

UNIVERSITY OF TARTU

SCHOOL OF LAW

Department of Public Law

Compulsory Military Service in the Baltic States during the Soviet Occupation: Legality and
Issues of Russia's State Responsibility

Master's Thesis

Supervisor

Prof Lauri Mälksoo

Tallinn 2026

Table of Contents

Table of Contents	1
Abbreviations.....	3
Tānusõnad	4
Introduction.....	5
1. Applicability of the Hague and Geneva Conventions.....	7
1.1. Notes on the application and interpretation of the Geneva and Hague Conventions	7
1.2. Material jurisdiction.....	9
1.3. Other substantive provisions.....	9
1.4. Temporal jurisdiction	10
1.5. Territorial jurisdiction	13
1.6. Personal jurisdiction in the Geneva Convention.....	14
1.7. Question of citizenship	15
2. Fact of occupation.....	20
2.1. Law of occupation – historical separation of de jure and de facto sovereignty.....	20
2.2. Law of occupation – prohibition on changes to the political and legal order.....	22
2.3. Definition of occupation in the Hague and Geneva Conventions.....	23
2.4. Statehood of the Baltic states, recognition by Russia	24
2.5. Red Army’s military operations towards the Baltic states starting in 1939.....	25
2.6. Baltic legations and representatives abroad in 1940-1991	29
2.7. Russian views on occupation and the Baltic states	31
2.8. Principle of effectiveness vs principle of legality	33
3. Enlistment in the military.....	37
3.1. Prohibition under International Law	37
3.2. Defense/military as the Union’s responsibility	38
3.3. Legislation pre-WW2.....	39
3.4. Criminal penalties applied during World War 2.....	39
3.5. Mobilization during World War II	40
3.6. Enlistment post WW2	42
3.7. Requirement to swear allegiance	45

Propaganda.....	46
3.8. Protest movement against enlistment.....	46
4. Law of State Responsibility	48
4.1. Law of State Responsibility on Aggression	48
4.2. Legal nature of the Russian Federation vis-à-vis the Soviet Union.....	50
4.3. Similarities with Russian military operations in Ukraine	50
4.4. State responsibility for violations of IHL	52
Conclusion	56
Bibliography	58
Treaties.....	58
Commentaries to the Geneva Convention	58
Soviet legislation.....	59
Newspaper articles.....	61
Press releases	61
Website links	62
Kokkuvõte.....	63

Abbreviations

IHRL	International humanitarian law
Hague Convention 1899 or HC 1899	Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (entered into force 04.09.1900)
‘Hague Convention 1907’ or ‘HC 1907’	Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (entered into force 26.01.1910)
‘Geneva Convention’ or ‘GC’	Convention (IV) relative to the Protection of Civilian Persons in Time of War (entered into force 21.10.1950)
ICRC	International Committee of the Red Cross
ARSIWA	The Draft Articles of State Responsibility for Internationally Wrongful Acts

Keywords: law of occupation, Baltic states, Soviet Union, enlistment, international humanitarian law, law of state responsibility

Tänu sõnad

Ehkki töö on kirjutatud inglise keeles, on peaaegu kõik mu tänu sõnad suunatud eestlastele ning seetõttu kirjutan need eesti keeles. Ma tänan kõigepealt oma perekonda nende lõputu toetuse ja kannatlikuse eest, eriti viimaste kuude jooksul. Eriline tänu minu vanematele ja vanavanematele kõige selle eest, mis te minu heaks teinud olete. Ma tänan kõiki oma sõpru, aga eriti tänan Andrat. Meie sõprus on olnud siia punkti jõudmiseks väga oluline. Aitäh viimase 11 aasta eest! Ma tänan ka Tuulit, kes alati minuga kaasa mõtles ja aitas enda mõtteid sõnastada. Meie raamatukogu sessioonid olid väga olulised selle töö valmimiseks.

Tänu ka mu töökaaslastele Advokaadibüroost Eipre ja Partnerid ning eriti soovin tänada Terje Eipret ja Merit Tammikut, kes andsid mulle võimaluse juristina alustada juba varakult. Ehkki selle töö ja meie büroo õigusvaldkonnad on kardinaalselt erinevad, olen teilt kõigilt tohutult palju õppinud nii juristina kui muidu. Ma loodan, et seda on ka sellest tööst näha.

Tänu loomulikult ka oma juhendajale, dr Lauri Mälksood, kõiki Tartu Ülikooli rahvusvahelise õiguse osakonna õppejõude ning administratiivtöötajaid.

Introduction

This thesis covers the topic of legally mandated enlistment of men from Estonia, Latvia, and Lithuania during the times of the Soviet occupation in 1940-1941 and 1944-1991. These dates are generally recognized as the period during which the Soviet Union occupied the Baltic states of Estonia, Latvia, and Lithuania. The Soviet Union mandated universal military service across all its Republics, but the Baltic states' legal status in the USSR is highly contested. All three states hold that their admittance into the Soviet Union was contrary to international law at the time, and that they were occupied by the USSR until 1991. It therefore follows that the laws of occupation applied, including the prohibition of mobilization or enlistment by the Occupying Power of the inhabitants of occupied territory.

The purpose of the thesis is two-fold. On the one hand, the legality of military service during the Soviet occupation of the Baltic states has received little legal analysis. Existing appraisals lack a complete legal analysis of international law. Furthermore, the war in Ukraine has inspired many comparisons for Estonians, Latvians, and Lithuanians. This thesis also considers whether international law has addressed state responsibility for systematic and repeated violations.

The main sources for this analysis are the Hague and Geneva Conventions. The Hague Conventions are differentiated by year of adoption: 'the Hague Convention 1899' or 'HC 1899' refers to Convention (II) with Respect to the Laws and Customs of War on Land and its annex, Regulations concerning the Laws and Customs of War on Land. The 'Hague Convention 1907' or 'HC 1907' is used for Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. Finally, the Geneva Convention or 'GC' means the Convention (IV) relative to the Protection of Civilian Persons in Time of War. The two are grouped together, as they significantly overlap and have been examined together by international law tribunals, such as the Nuremberg and Tokyo trials, and later the ICTY.

