the launch of *the Immortal Regiment* initiative (Miller 2020: 215). It is significant that the law on foreign agents[4] was enacted in the same year. This act is important for minimizing the risks of foreign influence on the perceptions formed among citizens regarding the history of Russia and its role in global development.

According to the interpretation of the Strategy, the strengthening of civic consciousness is accomplished, among other avenues, through the preservation of traditional values (paragraphs 17 and 21.1). The success of this tactic is attributed to the universal nature of the majority of values presented in the analyzed documents, including *the Foundations of State Policy on the Preservation and Strengthening of Traditional Values* (hereinafter referred to *as the Foundations for Preserving Traditional Values*[5]). Among these values are "life, dignity, high moral ideals, a strong family, constructive labor, the precedence of the spiritual over the material, humanism, compassion, justice, collectivism, mutual assistance, and mutual respect" (paragraph 5 of the Foundations), which are values that are not tied to any specific state. It is precisely the moral identity that researchers identify as the core of personal identity (Atkins 2008: 65). A significant advantage of this moral identity is that it shapes the expectations of citizens regarding other members of the nation, allowing them to perceive others through the lens of moral identity. The strategy chosen by the legislator, taking into account the high degree of universality of the carefully selected values, appears to be quite justified.

In addition to moral values, values of a historical nature are integrated into civic identity. The choice of such values appears to be a strategically disadvantageous option due to the lack of compre-

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[4] Federal Law No. 121-FZ of July 20, 2012, «On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Profit Organizations Performing Functions of a Foreign Agent», *Rossiyskaya Gazeta*, July 23, 2012. (in Russ.).

[5] Foundations of State Policy for the Preservation and Strengthening of Traditional Russian Spiritual and Moral Values, approved by the Decree of the President of the Russian Federation dated November 9, 2022, No. 809, *Collection of Legislation of the Russian Federation*, 2022, no. 46, art. 7977. (in Russ.).

hensive, targeted action from the state in this area over a prolonged period. Furthermore, historical identity cannot claim universal status when detached from other components of civic identity (Syrov 2023: 10). At the same time, when shaping civic identity, it is crucial to consider the historical context: the current set of values is grounded in past frameworks and is aimed at building the future upon them. In other words, the inclusion of these values into the legal framework possesses a rational basis.

In the context of examining the role of historical truth and memory within the structure of civic identity at the level of strategic planning documents, the issue of the conceptual and categorical apparatus used in these documents draws attention. First, many of the terms are not characteristic of legal science and are borrowed from other social sciences (such as *civic identity, cultural identity, historical memory, traditional values, patriotism*, etc.). Second, not all concepts have clear definitions (such as *cultural identity, historical memory, historical truth*, etc.), which raises questions about the relationships between these concepts. Third, the existing definitions are ambiguous. *Civic identity* is used synonymously with *civic consciousness* and interpreted as "the awareness of the Russian Federation citizens of their belonging to their state, people, society, accountability for the fate of the country, the necessity of observing civil rights and obligations, as well as a commitment to the basic values of Russian society"[6]. This concept conflates several types of identity, including national and ethnic identity. This raises the question of how effective it is to incorporate a concept related to individual citizens into state national policy and to seek legal means of influencing citizens' identities. The identified issue concerning the conceptual and categorical apparatus necessitates independent scholarly investigation.

Historical truth is not explicitly named among the traditional values. However, *historical memory* and *intergenerational continuity* are indicated as such. Historical truth is closely linked to other values – specifically, patriotism, civic responsibility, service to the home country, and accountability for its fate. The teaching of national history, from a certain perspective, serves as a tool for

[6] Paragraph "g" of Section 4.2 from the Strategy of State National Policy of the Russian Federation for the Period Until 2025.

instilling patriotism, civic consciousness, and solidarity among citizens. However, a number of ambiguous questions arise: *Can historical truth* and *historical memory* be universal values inherent to identity? How do historical truth and historical memory relate to constitutional-legal values and moral values? What legal means are most optimal for their universalization? What is the relationship between freedom of speech and historical truth?

It seems that *historical truth* can be viewed as an ideological construct inherent to civic identity; however, for its universalization as a value at the state level, official assessments of key events significant to Russian statehood must be developed. It is generally the school and university education systems that serve as the main conduits for these positions. This is why it is extremely important to create a scientifically substantiated historiographical model of political and legal knowledge and to implement it into cognitive technologies for value formation among targeted groups, such as schoolchildren and students. *Historical memory* is part of historical consciousness and societal awareness as a whole. In the context of civic identity, historical truth is linked to the preservation of the historical and cultural heritage of ethnic groups in Russia and the continuity of their historical traditions. Memory, to some extent, acquires practical significance, becoming a resource for state-building and enhancing public well-being (Golovashina 2024: 42). The formation of identity is based on traditional values; however, identity may also encompass other value foundations that do not contradict Russian law. Researchers identify values such as solidarity, communal unity, national identity, reunion with compatriots, trust, and others as part of this framework (Semenova et al. 2023).

A significant event in light of the pressing issues of politics of memory was the adoption of *the Foundations of State Policy of the Russian Federation in the Field of Historical Enlightenment* in 2024[7]. Historical enlightenment is distinguished from education and is defined as the dissemination of historical knowledge aimed at forming an understanding of the past that would constitute a common civic identity and collective historical memory. This definition aligns with

[7] Foundations of State Policy of the Russian Federation in the Field of Historical Education, approved by the Decree of the President of the Russian Federation dated May 8, 2024, No. 314, *Collection of Legislation of the Russian Federation*, 2024, no. 20, art. 2587. (in Russ.).

the socio-value model of the current Constitution. The document reflects traces of the Eurasian idea of socio-political corporatism and the potential for realizing geopolitical opportunities within the spatial system of Russia-Eurasia. Russia positions itself as a civilization-state that unites peoples across Eurasia into a singular cultural-historical community. Centripetal vectors are established within the framework of the Union State and the CIS, based on spiritual, moral, and cultural-historical values, with the aim of countering ideological and informational aggression against Russia. The institutional foundation for this implementation consists of the entities involved in historical enlightenment policy and the *Interdepartmental Commission for Historical Enlightenment*, established in 2021.

In the addresses of the President of the Russian Federation since 2020, the theme of traditional values has been raised, along with indications of necessary measures: advocating for and defending spiritual and moral values, revising history textbooks, improving the quality of history courses and methodological resources, allocating funds for the renovation of cultural centers, libraries, and museums in rural areas, countering historical falsification in the context of information warfare, and supporting the development of culture in newly formed regions[8]. Thus, these addresses, presented in a strategic planning format, define the forthcoming vectors of development for the Russian state[9].

Almost all the documents examined in this article mention historical and cultural values, among which historical truth occupies a significant place. The protection of this value is essential for ensuring Russia's national security. By safeguarding historical truth, as well as historical, cultural, and moral values, the state ensures national unity. However, the existing regulatory framework is insufficient for establishing a memory policy. At the legislative

[8] *Message of the President of the Russian Federation dated April 21, 2021*, available at: http://www.kremlin.ru/acts/bank/46794 (accessed October 30, 2024) (in Russ.); *Message of the President of the Russian Federation dated February 21, 2023*, available at: http://www.kremlin.ru/acts/bank/49010 (accessed October 30, 2024) (in Russ.); *Message of the President of the Russian Federation dated February 19, 2024*, available at: http://www.kremlin.ru/acts/bank/50431 (accessed October 30, 2024). (in Russ.).

[9] Article 15 of the Federal Law dated June 28, 2014, No. 172-FZ, "On Strategic Planning in the Russian Federation." *Rossiyskaya Gazeta*, July 3, 2014, p. 15. (in Russ.).

level, definitions of objects deserving legal protection within the framework of Russia's politics of memory have not been formulated (definition for concepts like *historical truth* or *minimizing heroism in the defense of the home country* is lacking; although, individual offenses are established, among others). Furthermore, the institutional foundation for politics of memory is not clearly defined: while almost all executive bodies are involved in its implementation, a coordinating structure has not been created, and there is no consistent delineation of the competences of these bodies (Elizarov 2014: 36). Additionally, there is no clearly articulated mechanism for implementing politics of memory. It is challenging to track the effectiveness of such policy since the performance indicators in strategic planning documents are provided only for certain policy directions. There is an urgent need for expert-analytical support for decision-making regarding issues of historical truth (Rattur 2024: 277).

It would be advisable to adopt a *memory policy* concept to address the aforementioned issues, which would outline: the principles for implementing this policy within the country and beyond its borders; the rights and responsibilities of public authority bodies in its realization; measures to protect historical truth, prevent the distortion of historical facts, and safeguard historical memory; accountability measures; and monitoring and performance indicators for the implementation of the concept. It is sensible to normatively define historical policy as "a set of actions carried out by the subjects of state historical policy aimed at forming and disseminating official representations of Russia's history within society, supporting and promoting scientific research in the field of Russian history, and shaping individuals based on the value system inherent to Russian society and love for the home country". The concept may be adopted by the Government of the Russian Federation based on its general powers to organize the implementation of domestic policy, its authority in the protection of family and childhood, and its powers in the fields of education, science, and culture[10].

The practice of legally formalizing historical policy through general documents is not widespread globally. In countries with a

[10] Federal Constitutional Law dated November 6, 2020, No. 4-FKZ, "On the Government of the Russian Federation", *Rossiyskaya Gazeta*, September 9, 2020, pp. 13, 15, 21. (in Russ.).

Romano-Germanic legal system that implement an official state historical policy, such policies are typically articulated through several legislative acts addressing specific aspects. This method of formulation has gained traction in European Union countries (e.g., France, Germany, Hungary, Poland, etc.), in Latin American countries (Argentina, Peru, Bolivia, etc.), in Africa (e.g., Tanzania), and in the member states of the CIS (Kazakhstan, the Republic of Belarus, etc.). The experience of creating general documents will be analyzed further below.

Historical policy as implemented by European states varies significantly in content. These differences can be schematically outlined as follows: the core of the historical policy in Western European countries is the acknowledgment of the Holocaust and the responsibility for it, whereas in Eastern European countries, it is the necessity of overcoming the consequences of two totalitarian regimes – the Nazi and the Communist (Lifanov 2021: 80-85). In the Kingdom of Spain, the core of historical memory is encapsulated in the so-called *Historical Memory Law*, which recognizes the rights of individuals who became victims of persecution or violence during the Civil War or dictatorship, and establishes compensatory measures for such individuals[11]. The institutional foundation consists of *the Documentary Center for Historical Memory*, which operates under the Ministry of Culture and Sport.

