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THE CRIME OF PROMOTING WAR AND ITS SIGNS

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Annotation: The article examines the content of the international ban on propaganda of war, the procedure for fixing the ban in Russian law, as well as the imperfection of criminal legislation establishing responsibility for public calls to unleash an aggressive war.
Keywords: Aggressive war; propaganda of war; propaganda of aggression;public appeals; unleashing an aggressive war; criminal liability;corpus delicti.

Introduction

The prohibition of encroachments on international peace and security is enshrined both in numerous documents issued by United Nations (UN) bodies and in domestic regulations. According to paragraph 2 of Article 15 of the Foreign Policy Concept of the Russian Federation, approved on March 3, 2023, maintaining strategic stability, as well as strengthening international peace and security, are recognized as national interests. At the same time, international peace may be threatened not only by interstate aggression, but also by the propaganda of such aggression.

The public danger of war propaganda is not in doubt. Aron Naumovich Trainin, a Soviet specialist in the field of international criminal law, wrote that the propaganda of war is part of military-technical training and its purpose is to convince its own people of the need for this war [1, p. 5, 7].

In the second half of the 20th century, at the international level, following the participation of the entire international community, a ban on propaganda of aggression was established.However, the question arises: can such regulation be considered sufficient and effective? With the emergence and development of international criminal law and the adoption of the Rome Statute in 1998, it became possible to criminalize propaganda of aggression. However, to date, such a crime has not been reflected in the Rome Statute. At the same time, the national jurisdictions of most States establish prohibition of propaganda of aggression or war in various branches of law, including criminal law.

It is important to note that uniform terminology is used to indicate the content of the prohibition under study. Thus, in the process of drafting various international resolutions and treaties before the adoption of the UN Charter in 1945, the terms "war" and "aggression" were used to consolidate the prohibition on the use of force. It is worth noting that the term "war" was contained in the Preamble of the Statute The League of Nations. At the same time, there was no definition of this termination na, and based on the context of the document, it could be concluded that it is about an aggressive, not defensive war. Therefore, when mentioning this term in the article, it will be about aggressive war.

The UN Charter provides for a ban on the use of force or the threat of such use, but it does not contain the terms "aggression" or "war". Accepted The UN General Assembly Resolution 3314 (XXIX) of 12/14/1974, which became another document prohibiting the use of force, defines the concept of an act of aggression (which means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State or in any other way incompatible with the UN Charter) and its types. This shows that the international community has decided to abandon the term "war" in favor of the broader concept of "aggression".

However, since the prohibition of propaganda of "war" was finally established at the international level, despite the fact that when defining the term "war", as will be noted later, the concept of "act of aggression" is still used, the appropriate terminology will be used to describe the history of the formation of this prohibition in the article.

To prohibit propaganda of aggression and criminalize these actions, Russian legislation uses the terms "war" and "aggressive war", which do not differ significantly. In the Russian legal doctrine, you can find the term not only "war", but also "aggression". At the same time, it should be understood that the concepts of "war" and "aggression" are not identical, although there is no unity of opinion on this issue in the legal doctrine.

It is interesting, however,that, for example, the expression "propaganda of war" is used in Russian constitutional law, in contrast to criminal law, which provides for the composition of public calls for the outbreak of aggressive war. This discrepancy is also interesting because the Soviet criminal law the legislation used the term "propaganda of war".

In this regard, we consider it necessary to analyze the formation of an international ban on war propaganda and domestic legislation that prohibits war propaganda and criminalizes public calls for aggressive war.The main part Consider the prohibition of war propaganda in international law.The process of banning war propaganda at the international level can be divided into two periods: before and after 1945.

The need to ban the propaganda of war has been recognized by the international community since the middle of the XIX century. During this period, the first international conferences and congresses began to operate, the purpose of which was to preserve peace, and therefore the activities of these organizations were mainly aimed at establishing a legal ban on resorting to aggressive wars. The issue of banning war propaganda at the international level was addressed only in the twentieth century. At that time, various international conferences and congresses were dealing with this problem,Similarly, the League of Nations is the first international organization established in 1919 and set itself the goal of developing cooperation between peoples and ensuring international peace and security.