Treaty interpretation relies on existing case law from various international law tribunals and, when applicable, on commentaries. The Hague Conventions have no commentaries. The Geneva Convention has multiple commentaries prepared by the International Committee of the Red Cross (hereinafter the ICRC), published in 1958 and 2025. When the Commentaries are referenced, the publication year is added to provide clarity. When possible, the 1958 Commentary is used as it provides stronger evidence of the Geneva Convention as understood at the time of adoption and thus at the time of the Baltic states' occupation. The 2025

Commentary is nevertheless used, as it has extensive references to case law and historical background; therefore, despite the later publishing date, it still proved useful.

As the main research questions of this thesis revolve around historical events, the methodology used is naturally a historical analysis of events and the legal acts that governed these events at the time. The nature of international law pre-1945 requires additional analysis of the development of certain legal concepts, as many concepts were not written down as they are today. It also helps explain how different countries and legal systems have approached these issues, particularly in the abstract, without political considerations weighing in. The fact that the events studied in the thesis occurred in the past also allows for assessing how the law evolved after these events or in other states at roughly similar times.

This thesis aims to answer the following research questions:

1. Are the jurisdictional conditions for the application of the Hague 1899 and 1907 Conventions and the 1949 Geneva Convention met?
2. Provided the aforementioned Conventions can be applied, are the conditions met for the prohibition of enlistment of inhabitants from occupied territories met?
 - a. Were the conditions for occupation met?
 - b. How was enlistment organized?
 - c. What other substantial provisions of the Hague and Geneva Conventions were possibly violated by enforcing the enlistment?
3. Has the law of state responsibility been triggered, and what would be the obligations of the USSR under it?
4. Provided violations of international law are proven, is the law of state responsibility applicable, and can it be triggered in regard to the Russian Federation?

Many of the sources used are in Estonian, rather than Latvian or Lithuanian. This is because of availability, but also because many of the materials that would be relevant are published only in the native languages of the relevant countries. Of the three, the author speaks only Estonian, which limits the use of original sources, particularly Soviet-era writings and documents. However, the relevant legal sources were Union-wide, so it is irrelevant whether the laws were intended for Estonia, Latvia, Lithuania, or, indeed, the other Soviet states. Given the few examples of personal experience referenced, there is no reason to doubt that they would differ significantly. The only AI application used in this thesis is Grammarly for language.

1. Applicability of the Hague and Geneva Conventions

The main treaties on international humanitarian law that apply for the purposes of this thesis are the Hague Convention II (1899), the Hague Convention IV (1907), and the Geneva Convention IV (1949), because these treaties expressly include prohibitions on enlistment into the military of the Occupying Power from the occupied territories. It must be noted that the 1907 Hague Convention replaced the 1899 Convention between the states that ratified the 1907 Convention, but the former remained in force in cases where both parties had ratified the 1899 Convention but did not ratify the 1907 Convention.¹ The two treaties are often considered jointly.

This chapter evaluates, in purely jurisdictional terms, whether the Hague or Geneva Conventions are applicable to the Soviet Union's occupation of the Baltic states. This chapter does not evaluate whether the legal definition of occupation under the Hague or Geneva Conventions is met, nor does it evaluate the legal framework applied for enlistment. Those subjects are covered in later chapters.

1.1. Notes on the application and interpretation of the Geneva and Hague Conventions

Naturally, the general principles that apply to treaty interpretation, such as the *pacta sunt servanda* principle and the principle of interpreting the treaty within its context and considering its purpose and object, should always be followed. While these principles were codified only in the Vienna Convention on the Law of Treaties, adopted in 1969, they are significantly older. The Vienna Convention was prepared by the International Law Commission, in cooperation with states, to codify existing laws and harmonize state approaches.²

The Hague Conventions, like most treaties, lay down the object and purpose of mitigating the damage caused by armed conflicts and promoting the “laws of humanity and the dictates of the

¹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted 18.10.1907, entered into force 26.01.1910) (Hague Convention 1907) art 4

² ‘Draft Articles on the Law of Treaties with Commentaries’ 218–223 <https://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf> accessed 25 April 2026.

public conscience.”^{3,4} The Preambles note that it is impossible to foresee all developments of armed conflict, and these general principles ought to be kept in mind when the more specific provisions of the annexed Regulation do not explicitly cover the entire situation.⁵ A certain degree of interpretive flexibility is thus encouraged by the treaties themselves.

The Geneva Convention itself addresses interpretation in its text in the very first article, which obliges the state parties to “undertake to respect and to ensure respect for the present Convention in all circumstances.”⁶ Per the 1958 Commentary, this was a deliberate choice to emphasize the Convention's special nature.⁷ The Commentary uses unequivocal, magniloquent language to describe its motivation as an “imperative call of civilization.” The wording of the Article was specifically designed to emphasize that States have accepted the obligation not only to adopt these principles but also to ensure their effective application in practice.⁸ In other words, the Convention requires its state parties to ensure practical results.

The obligation to ensure respect is extensive and, since the Convention’s adoption, has been interpreted as an *erga omnes* obligation.⁹ The 2025 Commentary acknowledges that some states originally expressed unwillingness to interpret Article 1 so broadly, but the ICRC has held this view since the Convention’s adoption and subsequent state practice confirms it.¹⁰ Furthermore, the Commentary interprets “in all circumstances” to mean that, provided any of the conditions in articles 2 or 3 are met, a state party has no justification for non-compliance.¹¹ The special role of the ICRC in the development of the Geneva Conventions and its Commentaries, of course, does not confer legally binding obligations onto the states, but is

³ ‘Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (adopted 29.07.1899, entered into force 04.09.1900) (Hague Convention 1899)’ <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899?activeTab=default>> accessed 18 April 2026 preamble.

⁴ ‘Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Adopted 18 October 1907, Entered into Force 26 January 1910)’ <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907?activeTab=default>> preamble.