In the Republic of Poland, state historical policy is normatively established by the 2016 Law on the Prohibition of the Propagation of Communism or Other Totalitarian Systems through the Names of Organizations, Units, Public Buildings, Structures, Devices, and Monuments[12]; the 2009 Law on Amendments to the Law on the Pension Provision for Professional Soldiers and Their Families;

[11] Law 52/2007, of December 26, which recognizes and expands rights and establishes measures in favor of those who suffered persecution or violence during the civil war and the dictatorship, available at: https://www.boe.es/boe/dias/2007/12/27/pdfs/A53410-53416.pdf (accessed November 04, 2024). (in Spanich).

[12] Act of 1 April 2016 on the Prohibition of the promotion of communism or other totalitarian regime by the names of organizational units, auxiliary units of the municipality, buildings, objects and public facilities and monuments, see: *Dziennik Ustaw Rzeczypospolitej Polskiej*, 2016, poz., 744, available at: https://ipn.gov.pl/download/1/110400/Ustawazdnia1kwietnia2016.pdf (accessed November 04, 2024). (in Polish).

and the Law on the Pension Provision for Employees of the Police, the Internal Security Agency, the Intelligence Agency, the Military Counterintelligence Service, the Central Anti-Corruption Bureau, the Border Guard, the State Protection Bureau, the State Fire Service, and the Penitentiary Service and Their Families, which altered the payment system for individuals who supported the Communist regime[13]. Additionally, the Criminal Code includes provisions on so-called "Communist crimes" that were incorporated in 1998, among others. Since 1999, the Institute of National Remembrance and the Ministry of Culture and National Heritage have been operational, and since 2020, the Institute of Heritage of National Thought has been established. Since 2015, the development of a Polish historical policy strategy has been part of the political agenda. According to the transcript of the official meeting regarding this strategy's development (Belvedere, Warsaw, 17.11.2015), the idea aligns with the necessity to uphold the values of the Polish people[14]. However, the Strategy was never officially adopted.

At the level of the European Union, an attempt has been made to utilize the agenda of historical memory as a tool for shaping a pan-European identity. Initially, the focus was on the Holocaust, which was termed "a unique historical reference point that will forever remain in the memory of the peoples of Europe"[15]. Subsequently, in 2009, there was a shift towards commemorating the vic-

[13] Act of 23 January 2009 amending the act on pension provision for professional soldiers and their families and the act on pension provision for police officers, the Internal Security Agency, the Intelligence Agency, the Military Counter-Intelligence Service, the Central Anti-Corruption Bureau, the Border Guard, the Government Protection Bureau, the State Fire Service and the Prison Service and their families, see: *Dziennik Ustaw Rzeczypospolitej Polskiej*, 2009, № 24, poz. 145, available at: https://www.gov.pl/web/zermswia/ustawa-z-dnia-23-stycznia-2009-r (accessed November 04, 2024). (in Polish).

[14] *Recording of the meeting inaugurating the work on the establishment of the strategy of Polish historical policy in Belvedere*, available at: URL: https://www.prezydent.pl/storage/file/core_files/2021/8/5/e283c89495b5691530c7545261aab539/zapis_spotkania_dot._strategii_polskiej_polityki_historycznej.pdf (accessed November 04, 2024). (in Polish).

[15] *European Parliament resolution on remembrance of the Holocaust, anti-semitism and racism* (2005, January 27), available at: https://www.europarl.europa.eu/doceo/document/TA-6-2005-0018_EN.html (accessed November 04, 2024).

tims of totalitarian regimes[16]. Finally, in the resolution adopted on January 17, 2024, by the European Parliament titled *On European Historical Consciousness*, an effort was made to use memory issues as a means of reinforcing the value foundations of the European Union. This resolution marks a transition from a European *culture of memory*, which is essentially top-down and aims to dictate what Europeans should remember, to a grassroots and citizen-driven culture of memory grounded in common European principles and values[17].

In the post-Soviet space, trends similar to those in Russia regarding the development of legislation on politics of memory are observed in the Republic of Belarus, where the concept of historical memory was incorporated into the constitutional text in 2022. According to Article 15 of the Constitution, "the state ensures the preservation of historical truth and memory of the heroic feats of the Belarusian people during the Great Patriotic War", while Article 54 states that "the preservation of historical memory of the heroic past of the Belarusian people and patriotism is the duty of every citizen of the Republic of Belarus"[18]. In 2022, the Republican Council on Historical Policy was established under the Administration of the President of the Republic of Belarus[19]. Attempts have been made to officially solidify historical policy. In Chapter 12, *Preservation of National Foundations and Values*, this policy is identified as an element of national security, emphasizing that it is aimed at "cementing the Belarusian national conception of the country's

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[16] *European Parliament resolution on European conscience and totalitarianism (2009, April 2)*, available at: https://www.europarl.europa.eu/doceo/document/TA-6-2009-0213_EN.html (accessed November 04, 2024).

[17] *European Parliament resolution on European historical consciousness (2024, January 17)*, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2024-0030_EN.html (accessed November 04, 2024).

[18] *Constitution of the Republic of Belarus, 1994*, available at: https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/ (accessed November 04, 2024). (in Russ.).

[19] *Directive of the President of the Republic of Belarus No. 22rp dated February 4, 2022, "On the Republican Council for Historical Policy under the Administration of the President of the Republic of Belarus"*, available at: https://president.gov.by/fp/v1/825/document-thumb__37825__original/37825.1643988447.61b64231b0.pdf (accessed November 4, 2024). (in Russ.).

historical past and the Belarusian model of memory, both within Belarus and beyond its borders."[20] *The Concept of the History of Belarusian Statehood* has been developed at the Institute of History of the National Academy of Sciences of Belarus (Danilovich 2018: 9-15), which essentially aims to establish the uniqueness of the Belarusian state and distance it from Russia.

Despite the fact that, to date, the experience of adopting general legislative acts mediating historical policy has not gained widespread acceptance worldwide, it appears that in Russia, *the Concept of Historical Policy* as a strategic planning document could become an effective tool for shaping civic identity and embodying historical memory and truth as constitutional and legal values within the legal framework.

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Russian Statehood and the Western Strategic Narrative: Identity versus Rhetorical Coercion

Abstract. The article examines instrumental and substantive forms of borrowing from Western ideological complexes by Russian social theory during the period following the collapse of the USSR. Along with an assessment of their damaging effect, some directions for counteracting their distorting potential are proposed. The process of transferring borrowed ideological complexes is shown to involve a toolkit created under conditions of competition with the Soviet/Russian model and directly intended for expert support of this competition. It is shown that the borrowed items were directed to the value centre of the system and used for the transformation of its identity core. The instrumental nature of the applied techniques is revealed through the concept of strategic narrative as a technique for the semantic programming of political experience along with its substantive components, qualifying features and scope of action in ideological, social and managerial spaces. Common semantic complexes used to describe and self-describe Russian statehood are considered as strategic narratives. A direct dependence of the state's subjectivity on its preservation of the systemic sociolinguistic configuration that determines its identity and the ability to resist rhetorical coercion from external centres of influence is revealed. A number of directions for the protection and development of the representative power of the Russian Federation under contemporary conditions are proposed. In particular, it is shown that the preservation and protection of identity require the development of normative self-descriptions of Russian statehood in terms of its essence and meaning consolidated at the level of programme and strategic planning documents.

Keywords: state identity; strategic narrative; intellectual transplant; identity; rhetorical coercion; representative power; state sovereignty; distortion of the civilisational development of the Russian Federation

Introduction. During the 1990s, the catastrophic collapse of a historically unique social system as represented by the USSR determined the need to re-establish the Russian state in a new form and on new ideological foundations. However, the reform process did not only require a reconfiguration of the political and administrative regime along with major revisions and changes in the economic principles of distribution of public resources and goods. An even more significant need arose at a deep societal level for large-scale rethinking of the very essence of the unity embodied in the new Russian state, which manifested itself as a successor not only to the Soviet Union but also to the Russian statehood of historically more distant periods, to which at the same time it was opposed.

The situation having thus developed had the character of a deep crisis. A historical failure taking the form of a major geopolitical catastrophe made it impossible to rely on the established foundations of social solidarity and institutions of governance, which were labelled from that moment on not as "special", "progressive" or "superior", but as historically "erroneous" or empirically "defective". At the same time, the monopolisation of ideological influence and the simultaneous consolidation of the functions of critical social theory exclusively for the party centre of the Soviet system precluded the possibilities for the formation of strategies for independent self-description, which would allow the preservation of the identity core of society during the period of necessary reforms.

Under the conditions of an inadequate vocabulary capable of describing the emerging social formation, as well as the need to use established terminology while simultaneously denying it confidence, the consideration of the experience of an entire historical era from the position of total repudiation became the typical form of political judgment in mass and expert discussion (see e.g.: Zubov, Salmin 1991: 42).

The supposed need to work on mistakes, to "normalise" the social structure in relation to the models of the countries that claimed to have won the Cold War as a condition for joining the world community directed the interest of public discussion to substitute descriptive and analytical strategies. In the post-Soviet situation, these almost invariably took the form of intellectual borrowings and transplants.

Under normal conditions of social development, the role of such borrowed semantic complexes is generally quite modest. Serving primarily to fill niches in areas where there is a deficit in regulatory frameworks, such strategies are primarily of utility when used in vital processes of institutional reconstruction. Even in this case, their impact can be ambivalent and often result in unpredictable negative effects (Pankevich 2014: 55-57).

Under the conditions of catastrophic breakdown following the collapse of the USSR the functional area of borrowing went far beyond the local need to fill the gaps that had arisen in the diagnosis of problems in social conditions and identification of strategic and legal solutions for their correction. Intellectual borrowings were directed directly to the value centre of the system and used to transform its identity core, comprised of key semantic complexes and principles of self-description, self-understanding and reflection. As well as examining the instrumental and substantive forms of this borrowing, the present work evaluates their effect and identifies some potential approaches for counteracting their distorting potential.