At several international conferences and congresses held in the first half of the twentieth century, the issue of the need to establish criminal liability for propaganda of war and the development of draft resolutions that would provide for such responsibility was raised. Among them were conferences on the unification of criminal legislation (the so-called unification conferences), the main idea of which was "to include similar, if not identical, definitions in the codes of the participating States in such a way that It was possible to provide for similar punishments as simply as possible and ensure the effectiveness of international prosecution" [2, p. 63].

At the First Conference on the unification of criminal law, held in Warsaw (Poland) in 1927, Stanislav Rappaport, at that time a judge of the Supreme Court of Poland, proposed to develop a draft criminal law that would include "incitement to aggressive war" in the list of crimes against the general rule of law of all nations (that is, crimes juris gentium, among which there was, for example, piracy). S. Rappoport noted that this composition has already been included in the draft Criminal Code Poland (paragraphs "b" of Articles 8 and 108) [3, p. 60]. To the next At the unification conference in 1930, held in Brussels (Belgium), a resolution was adopted that declared "propaganda for the purpose of publicly calling for war" [1, p. 18] punishable.

As for the activities of the League of Nations in this direction, the International Convention on the Use of Radio Broadcasting in the Interests of Peace was adopted on September 23, 1936 - the first multilateral legal instrument the act prohibiting propaganda in peacetime [4, p. 343].Article 2 imposes on the Contracting Parties the obligation to ensure that the transmissions of stations located on their territories do not constitute incitement to war against another Contracting Party or actions that may lead to it [the war]. It is required to immediately stop any transmissions that may damage good international understanding as a result of communications whose inaccuracy is known or should be known to those responsible for the transmission.At the same time, the convention did not contain measures to ensure the fulfillment of the obligations imposed on States, its purpose was to

suppress the aggression of Italy and Germany, whose radio stations inspired the population with the idea of the superiority of the Aryan race, but " it did not achieve its noble goals" [5, p. 219].

In the 20th century, many States concluded bilateral agreements prohibiting propaganda against each other. So, on April 22, 1926, between Persia and Turkey concluded a Treaty of Friendship and Security, in Article 5 of which the parties agreed not to allow the presence of individuals or organizations that spread propaganda or try to take military action against the other side by other means (our translation - R. D.).

After the Second World War, the ideas of banning war propaganda took on a clearer form. And although various international conferences and organizations (for example, the Peace Movement,which was first convened in 1946 and contributed to the anti-war movement in many states) continued to operate, the main function of developing international documents that would contain a ban on war propaganda was transferred to the UN.

An important document in this period is Resolution 110 (II) "Measures to be taken against propaganda and incendiaries of a new war",adopted at the 108th plenary session of the UN General Assembly in 1947 (hereinafter - Resolution 110 (II)),which condemns "any form of propaganda conducted in any country which has the purpose or is capable of creating or strengthening a threat to peace, a violation of peace or an act of aggression" (paragraph 1) and calls on all UN members to adopt laws criminalizing propaganda (paragraph 2).

Unlike the resolutions adopted following the unification conferences, the concept of propaganda is interpreted more broadly: if earlier a ban on propaganda for the purpose of public appeal was established, then since 1947 it has been proposed to establish responsibility for any propaganda, regardless of its form, the sole purpose of which is a threat to peace.

It is worth noting that the ban on war propaganda was initially considered only as a restriction on the right to freedom of speech, press and expression.Thus, the UN Human Rights Committee, at its second session on December 2, 1947, considered the need to include provisions on freedom of expression and information in the Universal Declaration of Human Rights, for which the Human Rights Committee The UN has requested the opinion of the Subcommittee on Freedom of Information and the Press and the International Conference on Freedom of Information. At the same time, during development recommendations on this issue by the Commission on Human Rights at the second meeting, held on 2-17.December 1947, asked to take into account "two resolutions of the UN General Assembly on this issue (resolution 110 (II) and resolution A/C.3/180/Rev.1 "False and distorted reports)" (translated and italicized by our. - R. D.). By 1948, a number of options proposed by delegations at the third meeting of the Human Rights Committee (24 May - June 18, 1948), already included the prohibition of war propaganda in an article enshrining the right to freedom of speech, the press or freedom of expression. It was different only the wording of the ban on propaganda itself. The delegation from the USSR, for example, proposed the following option: "In accordance with the principles of democracy and in the interests of strengthening international cooperation and world peace, everyone should The right to freedom of expression and, in particular, the right to freedom of speech and the press, freedom of assembly and freedom of artistic representation must be guaranteed by law. The use of freedom of speech and freedom of the press to promote fascism and aggression or to incite war between nations is not allowed" (our translation - R. D.).