⁵ *ibid.*

⁶ ‘Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) (Adopted 12 August 1949, Entered into Force October 1950)’ art 3.

⁷ ‘Article 1’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 1958) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-1/commentary/1958?activeTab=1949GCs-APs-and-commentaries>> accessed 1 March 2026.

⁸ *ibid.*

⁹ *ibid.*

¹⁰ ‘Article 1’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-1/commentary/2025?activeTab=1949GCs-APs-and-commentaries>> accessed 1 March 2026.

¹¹ *ibid.*

helpful in interpretation and cannot be divorced from the context of the treaty. These guidelines for interpretation are to be kept in mind for this chapter.

1.2. Material jurisdiction

Article 44 of the HC 1899 states that “any compulsion of the population of occupied territory to take part in military operations against its own country is prohibited.”¹² It thus clearly forbids the coercive enlistment of men from occupied territories, with the caveat that they may not be compelled to participate in operations against their own country. The possibility of compelling occupied populations to take part in other military operations is left open. That was particularly acute in the context of World War II, when military operations were conducted against many states simultaneously, allowing states to quite easily circumvent the prohibition if they so desired.

The 1907 HC prohibition is substantively the same as the 1899 Convention, prohibiting mobilized forces from occupied areas from being used in military action against their own state.

¹³ The GC is far stricter and an absolute prohibition. The Geneva Convention is more encompassing, prohibiting all compulsory enlistment into both armed and auxiliary forces. It furthermore prohibits measures used to secure voluntary enlistment, such as pressure or propaganda.¹⁴

1.3. Other substantive provisions

There are other provisions in all treaties that do not address enlistment directly but are more general and apply, nevertheless. Most obviously, the Occupying Powers are prohibited from making changes to or failing to apply the existing laws in occupied areas.¹⁵ From the Baltic states’ perspective, the political, social, legal, and economic foundations of the state were forcibly altered. The Russian view to this day goes further, arguing that the Baltic SSRs were

¹² Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (Hague Convention II) art 44.

¹³ ‘Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Adopted 18 October 1907, Entered into Force 26 January 1910)’ (n 4) art 52.

¹⁴ ‘Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) (Adopted 12 August 1949, Entered into Force October 1950)’ (n 6) art 53.

¹⁵ Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted 29.07.1899, entered into force 04.09.1900) (Hague Convention 1899) art 43

entirely new states.¹⁶ Mobilization or enlistment orders were mandated by both the USSR's and the individual Republics' Constitutions and enforced by legislative acts and criminal law. Furthermore, the Hague Conventions outlaw the requirement for inhabitants of occupied areas to swear allegiance to the Occupying Power. The subject of enlistment is studied far more extensively in Chapter 3. For the purposes of confirming the Conventions' applicability as far as jurisdiction goes, it is sufficient to note that the subject matter is clearly covered under these Conventions.

1.4. Temporal jurisdiction

The 1899 Hague Convention was ratified by Russia on 04 September 1900, and the 1907 Convention on November 27th, 1909. The 1899 Convention entered into force on the date of ratification, while the 1907 Convention entered into force on 26 January 1910. In both cases, Russia was among the first states to ratify the Conventions, as it had played a significant role in convening the states and in the creation of humanitarian law treaties, particularly between European powers.¹⁷

The Conventions were ratified by the Tsarist governments in both cases. Despite the Soviet Union's ideological opposition to the political principles of the Tsarist regime, including its international policies, it is generally agreed that IHL treaties continued to apply after the Russian Revolution.¹⁸ The Soviet Union reserved the right to accede to treaties on a case-by-case basis, but it did not denounce any IHL treaties. Overall, there is little doubt among both international and Russian lawyers that at least IHL treaties continued to apply to the Soviet Union.¹⁹ There were also no renunciations, reservations, or declarations made that would suggest otherwise. Thus, it can be concluded that both treaties remained in force for the entirety of the USSR.

Regardless, both Hague Conventions were declared customary international law by 1939, as determined by the International Military Tribunals of Nuremberg and Tokyo in the aftermath

¹⁶ Lauri Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR* (2nd Revised Edition, Koninklijke Brill NV 2022) 61.

¹⁷ Eyal Benvenisti, 'The Origins and Concept of Belligerent Occupation' (2008) 26 *Law and History Review* 645–647.

¹⁸ Michael Riepl, 'Russian Contributions to International Humanitarian Law: A contrastive analysis of Russia's historical role and its current practice' (2022) 16 *Cologne Studies on International Peace and Security Law* 21, 99.

¹⁹ *ibid* 101,102.

of World War II.^{20,21} The Soviet Union participated extensively in the trials and played a significant role in shaping the mandate of the Trials and the legal principles it established, both in terms of interpreting existing laws and in its progressive development. It is thus evident that both Conventions apply to the events of 1940-1991, under both treaty and customary law.

The 1949 Geneva Convention was signed by the USSR on 12th of December 1949, and ratified on May 10th, 1954. The Convention does not specify a timeline for when it begins to apply compared to the date of ratification. Per Article 6 of the Convention, the Convention applies “from the outset of any conflict or occupation” as defined in Article 2. It is a generally accepted principle of public international law that treaties or obligations established by other international instruments cannot be applied retroactively. Therefore, the Geneva Convention can be applied to Soviet actions in the Baltic states, including enlistment, that occurred after May 10th, 1954.

It is only logical to conclude that this applies to both orders to enlist issued after the 10th of May 1954, as well as to the service that started earlier but continued after that date. In that case, the enlistment would be made illegal under the Geneva Convention on May 10th, 1954. In cases where a person was enlisted before that date, but the military service continued through May 10th, it would follow that the individual’s enlistment would now fall under the jurisdiction of the GC, as the allegedly illegal act continued.