Borrowed Strategies: the Substantive Aspect. Despite the obviously low compatibility of their methodological principles, premises and axiomatics, the complex of borrowed approaches in application to Russian statehood quite quickly acquired consistent outlines. The idea of the *end of history* (Fukuyama 1992)[1], which became influential in the post-Soviet moment in the light of the apparent victory of the West in the bipolar confrontation, assumed the accession of Russian society to the basic paradigm of Western society in the form of liberal competitive market democracy as the only normative – and, in fact, the only possible – political form.

The loss of superpower status and the need to correct the uniqueness of the Russian state in its unexpected capacity

[1] Later, the creator of this idea, which quickly became a cliché, was forced to explain that the "end of history" in his understanding did not at all mean the common notion of the cessation of development in light of the final victory of the Western political form, but the final *goal* of world development itself. From our point of view, such an admission reveals to an even greater extent the ideological motivation of the entire theory (Fukuyama 2024: 18-19).

as an ordinary participant in the international community were reflected in the theories of democratic and market *transition*, which designated the final point of reforms necessary to achieve the end of local history in the course of *catch-up development*. As such, Russia's new place in the world cycle of production, distribution, and consumption was determined within the framework of a postulated centre-periphery structure of the contemporary world system. This position was predictably characterised by *(semi)peripherality*, asymmetry of participation in global market exchanges, institutional deficits, underdevelopment, and an irrational economic complex structure, which included the stigma of the *resource curse*.

Over time, the slow progress of Russian society towards the *end of history* and its inability to reproduce the normative form were explained within the framework of the idea of the *hybrid* nature of the political system and its economic complex. According to this understanding, the colossal stress of dependence on the results of previous development (path-dependence) inevitably resulted in the distorted nature of institutions, which everywhere revealed their otherness in relation to Western norms: the distribution of goods in the economy, the archaism of the social structure, the discrepancy between legislative norms and practice, the intensity of informal practices and the significance of informal institutions.

It is especially necessary to point out the damaging nature of the transfer from Western discourse of ideas about the Russian state as a *failed empire*, whose unity collapsed under the pressure of an anti-colonial movement (Bovdunov 2022). In relation to the USSR, this negatively charged trope has long been firmly rooted in Western ideological discourse. At the same time, in its instrumental capacity, it obviously relied on examples of Soviet criticism of the imperial experience of Russian statehood before the 1917 revolution, which were aimed at dismantling Tsarist Russia (Tikhonov 2024). The further unification of this part of the self-description of Russian pre-revolutionary reality with the political priorities of the bipolar confrontation created the ground for defining the USSR as an empire not only in the sense of its intensive influence on a number of states in the foreign policy domain, but also in the domestic space, i.e., as an order based on the colonisation, subordination and exploitation of internal space.

The application of this semantic complex to the emerging new Russian statehood opened up unexpected opportunities for actions leading to a transformation of its identity core. Statements about the subordination and exploitation of the peoples of the country directly reinforced the potential for separation of national peripheries and subsequent ruptures of the territorial integrity of the nation state.

No less negative a charge was possessed by the complex of ideas associated with the colonialist exploitation by the state of the entire space and population comprising its social and ethnic majority (Fadeicheva 2007). The resulting idea of a loose formation that arose in the process of *internal colonisation* (Etkind 2013[2]) dealt tangible blows to the legitimacy of the Russian model of development and governance. The practical application of this part of the corresponding narrative was fully demonstrated during the "parade of sovereignties" that the country experienced in the 1990s, whose consequences are still being felt today. Thus, the results of thirty years of spatial and social development of the country are described in ideologically loaded terms of colonisation/decolonisation of individual regions and territories (Shabaev 2022).

Finally, the combination of the idea of the rooted imperial nature of the modern Russian state with the assertion of its peripherality as a systemic quality (Kagarlitsky 2009[3]) created opportunities for challenging the country's position across the broadest spectrum of its actions in the international context.

In the combination of various approaches to the description of the new Russian identity by foreign researchers and its self-description by a number of Russian authors can be discerned a general assumption of the insurmountable defectiveness and dead-end of the domestic development model. Ultimately, this view encouraged Russian sociologists to take the next step and begin to discuss the country in terms of the kind of calamitous decline that falls into the category of failed states.

Strategic Narrative as a Transformed Social Theory. Today, the massively damaging effect of this kind of imposed conception is often explained by the fact that the categorical apparatus used is

[2] Included in the register of foreign agents.

[3] Included in the register of foreign agents.

closely connected primarily with the European experience of creating a standard model of social life, which is however clearly inapplicable in a huge number of cases in regions outside the European civilisational core. Therefore, it would be fair to criticise the fact that the "Western mainstream" is burdened with ideological connotations and thus represents an inadequate analytical tool due to its elevation of the exception represented by the evolution of states in Europe and the civilisational "West" into the rule (Martyanov 2021).

Also justified is the more recent criticism associated with the revelation of the incompleteness, bias and idealised nature of descriptions of the Western model, the purity of which is called into question in light of the inclusions that are constantly discovered in its composition that contradict the liberal / democratic ideal – the increasing role of state regulation in economic activity, the role of informal elite alliances and transfer of power only within their framework of nepotism, etc. (Martyanov, Rudenko 2022).

However, it seems to us that the broader problem consists not only in the use of a rather unsuccessful, ideologically loaded and reality-divergent categorical apparatus for distorting description and self-description based on borrowed approaches. Much more importantly, the toolkit used was one that was created in the explicit context of Western competition with the Soviet/Russian model, which was directly intended as a means to expertly maintain this competition.

Despite the comparatively low intensity of the military-force agenda, the Cold War was nevertheless by its nature a state of active struggle, in which the humanitarian component acquired a fundamental significance. The importance of rooting the necessary interpretation of the outcome of the confrontation by the winner – thus considered fair and final – within the framework of the Western paradigm is fully realised and expressed more than explicitly: "For war's outcome to have purchase on people, they need to accept it's meaning; if they do not, they may well see things differently" (Simpson 2012: 31); "most of the time victories are won when "those other actors in war" are brought to subscribe to a specific interpretation of events taking place on the physical battlefield" (De Graaf et al. 2015: 5). Even more desirable is the consolidation of such an interpretation at the level of the constitutional and legal complex of the target states (Carrington 2007).

Under the prevailing conditions, the instrument for the formation of a new identarian core of the Russian polity, in essence, became not the analytical aspect of explanatory theories, but only their ideological and evaluative component. As a result, questions of interpreting the identity of Russian statehood and its substantive content were resolved using formative *strategic narratives*, which have their own performative capacity – and which, in relation to the situation under consideration, merely imitate the form of scientifically based approaches developed within the framework of respectable social theories.

Therefore, an attempt to scientifically substantiate their inconsistency as certain *theories* of social development is in a certain sense futile since the nature of the object of criticism itself is initially different.

The task of social theory is to analyse causality and explain patterns, while the management function of strategic narrative is "the semantic programming of political experience and (the production of) an interconnected complex of mutual expectations… through symbolisation, typification of political events in space and time" (Zavershinskiy 2019: 102). This tool forms a semantic complex that can be used to structure the response to developing events, determine ways of formulating problems and propose countermeasures (Freedman 2006: 22).

The difference between a strategic narrative and a social theory lies in its focus on a specific outcome of the process that it directs. It is the end point of the entire movement of a strategic narrative that gives meaning to all parts of its meaningful whole (Roberts 2006: 712). The semantic framework that emerges during the unfolding of such a narrative holds together a very disparate mix of approaches that permit the creation of transgressions between their semantic components.

In fact, the correlation, consistency and semantic unity of the fundamental premises for strategic narrative do not have the same meaning as they have in social theory in its scientific sense. Indeed, this instrument has a directly opposite aim: to facilitate the implementation of individual committed political initiatives, comprising actions that have a pre-programmed result. Thus, its function consists precisely in linking together disparate events and tendencies and subordinating them to an instrumentally determined

causality in an interpretative structure, with the help of which it is possible to give an event or process the desired social meaning.

Rhetorical Coercion: External Management of Identity. The main semantic complexes proposed and borrowed for the conceptualisation of Russian statehood in a crisis situation and the search for ways to overcome it have all the signs of being oriented toward the creation of certain significant effects of a practical nature. In the absence of sufficient internal resources for creating theories of social development, ideas crystallised in the process of intellectual evolution according to the traditions, systems of reference, and values of the West, were introduced into the core of the Russian state's self-understanding. For this reason, they can be understood as a tool for serving hegemonic interests.

The fine line between explanatory political theory and formative strategic narrative turns out to be fundamental. Here, we are talking not just about the formation of a picture of the country's civilisational development that is accidentally or intentionally distorted in the abstract space of media communications. Rather, it directly influences the distribution of such an important resource as prestige to further program a significant number of the practical steps supposedly necessary to correct situations interpreted as deviations from the standard form. And this distorted picture de facto contributes to changes in the relative political weight of actors competing in the global space in terms of their subordination.

It is obvious that the rooting of imposed self-descriptions in public consciousness leads to the loss of sovereign control over what can be called nominative power – the power of self-determination. This organisational deficit further leads to the impossibility of independently forming the identity of the state and society, leading to an inevitable degradation of a significant part of the communication resource of the polity consisting in the ability to transmit its own semantic complexes and values as a projection of influence in the external environment.

This situation has critical consequences for the definition of identity not only in the internal space, but also for the view of it from the outside. Moreover, having become an independent part of the internal Russian public discussion and being subsequently returned to the global ideological space already as self-descriptions

and self-reflection, the borrowed concepts appear as representations of the true endogenous self-perception and self-understanding of the country.

Thus, the narrative of peripherality, which was returned to the global communications system as characterising the Russian role, indicates that the technological and social underdevelopment of the country is not evidence of its specific state in a specific period, but an integral essence of the system. The accepted narrative of transition takes on the character of a signal of readiness for targeted reforms oriented toward a given model; moreover, since this direction of development ultimately becomes the only possible one, the apparent need for external organisational consulting arises. The functionality of the problematic of hybridity is determined by the recording of the finality of failure in moving towards the norm and the inevitability of the defective nature of the system of social relations, consequently serving as proof of the justice of the peripheral position assigned to the polity in the global distribution of political and economic power, labour, resources and goods. Along with the quality of peripherality, the attribution to Russian polity of the quality of imperialism ensures its delegitimisation within the framework of the modern world system according to the principle of sovereign equality of states and creates the idea of a participant in the international community acting beyond its real status and weight in international relations. Thus its leadership potential also turns out to be blocked in light of the ascribed otherness of the value foundations and practices, which also, according to this optics, contradict the generally significant principles of a responsible and socially controlled government apparatus of the modern state.