France preferred not to enshrine an outright ban on war propaganda, but proposed to provide a separate paragraph with a general wording restricting the right to freedom of speech, expression and the press: "3. The freedoms specified in the preceding paragraphs may be subject only to such restrictions, penalties or liability as are provided by law to protect public order, national security, morality, respect for the law and reputation or the rights of other people" (our translation. -R. D.). The French version turned out to be more preferable for delegations at that time.

As Michael Kearney, a law lecturer at the University of Sussex, points out, only in the sixth session To the Commission on Human Rights, held on April 28, 1950, the representative from Great Britain proposed to distinguish between the prohibition of war propaganda and the provisions relating to the right to freedom of expression, fixing them in different articles [6, p. 553].

The final version of Article 20(1) of the ICCPR was approved by delegations in 1961 at the 16th session of the UN General Assembly. The fact that the pact was adopted after the approval of the UN Charter, but before the 1974 Resolution, may explain the terminology used: a ban on propaganda of war, not aggression. Despite the fact that the draft was adopted, some UN member states did not see the need to consolidate the ban on war propaganda in the ICCPR. Thus, the delegation from Ecuador, in accordance with resolution A/C.3/SR.1084 of 26.10.1961, recognizing the public danger of military propaganda, nevertheless believed that "the cause of wars is not propaganda, but a conflict of interests," and military propaganda (or what is recognized as such) was carried out by the states themselves.

A group of Scandinavian countries also voted against the final version of Article 20(1) of the ICCPR, justifying this with contradictory formulations and difficulties of law enforcement: "what can be recognized in one country as military propaganda can be approved and recognized as one of the means of positive policy in another." The delegation from Australia also referred to the lack of a definition of war propaganda.In addition to the above reason, Australia also noted that the prohibition of propaganda does not apply specifically to the rights of individuals, which should be consolidated in the ICCPR. In addition, the ban on propaganda "opened the way for severe restrictions on the right to freedom of speech."

As a result, countries such as Australia, Italy,France, the United Kingdom, the United States, as well as the Scandinavian countries, voted against the draft article 20(1) of the ICCPR. Nevertheless, most States were in favour and Article 20(1) was enshrined in the package in its modern version.In the process of drafting the International Covenant on Civil and Political Rights, delegations did not raise the issue of defining propaganda. As noted in the commentary to the document, the concept of propaganda The package does not provide for the absence of any well-established interpretation of this term in various national legal systems [7, p. 581].

According to General Comment No. 11 on Article 20, developed by the UN Human Rights Committee for the purpose of interpreting the ICCPR, propaganda of war should be understood as any form of propaganda that intimidates or leads to an act of aggression or to a violation of peace contrary to The UN Charter [8]. The Center for Civil and Political Rights, an international non-governmental organization specializing in human rights, in The Guide to the International Covenant on Civil and Political Rights adds that any propaganda of war includes intentional and purposeful influence on people to create or strengthen the desire to go to war, for example, by spreading or exaggerating facts [9, p. 37]. At the same time, the provisions of Article 20(1) of the ICCPR, as follows from General Comment No. 11 on Article 20, do not prohibit the assertion of the sovereign right to self-defense or the right of peoples to self-determination and independence in accordance with the UN Charter [8].

Thus, along with stating the need to prohibit the use of force to resolve interethnic disputes, the international community has also recognized the public danger of propaganda of war, which necessarily accompanies any war. The Unification Conferences and the League of Nations paved the way for the further work of the UN Human Rights Committee, which adopted the ICCPR and provided for a ban on war propaganda in Article 20(1).

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