Additionally, it must be noted that many of the obligations outlined in the GC cease to apply a year after “the general close of military operations”.²² The general close would be difficult to determine in the case of the Baltic states, which were occupied by threat and “voluntary” opening of Russian military bases and troops inside their territories, rather than through “classical” armed attack or active hostilities. The text of the Convention does not clarify the meaning of military operations and whether a sustained military presence, such as the Soviet Army’s presence in the Baltic states, could fall under the definition of “military operations” within the meaning of the Article.

²⁰ Judgment of the Nuremberg International Military Tribunal 1946 (1947) 41 AJIL 172, at 248-249

²¹ John Pritchard and Sonia M Zaide (eds.), ‘International Military Tribunal For The Far East (Judgment of 4 November 1948)’ *The Tokyo War Crimes Trial*, vol 22, 458
<https://crimeofaggression.info/documents//6/1948_Tokyo_Judgment.pdf> accessed 25 February 2026.

²² Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12.08.1949, entered into force 21.10.1950) (Geneva Convention) art 6

The 1958 Commentary clarifies that the absence of military resistance is not grounds for avoiding application of the treaty, and that the law of occupation still applies.²³ It also states that “occupation,” as used in Article 6, has a wide meaning that is to be applied on a case-by-case basis, and the occupation in question does not need to meet the threshold set in Article 42 of the Hague 1907 Convention. Furthermore, per the Commentary, the omission of Article 6 from the text for cases of occupation or the absence of armed conflict was a deliberate decision specifically to ensure that the Convention would apply in full throughout the occupation.²⁴ Therefore, provided all other conditions for its application are met, the Convention would have applied from the date of ratification until 1991.

The Commentary states that a political act such as annexation could effectively end the Convention’s applicability, but only when it is “recognized and accepted by the community of States”. It is explicitly stated that when annexation is not recognized, the Convention must be applied. The annexation of the Baltic states into the USSR was not formally recognized as legal by many states.²⁵ While there were differences among states, very few states acknowledged a *de jure* incorporation during the 47 years of occupation. For some of these states, this was an explicit aspect of renewing or establishing diplomatic relations with the USSR, not done for its own sake. These recognitions were not necessarily a reflection of the state’s opinion on the legality, but rather a political decision to deepen diplomatic ties with a globally relevant political and economic actor. Even retroactively, most states have at least accepted the Baltic states’ argument of legal continuity from pre-WW2 statehood, which is inherently based on the Baltic states’ claim of military occupation by the Soviet Union.²⁶ An indirect acceptance of the Baltic states’ position is implied.

Article 6 also states that not all obligations cease after a year of hostilities, and the prohibition on enlistment is one of them.²⁷ The Article effectively aims to loosen restrictions on civilians and local inhabitants living in occupied areas, as it can be assumed that after a year, the security situation is significantly more stable than during active hostilities and therefore severe restrictions are neither necessary nor justifiable.²⁸ The Article is expressly not an avenue for

²³ ‘Article 6’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 1958) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-6/commentary/1958?activeTab=1949GCs-APs-and-commentaries>>accessed 28 February 2026.

²⁴ *ibid.*

²⁵ Mälksoo (n 16) 105–116.

²⁶ *ibid.* 50.

²⁷ ‘Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) (Adopted 12 August 1949, Entered into Force October 1950)’ (n 6) art 6.

²⁸ ‘Article 6’ (n 23).

Occupying Powers or states to avoid their obligations or lessen the amount of responsibility they hold. The fact that the prohibition was specifically listed as one that remains when other obligations are loosened or ended indicates its importance to states and their absolute nature.

1.5. Territorial jurisdiction

Textually, both Hague Conventions only applied in cases of war between state parties.^{29, 30} In fact, both Conventions cease to apply when a non-party joins the conflict.^{31, 32} None of the Baltic states had ratified either Convention by 1939. However, the Hague Conventions were considered customary international law by 1939, applying to “all civilized nations” as declared by both the Nuremberg and Tokyo trials.^{33, 34} The Tribunals did not feel it necessary to consider whether any states involved in the War had acceded to the Convention and made a statement of immediately applying the Conventions without further analysis, including as to whom the byname “civilized nation” applied. Thus, their applicability from 1939 onwards to all states, including the Baltic states, would be difficult to contest.

Article 1 of the Geneva Convention obliges state parties to respect the Convention in all circumstances, although Article 2 goes on to limit the treaty’s applicability to conflicts between states that have ratified the treaty or accepted its provisions during the conflict.^{35, 36} The Geneva Convention applies “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.” The Baltic states were incorporated into the territory of the USSR in 1940 by amendment of the 1936 USSR Constitution. The illegality of this incorporation does not alter the fact that between 1940 and 1941, and later 1944 and 1991, the Soviet Union’s laws were applied within the Baltic states and to Estonian, Latvian, and Lithuanian citizens. The USSR itself added the Baltic states

²⁹ ‘Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Adopted 29.07.1899, Entered into Force 04.09.1900) (Hague Convention 1899)’ (n 3) art 2.

³⁰ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (1907) art 2.

³¹ ‘Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Adopted 29.07.1899, Entered into Force 04.09.1900) (Hague Convention 1899)’ (n 3) art 2.

³² ‘Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Adopted 18 October 1907, Entered into Force 26 January 1910)’ (n 4) art 2.

³³ Judgment of the Nuremberg International Military Tribunal (n7)

³⁴ Pritchard and Zaide (n 8)

³⁵ Convention (IV) relative to the Protection of Civilian Persons in Time of War 1949 153, art 1.

³⁶ *ibid* 2.

and their citizens into its jurisdiction. Both Commentaries confirm that Article 2 applies to occupations regardless of whether armed resistance was present or an armed conflict was declared.^{37, 38} The 2025 Commentary lists the example of Moravia and Bohemia being considered occupied territories by the Nuremberg Tribunal.³⁹ Therefore, the Union, as a legal entity, assumed the obligation to uphold its international commitments, including the provisions of the Geneva Conventions, in the territories of the Baltic states.