Used together, especially when widely circulated in public debate within the country, transferred to the mass media and into the process of creating works of mass culture, the twin narratives of peripherality and imperialism create the idea of a weak participant in the international community, who needs guardianship, patronage, guiding organisational assistance, and (if necessary) discipline and coercion.

The resulting effect strongly resembles one that that has been referred in Western discourses as *rhetorical coercion*. This phenomenon arises as a result of communication asymmetry, when a domi-

nant actor is able to impose on the opponent a position and actions that would otherwise be rejected (Krebs, Jackson 2007: 36). In such a situation, representative power and coercion are transformed into *meta-power* consisting in the ability of dominant actors to reconfigure, form or recreate the identity of target communities (Singh 2012: 472).

However, in the case of conformist borrowing, such coercion can be considered as both legitimate, since it presumably pursues the bona fide goals of assistance and providing the reform process with superior expert knowledge and practical experience, and voluntary, since the subordinate actor independently and proactively presents itself as a subject who is interested in such forms of interaction.

Thus, for example, the recognition of the value and institutional imperfection of the human rights protection system in the emerging Russian state – and, at the same time, the superior prestige of the Western model of democracy and human rights protection – predetermined the transfer of a significant part of the functions of justice and conflict resolution outside the legal system of the Russian Federation to the European Court of Human Rights. The subordination of the country's legal system to an external arbitrator already at the constitutional level turned out to have significant consequences.

The implementation of such subordination simultaneously created a new significant channel for further export and integration into the legal system of norms of external genesis to create conditions for the emergence of high-profile situations that frequently caused irreparable reputational and material damage. Correcting this situation required constitutional reform that strengthened the protective mechanisms against attempts at external regulation. Moreover, a number of outstanding situations of this kind still remain in need of correction.

Strategic Narrative: Not Just Rhetoric. In assessing the depth of its impact on target societies, it is also important to understand that a strategic narrative need not solely be intended to shape a particular opinion or perception of a situation. As an integrator of discursive coalitions comprising politically and media-active groups, it also becomes an instrument for directly modifying the social structure (Pankevich 2023). A special role in such

processes of intellectual export-import is played by the epistemic communities that emerge in the structure of the target society that orient themselves towards a certain ideological complex.

This is precisely why the form of external ideological influence through a non-standard channel that enjoyed the highest public prestige in the Soviet and early post-Soviet periods – that is to say, scientific discussion – should not be used to mask the strategic nature of the semantic complexes employed. In the case under consideration, we should not speak only of those inevitable distortions and errors in understanding social development that are associated with the impossibility of ensuring the absolute objectivity of the most conscientious researcher of social relations and his or her dependence on value and ideological preferences conditioned by socialisation within a certain value paradigm. It is also important that the operational autonomy inherent in the scientific sphere in putting forward and substantiating certain hypotheses be understood as serving to enhance the status and practical effectiveness of such influence. The apparent demand for imported ideas and their wide circulation in the scientific and then in the media space contributed to the perception of the main theses as Russian social consensus.

At the same time, the localisation of scientific activity in the structure of public relations provided direct access to the transmission of ideas to centres for the development of social development strategies and the adoption of specific political decisions. The feedback that arises in the structure of the media environment is also obvious: the interests and strategies of certain players who are dismantling the management system and carrying out the removal of certain power functions outside the state were legitimised from the positions of "advanced social theories".

Thirty years of experience in statecraft following the collapse of the USSR clearly demonstrates that the preservation of the representative power of the state, which is associated with the stability of ideas about itself, its essence and nature, is of critical importance. It is localised "above" and "beyond" all the specific roles and functions, states and statuses that may be inherent or, for various reasons, prescribed to the polity in specific historical circumstances. The subjectivity of the state directly depends on the preservation of the configuration of sociolinguistic systems that determine its identity (Mattern 2005: 97). Therefore, control over such an important iden-

tity resource as self-understanding and self-description can be confidently classified as a mandatory component of societal security.

Conclusion. Under contemporaneous conditions, the ability to resist rhetorical coercion is visibly complicated by the formation of new media landscapes that open up prospects for the emergence of new types of actors capable of exerting pressure on the substantive components of state identity. These involve decentralised transnational politically motivated communities that were virtually unknown at the time of the collapse of the Soviet system, which typically operate across state borders. Today, the activism of such extraterritorial communities is extremely significant due to its creation of new meanings, alternative ideologies, methods and channels for introducing ideas into public discussion.

At the same time, the experience of the post-Soviet period is valuable due to its direct revelation of the factors leading to an acute lack of independent value foundations and semantic complexes capable of protecting the identarian core of society from a large-scale injection of semantic programming due to external evaluative and politically motivated strategic narratives. Despite the importance of control over the spiritual and value space of the country, the monopolisation of the ideological function and its merging with the function of developing a critical social theory to close off public discussion carries with it the obvious risks of a need to turn to substitute semantic complexes. Many, if not most, of them eventually reveal their ideological and instrumental charge.

The preservation and protection of identity requires the development of normative self-descriptions of Russian statehood in terms of its essence, meaning, and identity. By relying on such self-descriptions, it will become possible to create the necessary reserve of stability and predictability of value orientations whether in the foreign or domestic political spaces. Such semantic complexes should be developed and consolidated within the framework of the adoption of strategic planning documents to reflect both the historically revealed character of Russian identity and future prospects for its development.

This work has already begun – its results are enshrined, for example, in the framework of the Concept of Foreign Policy of the Russian Federation, and the Concept of the State Language Policy. Its

continuation may be associated both with the development of new tools and concepts of strategic planning, as well as with the enrichment of existing concepts having new normative content.

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Genocide of the Soviet People: Trajectories of Legal Culture and Politics of Memory

Abstract. Criminalisation and victimisation, which characterise contemporary politics of memory, result in the construction of collective traumas as instruments for the political consolidation of society. The political instrumentalisation of genocide occurs in the context of memory wars unfolding between the countries of Eastern Europe and the Russian Federation as part of a process of rethinking their common socialist past. The recognition of historical events such as the famine of 1932–1933 as "genocide" thus becomes not only an important factor in civil nation-building, but also a symbolic instrument of international geopolitical struggle. The historical development of the concept of "genocide" in relation to the crimes of the Nazi regime at the level of judicial decisions and federal legislation can be seen as a response to the use of this concept by Eastern European countries as a justification for revising the post-war international order as enshrined in the decisions of the Nuremberg trials. The submission to the Russian State Duma in 2024 of a bill "On perpetuating the memory of the victims of the genocide of the Soviet people during the Great Patriotic War of 1941–1945" leaves a number of questions unanswered. First of all, these consists in the problem of interpreting the concept of "a people" from the point of view of the ethnic or civic understanding of the nation. In addition, a question arises concerning the correlation of newly developed categories of memorial legislation with concepts already enshrined in existing regulatory acts (victims of the Great Patriotic War).

Keywords: genocide; trauma; memory law; Soviet people; crime against humanity; memory wars; instrumentalisation; peoples

Problem Statement. On June 18, 2024, a group of deputies submitted to the State Duma of the Russian Federation the text

of the bill "On perpetuating the memory of the victims of the genocide of the Soviet people during the Great Patriotic War of 1941–1945". The rare inter-factional unanimity demonstrated by the deputies in preparation of this bill, while in itself not a guarantee of its adoption, symbolises the importance that is attached to this project as part of the process of perpetuating the memory of the Great Patriotic War. As O.F. Rusakova notes, "in state discourse, historical memory is considered primarily as one of the structural components of a rich set of traditional values that form the basis of Russia's national identity. At the same time, the concept of *historical memory* appears in official documents as one of the dominant strategic priorities of national policy associated with the protection of traditional Russian values" (Rusakova 2023: 37). As a result of the question of preserving the memory of the Great Patriotic War becoming one of the key issues in contemporary Russian historical policy, the presented analysis of this bill thus acquires not only a scientific, but also a rather practical significance.

The issue of the normative consolidation of the concept of *genocide of the Soviet people* also acquires extreme relevance in the context of the analysis of memorial laws adopted in recent years in the Russian Federation, as well as law enforcement practice based on these laws. Thus, the issue acquires both a purely legal, as well as a theoretical-political and socio-philosophical, dimension.

In a legal sense, the proposed bill serves as a means of clarifying and specifying legal responsibility for war crimes against civilians; in addition, it provides for a clear definition of the powers of state bodies and local governments to perpetuate the memory of the victims of the Great Patriotic War.

In a theoretical and political science sense, the very appearance of the bill should be considered as a natural development of a whole chain of normative acts regulating and controlling the methods of referring to the past. In relation to such normative acts, the designation "memory laws" has become established in modern social science. The most important subject of this research is the political context that gives rise to the need to codify ideas about the past, as well as the selection of those categories that are used for such codification.

In a socio-philosophical sense, it is significant to change the models of ideas about the past (primarily about the Great

Patriotic War) from the point of view of the emotional colouring of these memories, focusing attention in the public space on the traumatic and sacrificial nature of the historical memory of the war. One can agree with D.E. Letnyakov that "it is counterproductive to view the collective memory of society as something unified, homogeneous and monolithic. On the contrary, it is a combination of different elements that may often appear contradictory" (Letnyakov 2021: 72). In this sense, the contemporary collective memory of Russian society is also extremely heterogeneous; therefore, questions of its potential splits, as well as nonlinear dynamics, become extremely relevant for scholarly research.

The present work will focus on the theoretical and political science aspects of the normative consolidation of the concept of *genocide of the Soviet people*, as well as the foreign and domestic policy contexts of the transformation of memorial legislation in this direction.