1.6. Personal jurisdiction in the Geneva Convention

The Geneva Convention is far more explicit about under what conditions it applies and when it does not. According to the Commentary of 1958, its drafters were well aware that many states had refused to recognize the state of war or enemy governments purely to avoid the obligations they had already accepted under the Hague Conventions and other treaties.⁴⁰ The Fourth Geneva Convention is explicitly intended to protect civilians. The term “civilian” is not actually defined in the Convention but is rather taken to mean anyone not covered by the other three 1949 Geneva Conventions.⁴¹ It is a generally accepted principle of humanitarian law that unless a person is considered a combatant, they are a civilian.

Additionally, the majority of enlistments were carried out after the end of the Second World War's active hostilities, in “peacetime”, although, under international law, occupation is a time of war, not peace. Additionally, the Red Army did not knowingly draft partisans or individuals who had fought in the armed forces of Germany during the war. It also did not want members of Estonian, Latvian, or Lithuanian armies, particularly higher-ranked officers who were considered class enemies, as representatives of illegitimate bourgeois governments.⁴² For the purposes of this thesis, it can be assumed that the individuals drafted were civilians.

³⁷ ‘Article 2’, *Commentary to the Geneva Convention (International Committee of the Red Cross 1958)* 21 <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-2/commentary/1958?activeTab=1949GCs-APs-and-commentaries>> accessed 28 February 2026.

³⁸ ‘Article 2’, *Commentary to the Geneva Convention (International Committee of the Red Cross 2025)* <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-2/commentary/2025?activeTab=1949GCs-APs-and-commentaries#__Toc211431406> accessed 12 April 2025.

³⁹ *ibid.*

⁴⁰ ‘Article 2’ (n 37).

⁴¹ Geneva Convention IV art 4(4).

⁴² Peeter Kaasik, ‘Eesti Rahvusväeosade Formeerimisest Nõukogude Armees Koosseisus Aastatel 1940-1955 (Ethnic Estonian Units in the Soviet Army During the Period 1940–1955)’ (2011) 1 *Estonian Yearbook of Military History* 102, 107, 111-117.

Drafters of the Convention were conscious of the fact that it, by the very nature of public international law, could not bind states that did not ratify the treaty.⁴³ Nevertheless, states considered whether the Convention's protections could be extended to all civilians or, when that was deemed unlikely to pass, to civilians of a non-State Party if the State Party was given the chance to accept the Convention's terms for the duration of the conflict. The Rapporteur concluded that, per general understanding, the State Party would be obliged to apply the Convention insofar as the other, non-contracting State agreed to fulfill the treaty. The ICRC has retained that reasoning and believes that in the spirit of all four Geneva Conventions, State Parties must apply the Conventions until the non-Party has declared its opposition to the Conventions' applicability. It must be noted that the ICRC itself admits that this is not an obligation set out in the treaty and is merely its own interpretation of its purpose.

1.7. Question of citizenship

Per Article 4 of the Convention, "persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals." Nationals of a State which is not bound by the Convention are not protected by it. The Geneva Convention thus expressly excludes citizens of states that are not parties to it.⁴⁴ The Baltic states could not have realistically ratified the Convention until 1991, but that does not change the fact that they acceded to the Geneva Conventions only in 1991 (Latvia), 1993 (Estonia), and 1996 (Lithuania), thus after the events being examined.⁴⁵ However, the citizens of Estonia, Latvia, and Lithuania were granted Soviet citizenship.⁴⁶

The fact that they were made citizens of the Union could also render them unable to invoke the Convention's protection. Upon a strict reading, the text states that the persons must be in the hands of a Power of which they are not nationals, which would exclude the citizens of the

⁴³ 'Article 2' (n 37).

⁴⁴ Geneva Convention IV art 4.

⁴⁵ 'Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.: State Parties' <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/state-parties?activeTab=1949GCs-APs-and-commentaries>> accessed 28 February 2026.

⁴⁶ 'NSVL Kodakondsuse Omandamise Korra Kohta Leedu, Läti Ja Eesti Nõukogude Sotsialistlike Vabariikide Kodanike Poolt: Seadlus 7 Septembrist 1940 (Regarding the Acquisition of Citizenship by the Citizens of the Lithuanian, Latvian and Estonian Soviet Socialist Republics: Law of 7th September 1940)', *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a. (Collection of the laws of the USSR and USSR Supreme Council's Presidium: 1938-june 1944)* (NSVL Ülemnõukogu Teataja 1940 nr 31 (USSR Supreme Soviet Gazette 1940 nr 31) 1940) <<http://www.digar.ee/id/et/nlib-digar:440311>> accessed 30 March 2026.

Baltic states who, due to remaining in the occupied territories, were forcibly made citizens. The 2025 Commentary adds that granting protected persons the nationality of the Occupying Power cannot be used to circumvent the prohibition.⁴⁷ Allowing this reading to prevail would allow the Soviet Union to avoid its international obligations through the illegal action of annexation of occupied territory into the Union. Citizenship was imposed on local inhabitants and their descendants after the Red Army had established control over the Baltic states. Throughout the occupation, Estonians, Latvians, and Lithuanians effectively “found themselves in the hands of a Party to the conflict or Occupying Power of which they are not nationals”.

Furthermore, it is a generally accepted principle of international law that a state cannot rely on domestic law as a defense for violations of international law. Provided that the conditions for the law of occupation under international law are met, which is examined in a later chapter, the domestic law of the Soviet Union cannot alter the statehood Estonia, Latvia, and Lithuania possessed under international law. At the time of the Convention’s adoption, the dominant approach was that international law does not interfere in a state’s relations with its own nationals.⁴⁸ However, that view does not reflect cases in which another state’s, or, in this instance, multiple states’, sovereign rights over its citizens were violated in violation of existing international law.

Additionally, Estonians, Latvians, and Lithuanians living in these states were effectively dual nationals, even though the Soviet authorities did not acknowledge this in practice. The Baltic embassies abroad that were able to continue working continued to issue passports and other documents on behalf of their states.⁴⁹ The acceptance of these passports and documents was not uniform, but, again, this is more likely a reflection of practical realities rather than an extension of the views states held on the Baltic states’ legal status.⁵⁰ Moreover, after re-establishing statehood, all three states granted immediate birthright citizenship to individuals and their descendants who had been or would have been eligible under existing national law prior to the 1940 occupation.⁵¹

International law has addressed the issue of multiple nationalities under the Geneva Convention before. The general understanding has been that, in cases involving multiple nationalities, the

⁴⁷ ‘Article 51’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) 51 <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-51/commentary/2025?activeTab=1949GCs-APs-and-commentaries#c__Toc211373962> accessed 3 April 2026.

⁴⁸ ‘Article 4’ (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-4/commentary/1958?activeTab=1949GCs-APs-and-commentaries>> accessed 28 February 2026.

⁴⁹ Mälksoo (n 16) 127.

⁵⁰ *ibid* 127.

⁵¹ *ibid* 186–189.

dominant nationality must be determined in accordance with international law standards.⁵² The International Criminal Tribunal for the Former Yugoslavia emphasized that IHL is “a body of law that is not grounded on formulistic postulates” and endorsed a flexible interpretation of nationality, such as based on ethnicity and allegiance, for the purposes of applying the Geneva Convention.⁵³ The ICC has also directly endorsed this approach, and so has the Extraordinary Chambers in the Courts of Cambodia.⁵⁴ State acceptance, at least, of a somewhat flexible approach to citizenship can be implied. It does not change the requirement of Article 4, but rather demonstrates that there is international acceptance of a more progressive approach.

During Soviet rule, ethnicity remained a significant part of identity for Estonians, Latvians, and Lithuanians. It also aligns with the principle of self-determination, as it remains generally accepted that, even though Baltic citizens eventually accepted the Soviet occupation as a fact, they did not consider the Soviet system their own and largely remained loyal to the original Baltic Republics and the political and legal systems they represented. The right to self-determination has also been used by the Baltic states to justify legal continuity internationally and in their respective Constitutions and other foundational documents.

The ICRC has endorsed the view that substantial relations, rather than formal ties to citizenship, should be the determining factor in deciding which nationality should be deemed the dominant one.⁵⁵ It also directly endorsed the ICTY’s approach and commended its flexible but consistent evaluation of these matters in its jurisprudence.⁵⁶ The endorsements admittedly also do not make this into a binding legal obligation.

The citizenship question is perhaps the most difficult one in this chapter. On the one hand, Estonians, Latvians, and Lithuanians were made Soviet citizens, and Soviet laws were applied to them. That act, at first glance, seemingly allows the application of the Convention on account of being citizens of and on the territory of a State Party. On the other hand, it was clearly an attempt to legalize the forcible annexation and occupation of the Baltic states. It was done through domestic law (albeit within a multinational union) and therefore cannot be used to justify violations of international law. Not including Soviet citizenship would also exclude Balts from the Convention's protection, as these states could not join the Convention while

⁵² ‘Article 4’ (n 48).

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ *ibid.*

existing primarily in the *de jure* realm. Citizens also cannot invoke the Convention against their own state, per Article 4.⁵⁷

The text of Article 2 on the application of the Convention is far more unequivocal, as it states the Convention applies to all cases of partial or total occupation of the territory of a State Party. Added together, a strict reading of the provisions implies that the Geneva Convention(s) were in fact applicable on the territory of the Baltic States as (involuntary) members of the USSR, but not applicable to the actual inhabitants either because they were in the hands of a state they were citizens of or because they were citizens of states that were not actually parties to the Convention. Such a situation is clearly nonsensical in practice.

It should also be considered that the Geneva Conventions were a direct response to the dereliction of international obligations by states leading up to and throughout the Second World War. The Baltic States' occupation could not have taken place without the War, as the treaties that allowed the presence of the Soviet Army on their territories and thus enabled the Soviet Union to take control of the states were, in fact, allegedly to counter the threat emanating from Germany. Furthermore, the Soviet Union's control over the Baltic states was accepted *de facto* by other states in the later years of the war or even after that, when it became clear that without military intervention from other states, the Soviet Union would not relinquish its control over these territories. Without the events of World War 2, the occupation could not have started, and it could possibly not have continued as it did.

The drafters of the Geneva Convention were also concerned about the avoidance of international obligations by legal technicalities. One of the examples listed is the German annexation of Poland, after which Germany claimed that since Poland did not exist as a legal entity, Polish inhabitants were not subject to German domestic law, and thus international humanitarian law rules that protected civilians no longer applied.⁵⁸ The Soviet Union then and the Russian Federation today have made very similar arguments regarding the cessation of the "original" Baltic Republics. Per the 2025 ICRC Commentary, the drafters were explicitly clear that wartime annexation was contrary to international law and that the law of occupation would continue to apply.⁵⁹

⁵⁷ 'Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) (Adopted 12 August 1949, Entered into Force October 1950)' (n 6) art 4.

⁵⁸ 'Article 47', *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-47/commentary/2025?activeTab=1949GCs-APs-and-commentaries#Fn_BFC30D61_00102> accessed 21 March 2026.

⁵⁹ *ibid.*

To consider only a strict approach under Article 4 would thus be contradictory with the purpose and object of the Geneva Convention in multiple ways. Firstly, it does not consider the purposes of the Convention in both directly responding to violations of international law carried out during the Second World War and in attempting to close the gaps that states exploited in previous treaties to avoid liability. It also does not consider that, at least in this particular instance, the states in question never had the chance to accept the terms of the Geneva Conventions. Moreover, multiple international law tribunals and bodies, including the ICRC, which holds a special role for the purposes of this treaty, have endorsed a flexible approach to the treaty and underlined its purpose in protecting all civilians, even when states are not expressly obliged to do so. Finally, it should be considered that the possible violation analyzed in this thesis could only take place as a result of previous violations of existing international law.