Theme of Genocide in the Context of Memory Laws. The idea of the existence of common tragedies for a given community has long been an important element in the formation and maintenance of national identity. The creation of nation states as actors in the politics of memory and identity typically led to their adoption of those versions of the traumatic perception of the past that were developed within the framework of the Christian worldview. According to A.V. Yarkeev, "self-sacrifice for the sake of the heavenly fatherland eventually acquired the appearance of civic self-sacrifice for the sake of the earthly fatherland; as such, the 'martyrdom' of the heroically fallen was given a national flavour" (Yarkeev 2023: 22). In this sense, an appeal to collective traumas is not limited to the current development stage of the politics of memory.

N.E. Koposov notes that "the uniqueness of the current historical policy is largely rooted in two important features of modern memory. Here we are talking about the criminalisation and victimisation of the past – that is to say, about the view of history as a chain of crimes and the desire of human groups to present themselves as the victims of these crimes" (Koposov 2011: 52). This seems to be the key difference between the modern attitude towards the past and the Romantic era of the creation of national narratives that arose in the 19th century, which conceived the past as an adventure novel in which the nation played the role of the main protag-

onist. The consequent criminalisation of the past is built around a desire to present the history of communities as a detective story in the course of which a criminal must necessarily be found; however, ideas of who exactly should be identified in this capacity tend to differ significantly among most modern political actors.

Victimisation is a process in which the idea of the existence of a community of victims who have suffered from a crime is formed; this, in turn, presupposes a certain restoration of justice (legal, economic or symbolic retribution). As K. Elyacheff and D. Soulé-Larivière point out, "at the trials of Adolf Eichmann (1961) and Klaus Barbie (1987), the unrecognised victims wanted to be recognised as victims of a crime against humanity, not as heroes. This was an important stage that took some time: a language appeared that allowed victims to talk about themselves; moreover, it became obligatory to look for the reasons for the appearance of victims in certain qualities of the modern world" (Eliacheff, Soulez-Larivière 2022: 29). From this follows, firstly, the very emergence of the practice of victimisation being directly related to the awareness of the tragic consequences of the Second World War, and, secondly, the state of victimhood being considered not as a random coincidence, but as presupposing the presence of a personified or depersonalised figure of the criminal.

But where there is a crime, there must be punishment. More precisely, the idea of the existence of crimes in the past presupposes the need for the emergence of those normative frameworks that make it possible to establish responsibility for the crime committed – and, most importantly, to hold accountable those whom the modern victimised community considers as criminals.

Memory laws are usually understood as normative acts that establish the responsibility of individual or collective subjects for public statements about the past. An example of the first such law is the Gayssot Act, which was adopted in France on July 13, 1990, and which established legal liability for denial of genocide, racism and xenophobia – in particular, for denial of the Holocaust. It is precisely the mention of a specific historical event (*the Holocaust*) that makes this normative act a striking example of a memory law that limits the possibility of public statements about the past not only from the point of view of national interests, but also that of humanity as a whole. However, it is important to understand that the Gayssot

Act had its own prehistory, which was connected with the enshrinement of the concept of *genocide* in international law. Thus, despite the apparent universality of the term itself in terms of its manifestations in various historical eras, its conceptualisation was directly linked to the events of the Second World War.

On December 9, 1948, the UN Convention on the Prevention and Punishment of the Crime of Genocide was adopted, in which the concept of *genocide* itself was formulated for the first time – or, more precisely, the criteria were outlined according to which a criminal offence could be classified as falling this category. Defined here, genocide means "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group"[1].

The need to clarify the concept of *genocide* arose due to the activities taking place as part of the Nuremberg Process, as well as by the fact that the previous UN resolution 96 (I) of 11 December 1946 had simply declared genocide a crime that violated international law without providing a precise legal definition. The 1948 Convention specified that the definition of genocide included acts directed against national, ethnic, racial or religious groups; while this may seem to specify a list of communities against which violent acts could be considered genocide, a certain interpretative leeway remained as a result of "national" and "ethnic" being used as separate terms. This ambiguity in the use of the term "nation" did not permit a more precise definition of whether reference was made exclusively to a nation in its ethnic sense or rather to a civil nation, thus significantly broadening the potential interpretation of genocide.

Another important step towards establishing legal responsibility for war crimes was taken in 1968, when the UN General Assembly adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (resolution 2391 (XXIII) of 26 November 1968)[2]. In the preamble, it is directly stated that the abolition of the statute of limitations for war crimes

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[1] *Convention on the Prevention and Punishment of the Crime of Genocide*, available at: https://www.un.org/ru/documents/decl_conv/conventions/genocide.shtml (accessed October 12, 2024). (in Russ.).

[2] Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, available at: https://www.un.org/ru/documents/decl_conv/conventions/warcrimes_limit.shtml (accessed October 12, 2024). (in Russ.).

and crimes against humanity was based on the decisions of the Nuremberg Tribunal. It is significant that the mention of genocide in the content of this Convention indicates the absence of a direct equivalence between these types of crimes. More precisely, genocide is considered as one of the crimes against humanity, but not the only one, since a number of crimes specified in the Charter of the International Nuremberg Military Tribunal are also included among them, namely "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"[3].

One can agree with T.G. Daduani that "there was a complex relationship between the two related but distinct concepts of *genocide* and *crimes against humanity*. Not only was genocide qualified as an international crime under an international convention, but it was also accompanied by significant additional obligations, namely: to prevent crimes; to enact national laws and enforce punishment for the crime; to cooperate in the extradition of criminals" (Daduani 2011: 142). At the same time, while the broad interpretation of crimes against humanity did not imply that each of them could be considered an act of genocide, the active dissemination in the 1960s of ideas about the Holocaust as the main tragedy of the civilian population during the Second World War led to the idea of the inextricable connection and even interchangeability of these concepts taking root in the public consciousness. Thus, the victimisation of Holocaust memory led to the emergence of a model of genocide that became key to subsequent political and legal use, not only in terms of the criteria for classifying an event as genocide, but also in terms of determining the consequences for those communities that acted as victims.

Political Instrumentalisation of Genocide in the Context of Memory Wars. An important factor in international relations at the beginning of the 21st century is the gradual complication

[3] *Charter of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries,* available at: https://docs.cntd.ru/document/901737883 (accessed October 12, 2024). (in Russ.).

of relations between the Russian Federation and the countries of Western Europe, which could not but be reflected in the sphere of memory politics since concerning the question of the alleged responsibility of the USSR not only for the socialist regimes in postwar Eastern Europe (the concept of *double occupation*), but also for the outbreak of World War II itself. Looking ahead, it is worth recalling that it was precisely this last political and legal invective that was reflected in the European Parliament resolution "On the importance of European remembrance for the future of Europe", adopted on September 19, 2019, which proclaimed the dual responsibility of the USSR and Germany for unleashing the war[4].

However, the specificity of a "memory war" lies in its peculiar epistemological status, since it is difficult to consider its goal to be the clarification of the final truth regarding a particular event. The question is rather one of determining which community has the moral right to tell the story that emphasises guilt or victimhood. "The debate around World War II is a struggle not so much for the right to impose a certain belief about it, but rather to recount a narrative about it. Likewise, all the numerous themes of the "memory wars" are a struggle for the position of the narrator and all the benefits that go with it" (Illarionov, Mosienko 2023: 40).

Any collective trauma that allows a certain community to be represented as victims (or their heirs) of actions that took place in the past thus becomes a powerful argument in the process of symbolic struggle. However, in the context of the devaluation of victimhood, when any community can appeal to tragic events that took place in its history that suggest the guilt of another community, it becomes important not only to identify the collective trauma itself, but also to give it a special character and thus to outplay one's rivals in the "symbolic field".

The theme of genocide, which is traditionally associated with the Holocaust in the European political and legal narrative, is acquiring a new meaning precisely in the context of a rethinking by Eastern European states of their geopolitical priorities and historical policies. From the point of view of the political context, the ap-

[4] *European Parliament resolution of 19 September 2019 on the importance of European remembrance for the future of Europe*, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2019-0021_EN.html (accessed October 12, 2024).

peal to genocide is beginning to be used most actively in relation to those states that are considered to be the remnants (or successors) of the former socialist camp. In particular, in 2009, the European Parliament adopted a resolution on Srebrenica, in which the actions of Serbian troops against the civilian population are directly characterised as genocide[5]. In parallel, a similar attempt is underway to reinterpret the mass famine on the territory of the Soviet Union as genocide, which in Ukrainian historiography is commonly called *the Holodomor*.

It is indicative that the concept of *Holodomor* as genocide is constructed according to the normative trajectory that was already established using the example of *the Holocaust*. In 2003, the Verkhovna Rada adopted a decision to recognise *the Holodomor* as genocide; in 2006, a law was passed establishing legal liability for denying *the Holodomor*. In a scholarly article examining the differences between Russian and Ukrainian positions on this event, the authors note that the perception of the famine of 1932–1933 not simply as a common tragedy, but as a deliberate act of eradication of the Ukrainian people, becomes an element of civil nationalism in Ukraine. In this context, *the Holodomor* becomes a collective trauma around which attempts to consolidate the culturally and linguistically disunited population of Ukraine are constructed; therefore, the key victimisation factor is the purely functional need to perform a national traumatic myth (Menkouski et al. 2021). A similar point of view is expressed by G.V. Kasyanov, who places this example in the broader context of nation-building practices in the post-Soviet space: "The myth of the long-suffering of a particular nation is common to almost all historiographies of the period of 'national revivals' not only in Europe, but indeed throughout the world (in fact, it is a necessary part of the 'national revival' scenario). In the post-Soviet space, it enjoys particular popularity" (Kasyanov 2004: 242).

But if in Ukraine the construction of *the Holodomor* as a collective victimisation trauma began back in the 1990s, then its gradual spread among European countries turned out to be connected with a general cooling of relations between Russia and the European

[5] *European Parliament resolution of 15 January 2009 on Srebrenica,* available at: https://www.europarl.europa.eu/doceo/document/TA-6-2009-0028_EN.html?redirect (accessed October 12, 2024).

Union. During the 2000s, more than 15 countries officially recognised the fact of *the Holodomor*, but in different formulations: for a number of countries, the concepts of *Holodomor* and genocide were synonymous; while for others, *the Holodomor* was perceived as an undoubted crime of the Soviet regime or the leadership of the Soviet Union, but without establishing the fact of genocide.