2. Fact of occupation

This chapter covers the basic history of the law of occupation, which is necessary to understand the state of international law as it was applied at the time, prior to the UN Charter and subsequent attempts to codify international law. Firstly, the roots of the law of occupation are discussed, focusing on how and why *de facto* and *de jure* concepts of state sovereignty came to be separated. Then, the thesis focuses on the history of the prohibition of legislative changes to occupied territories. The logical conclusion, then, is the events in the Baltic states starting in 1939, the manner in which the Soviet occupation was enacted, and whether this meets the definition of occupation under the Hague and Geneva Conventions.

2.1. Law of occupation – historical separation of *de jure* and *de facto* sovereignty

The roots of the law of occupation trace back to the idea of national self-determination, a concept that emerged from the French Revolution.⁶⁰ In Europe, the emergence of this idea became increasingly important to the legitimacy of governments, thereby leading to the increasing rejection of the previously prevalent doctrine of conquest, which did not consider the will of the inhabitants of conquered territories.⁶¹ The doctrine of conquest had allowed the transfer of sovereign title to territory once it was under the effective control of the Occupying Power. The Concert of Europe, which Russia was a part of, began to limit non-consensual conquest in the first decades of the 19th century, although it did not prohibit it.⁶² Opposition to the doctrine was instead led by Latin American states, which also championed the duty of non-recognition before it became more well-known as the Stimson doctrine.⁶³

The law of occupation emerged as a field of law because states needed to distinguish between annexation/conquest and occupation. Their reasons were primarily that sovereignty, as a claim to exclusive control over territory and its people, crystallized, and that the balance of power among European powers became clearer.⁶⁴ According to Benevisti, the law of occupation as we know it today therefore had two distinct reasons for it: the general emerging understanding of war as a scourge of humanity, which required states to start taking action to protect the lives

⁶⁰ Eyal Benvenisti, 'The Origins and Concept of Belligerent Occupation' (2008) 26 *Law and History Review* 622, at 627.

⁶¹ Ingrid Brunk and Monica Hakimi, 'The Prohibition of Annexations and the Foundations of Modern International Law' 118 *417* <<https://doi.org/10.1017/ajil.2024.26>>. at 427

⁶² *ibid.*

⁶³ *ibid.*

⁶⁴ Benvenisti (n 17) 622.

and property of inhabitants of the territory in question, and the need to respect the rights of the sovereign ousted government.⁶⁵ Moreover, legal state sovereignty as such began to be seen as the ability and the right to exclude actions by other states in its own territory and the ability to participate in international relations on an equal (legal) footing with other states.⁶⁶ At the same time, the distinction between *de jure* and *de facto* situations began to be more widely accepted.⁶⁷

In 1874, European powers signed the non-binding Brussels Declaration on the invitation of the Russian Tsar Alexander II. The Declaration defined occupation as a territory being “actually placed under the authority of the hostile army”.⁶⁸ This formulation of occupation would carry on to the later binding international instruments. The separation between *de facto* control over the territory and the legal title to a territory was also confirmed in the 1880 Oxford Manual, which stated that the occupant’s authority is “essentially provisional in character” and that *de jure* sovereignty does not change during the war.⁶⁹ The Manual also underlined the inherently temporary and flexible nature of occupation.⁷⁰

The Manual too was a non-binding instrument adopted by the Institute of International Law, which credited the Russian Tsar’s convening of states for the Brussels Declaration for its own work.⁷¹ Russia did not adopt the Manual. Nevertheless, the principle remained generally accepted, as evidenced by the 1925 *Affaire de la Dette Publique Ottomane* Arbitral Award, which explicitly confirmed that occupation does not confer sovereign title.⁷² This shows that the separation of *de jure* and *de facto* sovereignty is an older principle of international law, accepted by international lawyers and states alike, even prior to and outside its codification in treaties.

At the turn of the 19th and 20th centuries, the doctrine of belligerent occupation and other essential IHL principles were finally codified in the Hague Conventions of 1899 and 1907.⁷³

⁶⁵ *ibid* 622.

⁶⁶ Salvatore Fabio Nicolosi, ‘The Law of Military Occupation and the Role of *de Jure* and *de Facto* Sovereignty’ 31 *Polish Yearbook of International Law* 163, 165.

⁶⁷ Salvatore Fabio Nicolosi, ‘The Law of Military Occupation and the Role of *de Jure* and *de Facto* Sovereignty’ 31 *Polish Yearbook of International Law* 163, 165.

⁶⁸ ‘Project of an International Declaration Concerning the Laws and Customs of War’ <<https://ihl-databases.icrc.org/en/ihl-treaties/brussels-decl-1874?activeTab=>> accessed 1 October 2026.

⁶⁹ The Laws of War on Land (Oxford Manual) 1880 art 6.

⁷⁰ *ibid* 44.

⁷¹ *ibid* Preface.

⁷² *Affaire de la Dette Publique Ottomane (Bulgarie, Irak, Palestine, Transjordanie, Grèce, Italie et Turquie)* (1925) I Reports of International Arbitral Awards 529, 555.

⁷³ Salvatore Fabio Nicolosi, ‘The Law of Military Occupation and the Role of *de Jure* and *de Facto* Sovereignty’ 31 *Polish Yearbook of International Law* 163, 175

The conventions themselves were relatively constrained by modern standards but were recognized as customary law by the start of the Second World War. Both Conventions confirm the temporary nature of occupation and do not confer upon the occupant any sovereign title to the occupied territory.⁷⁴ The Russian state accepted this differentiation by ratifying both Conventions in 1900 and 1909, respectively. It also formally renounced conquest, or the doctrine that confers legal title based on factual control of the territory, after the First World War.⁷⁵

2.2. Law of occupation – prohibition on changes to the political and legal order

It is only logical that, since occupation does not confer a legal title, it is not allowed for the Occupying Power to make changes to the political, legal, or economic order of the territory. The aforementioned Brussels Declaration states that the laws in place at the time of peace must be preserved and not suspended or replaced unless absolutely necessary, as already stated in Article 3.⁷⁶ In fact, these two objectives are connected in multiple instruments. Again, the Oxford Manual also makes the same connection.⁷⁷ It also clearly states that occupation cannot be used to change the nationality of the inhabitants.⁷⁸ This prohibition thus exists both for the sake of preserving legal sovereignty and for perfectly practical reasons.