First and foremost among those who opposed the broad conflation of these concepts was Israel. According to E. Zuroff, writing in 2019, "One of the biggest problems we face now is the so-called 'double genocide theory' that is prevalent throughout Eastern Europe, where governments are trying to claim that communist crimes amounted to genocide"[6]. The essential point here was the transformation of the concept of *genocide* from a legal mechanism that allowed for the possibility of prosecution without taking into account the time that had passed into a political instrument for settling scores with ideological opponents.

An intensification of the process of instrumentalisation of *the Holodomor* as genocide is associated with the armed conflict taking place in Ukraine. During the autumn of 2022, a number of European countries adopted legislative acts that, without further ado, recognised *the Holodomor* as genocide, establishing legal liability for its denial. The culmination of these public actions was the adoption by the European Parliament of a resolution to mark the 90th anniversary of the famine, which declared that the Parliament "recognises the Holodomor – the famine of 1932–1933 in Ukraine, artificially and deliberately created by the policy of the Soviet regime – as genocide against the Ukrainian people, since it was carried out with the aim of destroying a group of people by deliberately creating conditions of life calculated to bring about their physical destruction"[7]. Clearly, by cancelling at a stroke all scholarly discussions about the correctness of using this term in relation to the complex and ambiguous phenom-

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[6] *Zuroff: Israel should not recognize Holodomor as genocide,* available at: https://www.jpost.com/israel-news/zuroff-israel-should-not-recognize-holodomor-as-genocide-578308 (accessed October 12, 2024).

[7] *Resolution of the European Parliament of 15 December 2022 "90 years after the Holodomor: Recognizing mass starvation as genocide"* (2022/3001(RSP)), available at: https://www.europarl.europa.eu/cmsdata/263124/1269638%2090%20years%20after%20Holodomor%2015.12.2022%20RU.pdf (accessed October 12, 2024). (in Russ.).

enon of the mass famine of 1932–1933, it is not the legal, but rather the political aspect of this problem that is brought to the forefront.

The victimisation of the former socialist republics (both Eastern Europe and the immediate post-Soviet space) and concomitant criminalisation of Russia as the legal successor of the Soviet Union had very specific consequences not only from the point of view of the current political agenda, but also in the context of memory wars. The ensuing victim status not only allowed a number of states to escape responsibility for crimes committed during the war, including against the peoples of the Soviet Union, but also opened the way for the open glorification of accomplices of the Nazi regime among representatives of Eastern European countries.

A logical reaction to the formation of a victim narrative in Ukraine consisted in a corresponding desire to justify Russia's moral and legal right to hold people accountable for the crimes committed, which manifested itself both in the emergence of a number of public projects and in attempts to normatively enshrine such a right.

From Peoples to People: the Concept of *genocide* in the Russian Memorial Agenda. The topic of Nazi crimes against humanity on the territory of the Russian Federation (and more broadly, the former USSR) was brought to the fore in 2018, which was caused not only by foreign policy, but also by domestic political factors.

Several years before this, in 2014, amendments were made to the Criminal Code of the Russian Federation, which established liability for the rehabilitation of Nazism (Article 354.1 of the Criminal Code of the Russian Federation), which became, in fact, the first example of a memorial law in Russia (Anikin, Golovashina 2023). In the same 2014, amendments were made to Article 20.3 of the Code of Administrative Offences of the Russian Federation, which received the clarified title "Propaganda or public display of Nazi paraphernalia or symbols, or paraphernalia or symbols of extremist organisations, or other paraphernalia or symbols, the propaganda or public display of which is prohibited by federal laws"[8].

Finally, on May 9, 2018, the Decree of the President of the Russian Federation was signed, launching preparations for the celebration

[8] *Code of Administrative Offences of the Russian Federation. Art. 20.3*, available at: https://www.consultant.ru/document/cons_doc_LAW_34661/e3620d183bd6d1fe2ab8b0c912809857217325a2/ (accessed October 12, 2024). (in Russ.).

of the 75th anniversary of Victory in the Great Patriotic War, which involved the development and approval of a plan for the preparation and holding of the main festive events[9]. The date planned for 2020 was perceived as comparable in its symbolic potential to the previous "round" anniversary in 1995.

At the meeting of the Organising Committee "Victory" on December 12, 2018, in her speech, E.M. Tsunaeva, who is also the executive secretary of the Search Movement of Russia and the chairperson of the commission of the Public Chamber of the Russian Federation on youth affairs, development of volunteerism and patriotic education, voiced the idea of the need to create the project "Without a Statute of Limitations" aimed at updating the memory of the crimes of the Nazis against the population of the USSR.

There are two points worth noting in this speech. Firstly, the international context of rethinking the role of the USSR in the fight against Nazism: "Many of the perpetrators of punitive actions escaped punishment by receiving asylum abroad. Moreover, they are becoming a symbol of a new wave of revision of the results of the Second World War… Unfortunately, in a number of countries this has become part of state policy, and this with the complete connivance of European neighbours, who have also apparently forgotten what the inaction of their grandparents led to in the 1930s"[10]. Secondly, it is in this speech that the talk turns to genocide – and by analogy with the Holocaust that not only of Jews, but also other peoples living on the territory of the Soviet Union: "The crime in all the territories temporarily occupied by the Nazis clearly testifies to the genuine genocide not only against the Jews, but also against the entire Slavic people"[11].

The launch of the "No Statute of Limitations" project in 2019 led not only to the intensification of public activity in searching for burial sites and installing monuments to victims of Nazism, but

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[9] *Decree of the President of the Russian Federation of 09/05/2018 No. 211 "On the preparation and holding of the celebration of the 75th anniversary of Victory in the Great Patriotic War of 1941–1945",* available at: http://www.kremlin.ru/acts/bank/43034 (accessed October 12, 2024). (in Russ.).

[10] *Meeting of the Organising Committee "Victory" (December 12, 2018)*, available at: http://www.kremlin.ru/events/president/news/59388 (accessed October 12, 2024). (in Russ.).

[11] Ibid.

also to the emergence of legal practice of initiating criminal cases under Article 357 of the Criminal Code of the Russian Federation for crimes committed during the Great Patriotic War. The first precedent of the court decision was the recognition of the mass murder of civilians in 1942–1943 in the village of Zhestyanaya Gorka in the Novgorod region as a war crime against humanity. The Soletsky District Court, which issued its verdict on October 27, 2020, agreed with the prosecutor's arguments that failure to recognise the crime as genocide would limit the rights of the victims[12].

Over the following years (2020–2024), similar decisions were made by the courts of a number of constituent entities of the Russian Federation; the dynamics and geography of the decisions taken allow us to judge that in the near future all regions in which military actions took place in 1941–1945 will join this process. In the autumn of 2024, the fact of genocide was officially established on the territory of the Republic of Adygea (September 26)[13] and the Donetsk People's Republic (October 1)[14].

It is not surprising that already in the spring of 2023, the practice of recognising crimes against civilians as manifestations of genocide was brought to the federal level. On March 22, 2023, a Statement of the State Duma of the Russian Federation was issued, which stated the following: "The State Duma... recognises the criminal acts of the Nazi invaders and their accomplices against the civilian population of the USSR as genocide of the peoples

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[12] Kiknadze V.G. *Genocide of our people recognised by the court for the first time*, 28.10.2020, available at: https://www.noo-journal.ru/blog/patrioticheskie-svodki-ot-vladimira-kiknadze/genotsid-naseleniya-rossii-resheniye-suda-novgorodskaya-oblast-zhestyanaya-gorka/ (accessed October 12, 2024). (in Russ.).

[13] *In Adygea, the court granted the prosecutor's application to establish the fact of genocide of the peoples of the Soviet Union, as prepared on the instructions of the Prosecutor General of Russia Igor Krasnov*, 26.09.2024, available at: https://epp.genproc.gov.ru/web/gprf/mass-media/news?item=98137931 (accessed October 12, 2024). (in Russ.).

[14] *In Donetsk, the court granted the prosecutor's application to establish the fact of genocide of the peoples of the Soviet Union, as prepared on the instructions of Igor Krasnov*, 01.10.2024, available at: https://epp.genproc.gov.ru/web/gprf/mass-media/news?item=98237033 (accessed October 12, 2024). (in Russ.).

of the Soviet Union"[15]. In this formulation, two fundamental aspects should be emphasised. Firstly, this is an appeal to UN normative acts in terms of formulations that clarify and concretise the concept of *genocide* ("genocide of national, ethnic and racial groups that constituted the population of the USSR"). Secondly, this indicates a plurality of those peoples who are victims of targeted activities to destroy them by the Nazis and their accomplices (including from among the inhabitants of the occupied territories).

The transcript of the State Duma meeting allows us to assess the disagreements that arose between the deputies regarding the wording of the document. In particular, several options for clarifying the composition of the peoples of the USSR were announced; here, special attention was proposed to be paid to the Russian people, which provoked a very characteristic comment from the chairman of the defence committee A. Kartapolov: "They were killed, cut, burned, raped as citizens of the Soviet Union, and not as Ukrainians, Belarusians, Dagestanis, Jews and Tatars, understand this!"[16] Despite a clarification about citizens of the Soviet Union not being included in the final document, this exchange very well characterises the categorical fork in which the initiative to give crimes against civilians the status of genocide found itself. Although the idea of genocide against the peoples of the USSR more clearly corresponds to the spirit of the 1948 Convention, it raises the question of the exact composition of the peoples subjected to genocide (taking into account the certain ambiguity of the population censuses). The idea of genocide against the people of the USSR in the sense of a civil nation forces us to turn to a literal interpretation of the 1948 Convention regarding the distinction between ethnic and national communities, and also refers to the wording of the 1977 Constitution: "a society of mature socialist social relations, in which, on the basis of the rapprochement of all classes and social strata, the legal and actual equality of all nations and nationalities, and their fraternal

[15] *Statement of the State Duma "On the genocide of the peoples of the Soviet Union by Germany and its accomplices during the Great Patriotic War of 1941–1945"*, 22.03.2023, available at: http://duma.gov.ru/news/56676/ (accessed October 12, 2024). (in Russ.).

[16] Veretennikova K. *Deputies looked for the past in the present,* 22.03.2023, available at: https://www.kommersant.ru/doc/5888941 (accessed October 12, 2024). (in Russ.).

cooperation, a new historical community of people has emerged – the Soviet people"[17] .

The lack of a clear solution to this problem is also demonstrated by the bill "On perpetuating the memory of the victims of the genocide of the Soviet people during the Great Patriotic War of 1941–1945", submitted to the State Duma on June 18, 2024[18]. On the one hand, it uses "genocide" in relation to the term "people" in the singular, while on the other hand, the very definition of the genocide of the Soviet people contains a reference to the ethnic interpretation of this term: "The genocide of the Soviet people is recognised as the actions of Nazi Germany and its accomplices, aimed at the complete or partial destruction of national, ethnic and racial groups inhabiting the territory of the USSR during the Great Patriotic War of 1941–1945"[19]. The difficulties associated with the uncertainty of terminology are not only of a purely theoretical nature, but also have a very definite practical significance, since they raise the question of the compliance of the adopted normative acts with international legislation – in particular, the Conventions of 1948 and 1968, which were developed with the direct participation of representatives of the USSR. In addition, according to a fair commentary on the draft law from the Accounts Chamber, a conflict arises related to the definition of the boundaries of the very concept of *victims of the genocide of the Soviet people*: "it remains unclear whether it is intended to consider victims of the genocide of the Soviet people as a category of citizens separate from victims of the Great Patriotic War, or whether it is a matter of clarifying the concept of *a victim of the Great Patriotic War*"[20]. At present, no amendments have been made to this bill, so there is still no understanding of what path will be chosen for the normative formulation of the topic of genocide.

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[17] C*onstitution (Basic Law) of the Union of Soviet Socialist Republics (adopted at the extraordinary seventh session of the Supreme Soviet of the USSR of the ninth convocation on October 7, 1977)*, available at: https://constitution.garant.ru/history/ussr-rsfsr/1977/red_1977/5478732/ (accessed October 12, 2024). (in Russ.).

[18] *On perpetuating the memory of the victims of the genocide of the Soviet people during the Great Patriotic War of 1941–1945*, available at: https://sozd.duma.gov.ru/bill/650430-8 (accessed October 12, 2024). (in Russ.).

[19] Ibid.

[20] Ibid.

In conclusion, we may note the following:

1. The development of memory wars in contemporary international relations leads to the desire to use tragic events of the past as instruments of symbolic politics. The use of collective trauma as political arguments leads to the devaluation of victimhood (that is, the loss of the symbolic meaning of conventional wars or armed conflicts), forcing the parties to turn to the topic of crimes against humanity in an attempt to "raise the stakes". It is important to take into account that the concept of *genocide* is not legally equivalent to the concept of *crime against humanity*; more precisely, it represents only one type of such crime.

2. *The Holocaust* becomes a model for the instrumentalisation of genocide; consequently, methods for consolidating the memory of it in symbolic space (monuments, public speeches, regulations establishing responsibility for denial) begin to be replicated in relation to other events that have sacrificial potential. The use of genocides in symbolic space becomes especially acute in the context of Eastern European and Balkan countries, where historically ethnic heterogeneity becomes the basis for the possibility of such an interpretation.

3. The theme of genocide as a way of implementing memorial culture and historical policy represents a complex combination of several motives – both the desire to preserve the memory of the crimes committed in the public space and an act of symbolic struggle aimed at rethinking the historical agenda. The issue of the genocide of the Soviet people, which has been actively addressed in recent years not only in the public space but also in regulations and bills, serves as a manifestation of this ambiguity and contradiction.

4. From a legal point of view, the arguments about the existence of the Soviet people as an independent national community, which logically follows from the wording of the 1948 Convention, require additional elaboration and argumentation; either that, or the discussion should be about the genocide of the peoples of the Soviet Union, which triggers the process of internal symbolic competition between individual political factions already active within contemporary Russia. From a political perspective, it seems important to study not only the context of the actualisation of such topics in modern Russian society, but also the prospects for its transfor-

mation into a new system of civil goals and priorities, primarily as affecting young people.

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"Struggle and Seek": In Search of the Right to National Identity in General International Law

Abstract. In the emerging context of a multipolar world order, providing for the protection of sovereignty and national identity from external threats becomes an urgent task. At the same time, destructive attitudes aimed at undermining national security and identity can be transmitted through international institutions. Such a situation necessitates the development of legal mechanisms by means of which states may protect their national identity. However, such mechanisms must also consider the possibility that exceptional situations may arise in which the protection of identity becomes impossible without refusing to fulfil one or another international obligation. The exceptional nature of the task consists not only in it forcing us to look for ways to deviate from the norms of international law, since, in the first place, it is necessary to ensure that states have the right to national identity and an appropriate means of protecting it. The present study opens a series of articles aimed at analysing the provisions of general international law that permit or limit the use by states of various mechanisms to protect their own national identity. Here, the aim is to provide a justification on the part of states to assert their national identity within the international legal order. In the present work, this issue is discussed in light of the principle of non-interference in internal affairs and the right of peoples to self-determination. Based on judicial practice, acts of the main organs of the UN and international legal doctrine, a conclusion is reached that the right of states to assert a national identity cannot be discovered in these principles. The reasons for this include the uncertainty of their positive legal content and the historical features of their origin, as well as the consequent impossibility of their broad interpretation. This does not mean, however, that states do not possess the sought-after right at all; on the contrary, the search for it can and should continue.

Keywords: national identity; international law; principle of non-interference in internal affairs; right of peoples to self-determination; International Court of Justice

Problem Statement. Globalisation processes continue to transform the contemporary world. Along with the positive transformations they have brought into socio-political life, many researchers also identify a threat to the national identity of modern societies and states. In the scientific discourse of those countries in which the topic of protecting national identity appears (for example, in Russia), national identity is understood as a system of the most important values shared by the majority of members of a particular society (Shabrov 2023: 18). Problems associated with national identity in the context of globalisation are also considered by Western scholars (Kennedy 2001: 18).

It should be borne in mind that national identity is not only a socio-cultural phenomenon, but also a legal one. In particular, it has implications for the international legal status of collective entities, in particular those defined as peoples or ethnic groups[1]. Thus, the International Court of Justice in its advisory opinion on the *Western Sahara Case*, which examined the claims of Mauritania and Morocco to this territory, assessed Mauritania's arguments that tribes living in Western Sahara (Chinguetti) during the period of Spanish rule represented an entire society united by a common language, way of life and culture[2], i.e. possessing a certain degree of identity. Taking this into account, the Court concluded that close legal relations arose between Morocco, Mauritania and these tribes, which lacked their own statehood[3]. In international legal doctrine, the ability of communities to enter into such relationships is a hallmark of international legal personality (Worster 2016: 210-211), although the Court did not recognise such personality for these tribes.

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[1] In this connection, the UN Declaration on the Rights of Indigenous Peoples of 2007 emphasises that indigenous peoples have the right to self-determination, which recognises the possibility to independently carry out their cultural development (Articles 3, 4).

[2] *International Court of Justice* (hereinafter – ICJ). *Western Sahara. Advisory Opinion of October 16, 1975.* § *132(b)*, available at: https://www.icj-cij.org/sites/default/files/case-related/61/061-19751016-ADV-01-00-EN.pdf (accessed October 10, 2024).

[3] Ibid., § 162.

Under what conditions is it appropriate to consider issues of national identity, including through the prism of international law? A tendency has emerged to view these phenomena as opposing: in a number of jurisdictions, international law is considered to be a threat to national identity; moreover, the latter can constitute a legal instrument that may prevent the implementation of an international legal act (typically a decision of an international court) that contradicts the principles and values of a particular society. In a given legal system, such values typically take the form of constitutional norms; thus, a refusal to implement an international legal act may be motivated by its incompatibility with constitutional stipulations. In this context, it is apposite to turn to the legal doctrines of Italy and Russia as states that apply the concept of national identity in such a way.

Thus, the Chairman of the Constitutional Court of the Russian Federation V.D. Zorkin points to a "national constitutional identity"[4] as consisting mainly in terms of the need to resolve contradictions between the national and international legal orders, thus supporting the possibility of Russia's refusal to implement individual decisions of international courts (Zorkin 2017: 1, 24). Professor F. Palombino of the University of Naples argues that a state's derogation from an international court's decision (counter-limits argument) is permissible, although not without observing strict conditions, such as the decision's contradiction with fundamental principles reflecting the uniqueness of the national legal order, or the international court's disregard for the interests of those individuals whose rights are protected by the national constitution (Palombino 2015: 528-529). Meanwhile, Professor P. Palchetti of the University of Milan ironically asks whether it makes sense in the era of European integration and globalisation to refer to the Italian or any other national school of international law as something distinct from other schools that risk soon becoming a relic of the past (Palchetti 2018: 15).

The main problem with any mechanisms for resolving discrepancies between national and international law with reference to the protection of national (constitutional) identity is that they are gen-

[4] V.D. Zorkin uses the concepts of "national identity" and "constitutional identity" as contextual synonyms: he believes that "constitutional values" are "common-good values" that constitute the identity of the people and the state when enshrined in the corresponding constitution (Zorkin 2017: 1, 8).

erally discussed and applied without first answering the key question of whether the state (state-forming society) has a principled right to a national identity. If we can imagine a right that is not provided with a means of protection (*nudum jus*), then there is no means of protection in the absence of the protected right.

The present work therefore sets out to address the methodologically important question of whether a state has the right to national identity under general international law and, if so, whether it allows a state to refuse to implement an international legal act in exceptional cases when it is impossible to protect national identity by other means and without prejudice to the binding nature of international legal provisions. Since the comprehensive consideration of such a complex issue should form the subject of more than one study, this work will focus on the search for this right in the context of two imperatives of international law: the principle of non-interference in the internal affairs of states and the right of peoples to self-determination.

In order to analyse the content of these two principles as a means of determining whether the right of states to national identity can be derived from them, we will make two important preliminary observations.

Firstly, international law invariably proceeds from its own paramountcy. Thus, back in 1932, the Permanent Court of International Justice in its advisory opinion on the *case concerning the treatment of Polish citizens and other persons of Polish origin in the territory of Danzig* indicated that the content of national laws is for international law merely a question of fact, and that a state does not have the right to refer to the provisions of its legislation, including constitutional legislation, to justify its non-compliance with international legal norms[5]. In the 21st century, this thesis was confirmed by the UN International Law Commission in their commentary on the current Draft Articles on the Responsibility of States for Internationally Wrongful Acts[6].

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[5] *Permanent Court of International Justice. Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory. Advisory Opinion of 4 February 1932.* § *61-62,* available at: https://www.worldcourts.com/pcij/eng/decisions/1932.02.04_danzig.htm (accessed October 10, 2024).

[6] *International Law Commission. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Adopted by the International*

Secondly, international law, like any legal system, does not exclude deviations from its own provisions (the use of force in self-defence, permitted by Article 51 of the UN Charter; derogation in international human rights law; non-application of a number of international legal guarantees to an aggressor state (Dörr, Schmalenbach 2018: 1381-1383), etc.[7]). That is, it would be premature to assert that a state does not have the right to exclude for itself the effect of international obligations it has already assumed, always and in all cases, even if it is a matter of protecting national identity.

National Identity and the Principle of Non-Interference in the Internal Affairs of States. Since national identity is generally determined through a system of values, it should be considered a product of the unique cultural development of a society. International legal acts recognise the right to such development precisely in the context of the principle of non-interference in the internal affairs of states.

As based on the UN system, this principle has historically been formulated exclusively in modern international law as a negative obligation on the part of states not to take actions aimed at interfering in each other's internal affairs. Such formulations are used in the UN Charter (paragraph 7 of Article 2), bilateral agreements (for example, the Indian–Chinese Agreement on the Five Principles of Peaceful Coexistence of 1954) and acts of international conferences (the Bandung Principles of 1955).

The cultural aspect of this principle was emphasised by the UN General Assembly in the Declaration on Principles of International

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Law Commission at its fifty-third session, in 2001. pp. 37–38, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed October 10, 2024).

[7] This, however, does not change the fact that each of the given examples of permissible deviation from the norms of international law has clear limits determined by international law itself. Thus, it is considered that self-defense, as implemented in accordance with Article 51 of the UN Charter, is permitted only in response to an armed attack (O'Meara 2022: 322-323), and derogation within the framework of the European human rights mechanism is possible only subject to compliance with the appropriate procedure in the form of notification of this to the Secretary General of the Council of Europe (para. 3 of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950).

Law of 1970. The Declaration proposes to classify any threats (armed or unarmed) against the cultural foundations of the state as a violation of the principle of non-interference in internal affairs, along with "the use of force aimed at depriving peoples of their national identity"[8]. Moreover, for the first time the Declaration introduced a positive legal element into the content of this principle, namely the right of states to choose a cultural system without outside interference.

Meanwhile, it seems that even such a direct indication of the existence of relevant rights among states is not sufficient to conclude that states have the right to national identity in accordance with general international law, much less to derogate from its provisions in order to protect it. Predictably enough, the text of the 1970 Declaration does not speak about the latter. Moreover, it should be considered that the Declaration itself is an act of soft law.

Indeed, the Court in its judgment in the *case concerning military activities in and against Nicaragua* recognised, including with reference to the Declaration, that the prohibition of interference in the internal affairs of a state implies the inadmissibility of interference in the choice of a cultural system[9]. However, the Court here also stipulates – obviously preventing a broad interpretation of its findings – that since Nicaragua's request concerns acts of armed intervention, the Court will in this case examine only such acts for compliance with the principle of non-intervention[10]. Moreover, the Court pointed out that not every interference is unlawful, but only one characterised by a certain degree of coercion[11]. Subsequently, the Court also appealed to the principle of non-

[8] *UN General Assembly. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations 1970. Adopted at the 25th Session of UN General Assembly, on 24 October 1970. A/RES/2625(XXV)*, available at: https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf (accessed October 10, 2024).

[9] ICJ. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Judgment of 27 June 1986.* § *204*, available at: https://www.icj-cij.org/sites/default/files/case-related/70/070-19860627-JUD-01-00-EN.pdf (accessed October 10, 2024).

[10] Ibid.

[11] Ibid., § 205.

intervention only in situations involving the use of force[12], i.e., under conditions of unequivocal coercion. It is characteristic that for a long time the Court did not invoke this principle in other contexts, including cultural.

Moreover, states themselves demonstrate a lack of readiness for a broad interpretation of the principle of non-intervention. This is demonstrated, for example, by objections to the application of the principle of non-intervention in the classification of interstate cyber-attacks. In particular, Russia takes a rather categorical position in pointing out the inadmissibility of a "simple extrapolation" of the norms of international law to cyberspace, including the principle of non-interference[13]. The United States, while acknowledging that cyber-attacks may violate this principle, stipulates that "the principle of non-intervention is considered a relatively narrow norm of customary international law"[14].

Finally, it is important to note that arguments in favour of national identity are typically advanced in the context of non-implementation of decisions of international human rights bodies. At the same time, it is widely acknowledged that human rights and their protection cannot be purely an internal matter of the state, but are a subject of international concern (Slater, Nardin 1986: 88). In this connection, the question of the admissibility of humanitarian intervention, as representing a legalised form of interference in the affairs of the state, becomes particularly salient (Rodley 1989: 332).

Thus, the right of the state to national identity does not clearly follow from the principle of non-interference – both be-

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[12] ICJ. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda). Judgment of 19 December 2005.* § *164*, available at: https://www.icj-cij.org/sites/default/files/case-related/116/116-20051219-JUD-01-00-EN.pdf (accessed October 9, 2024).

[13] *UN General Assembly. Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States submitted by participating governmental experts in the Group of Governmental Experts on Advancing Responsible State Behavior in Cyberspace in the Context of International Security established pursuant to General Assembly resolution. Adopted at the 76th Session UN General Assembly, on 13 July 2021. A/76/136. p. 81*, available at: https://front.un-arm.org/wp-content/uploads/2021/08/A-76-136-EN.pdf (accessed October 9, 2024).

[14] Ibid., pp. 139-140.

cause of its negative nature and because of the difficulty of its broad interpretation.

National Identity and the Right of Peoples to Self-Determination. At first glance, there are prerequisites for the right to national identity to be derived from the right of peoples to self-determination. These rights are set out in the Declaration on Principles of International Law of 1970, according to which all peoples have the right to pursue their cultural development freely and without outside interference. Moreover, such prerequisites were formulated by the International Court of Justice in its advisory opinion on *case concerning the Legal Consequences of Israeli Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem*, in which the right of peoples to their independent cultural development is noted to be a key element of the right to self-determination[15].

It appears that the content of the right to self-determination can be formulated more precisely than that of the principle of non-interference, including for the purposes of protecting national identity. Unlike the principle of non-intervention, the right of peoples to self-determination has a higher legal status, since, from the point of view of the UN International Law Commission, it is a norm of *jus cogens*[16].

Historically, the right of peoples to self-determination arose as a product of the dismantling of the colonial system. The above formulations of the Declaration on Principles of International Law of 1970 are literally identical to the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960[17], in which they first appeared. This historical context can

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[15] ICJ. *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Advisory Opinion of 19 July 2024.* § *241*, available at:: https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf (accessed October 10, 2024).

[16] *International Law Commission. Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries. Adopted by the International Law Commission at its seventy-third session, in 2022. p. 16*, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_14_2022.pdf (accessed October 10, 2024).

[17] *UN General Assembly. Declaration on the Granting of Independence to Colonial Countries and Peoples 1960. Adopted at the 15th Session of UN General Assembly, on 14 December 1960*, available at: https://www.refworld.org/legal/resolution/unga/1960/en/7290 (accessed October 9, 2024).

also be seen in the practice of the International Court of Justice, which even in 2024 recognises the right to self-determination as a peremptory norm of international law only in cases of foreign occupation[18]. Analysing the Court's earlier decisions, however, it must be acknowledged that judicial practice on this issue is irregular and unstable. Thus, if in its advisory opinion on the *case concerning the legal consequences of the construction of a wall in the occupied Palestinian territories*, the Court touched upon the issue of the content of the right to self-determination, at least in part[19], later, for example, in the opinion on the case concerning the *conformity with international law of the declaration of independence of Kosovo*, the Court completely disregarded it[20]. As for national identity, there is no consensus in the doctrine of international law regarding which factors are decisive for the realisation of the right to self-determination, i.e., subjective (including those related to identity) or objective (for example, territorial). Accordingly, the right to self-determination – given its burden of historical context – cannot provide a sufficient basis for the emergence of the right of states to national identity in the sense in which it is considered in this study.

Conclusion. The Supreme Court of Canada in its *Reference Re Secession of Quebec* indicated the need for a strict distinction between the right of a people to act and their specific powers to do so[21]. Perhaps this is precisely why the question was raised about whether states have the right to national identity. The answer to this question must be obtained before examining the specific powers of a state – in particular its power to derogate from its individual obligations as a last resort in the protection of identity.

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[18] ICJ. *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. Advisory Opinion of 19 July 2024. § 233.

[19] ICJ. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Advisory Opinion of 9 July 2004. § 88.

[20] ICJ. *Accordance with international law of the unilateral declaration of independence in respect of Kosovo. Advisory Opinion of 22 July 2010.* § *82-83*, available at: https://www.icj-cij.org/sites/default/files/case-related/141/141-20100722-ADV-01-00-EN.pdf (accessed October 7, 2024).

[21] *Supreme Court of Canada. Reference re Secession of Quebec. Judgement of 20 August 1998. 2 SCR 217.* § *106*, available at: https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1643/index.do (accessed October 7, 2024).

The findings of this study do not prejudge the answer to these questions, but merely indicate the need to consider them in a broader international legal context. If it turns out to be problematic to discern the right to national identity in the context of the considered principles (including because their content must be judged by the advisory acts of the courts, which *stricto sensu* do not have binding force), such a right can be discerned in the context of other principles, which will be the task of further research. In particular, Sir M. Wood and M. Jamnejad believe that the answer lies in the law enforcement concept of the margin of appreciation of states in resolving issues that are particularly sensitive for them (Jamnejad, Wood 2009: 377)[22], including in light of the values adopted in that state that constitute its social identity.

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[22] These same authors do not exclude that violations of the principle of non-interference may include, for example, individual cases of illegal television broadcasting and propaganda on the territory of another state (Jamnejad, Wood 2009: 374). As is known, modern telecommunication technologies can very actively influence public opinion and consequent attitudes towards the values accepted in society; consequently, such activities are of particular importance in the context of national identity.

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