The rule was sufficiently established by the latter half of the 19th century that, when Russia occupied Bulgaria in 1877-1878 during the Russo-Turkish War, it was heavily criticized for reorganizing the local administrative system.⁷⁹ The Russian state justified the intervention by claiming that the local administration had been oppressive toward the Bulgarians and that the Occupying Power was therefore justified in making changes. Additionally, as the purpose of the occupation was to annex Bulgaria, these changes were, per the Russian state, considered permissible.⁸⁰ It is unclear what legal principle would afford title to territory based on such claims. Furthermore, Russia claimed the accusations were made by the “Turcophile European press” and thus could be discarded. These justifications are echoed in the occupation of Estonia, Latvia, and Lithuania in 1940 and in both the 2014 and 2022 invasions of Ukraine.

⁷⁴ Salvatore Fabio Nicolosi, ‘The Law of Military Occupation and the Role of de Jure and de Facto Sovereignty’ 31 *Polish Yearbook of International Law* 163, 175

⁷⁵ Brunk and Hakimi (n 61). at 429

⁷⁶ Brussels Declaration art 3

⁷⁷ The Laws of War on Land (Oxford Manual) art 43,44.

⁷⁸ *ibid* 46.

⁷⁹ Benvenisti (n 17) 645.

⁸⁰ *ibid* 645.

International law has differentiated between the de jure and de facto authorities for a while. Practice has been inconsistent, particularly among European powers for territories outside of Europe, but by the end of the 19th century at the latest, international law did not confer legal ownership purely by being able to control territory. During the 19th century, further efforts were made to prevent Occupying Powers from conquering or annexing territory and then imposing their own political and legal systems onto local inhabitants. These principles were used in the political and legal discourse at the time, including against the Russian state.

2.3. Definition of occupation in the Hague and Geneva Conventions

The text of the definition of occupation in both Hague Conventions is identical: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation applies only to the territory where such authority is established, and in a position to assert itself.”^{81, 82} The definition provided is rather technical and focused on pure facts. There are no minimum conditions to be met to determine that an occupation is taking place beyond military control over territory, per the HCs. The Hague Regulations were also considered applicable during the “peaceful” occupations of Denmark and Czechoslovakia by Nazi Germany during the Second World War, which involved little to no military confrontation.⁸³ Silvija Gerviene, too, determined that authors focusing on the issue have largely determined that a wider application of occupation, without the express need for military operations to occupy a country.⁸⁴

Occupation is also not defined in the Geneva Conventions. The drafters of the Geneva Convention were concerned that states might avoid obligations by abusing legal technicalities, for example, by failing to recognize the state of war or to acknowledge occupation without hostilities.⁸⁵ The 1947 Commission, preparing the text, particularly underlined that states ought to follow the principles outlined in the future Convention even when not necessarily obliged to do so.⁸⁶ Flexible interpretation of facts on the ground has thus always been part of the GC.

⁸¹ Hague Convention II art 42.

⁸² Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. art 42.

⁸³ Mälksoo (n 16) 146.

⁸⁴ Silvija Gerviene, ‘Reparation in International Law: Remedies for Victims of Soviet Occupation’ (Doctoral thesis, Vytautas Magnus University, Mykolas Romeris University 2018) 48.

⁸⁵ *Report on the Work of the Conference of Government Experts for the Study of the Conventions for the Protection of War Victims* (International Committee of the Red Cross 1947) 8 <https://tile.loc.gov/storage-services/service/ll/llmlp/RC_report-1947/RC_report-1947.pdf> accessed 3 April 2026.

⁸⁶ *ibid.*

2.4. Statehood of the Baltic states, recognition by Russia

The Soviet Union recognized the state of Estonia on February 2nd, 1920, with the Tartu Peace Treaty, which came into force on March 30th, 1920.⁸⁷ Estonia considers this treaty to be in force to this day, despite the events of 1940-1991, and has constitutionally confirmed its continuity.⁸⁸ The Russian government vehemently objects, claiming it is merely a historical document that Estonia is using to pursue territorial claims.⁸⁹ Similarly, the Soviet Union recognized the Republic of Latvia by the Riga Peace Treaty on August 11, 1920, which entered into force on October 4, 1920. Lithuania achieved its independence by the Moscow Peace Treaty, signed on October 14, 1920. The treaty entered into force on October 14, 1920. Each treaty contained provisions under which the Soviet Union recognized the independence and sovereignty of the Baltic states unreservedly and irrevocably. With these treaties, the Soviet Union expressly recognized the rights of the Estonians, Latvians, and Lithuanians to self-determination.⁹⁰

Multiple treaties were also concluded between the Baltic states and the USSR between 1920 and 1940 that prohibited aggression between the states. As members of the League of Nations, the states were bound by the Covenant of the League of Nations, whose Article 10 obliged member states to “respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.”⁹¹ There were admittedly disagreements over whether the Article continued to allow annexations by war, and, if so, whether that included all wars.⁹² As will be explained later in the chapter, the occupation of the Baltic states was achieved in the context of the Second World War through military action. The Soviet Union was expelled from the League of Nations on December 14, 1939 after invading Finland, although its legality is questioned by Leo Gross due to significant procedural deviations from the procedure envisioned by the Covenant.⁹³ Thus, whether the Covenant bound the Soviet Union after December remains debatable.

⁸⁷ Tartu Peace Treaty, 2 February 1920.

⁸⁸ The Constitution of the Republic of Estonia 1992 para 122.

⁸⁹ On submitting a proposal to the Russian President on signing agreements between the Russian Federation and the Republic of Estonia on the Russian-Estonian state border and on delimiting maritime space in the Narva Bay and the Gulf of Finland 2013.

⁹⁰ Mälksoo (n 16) 80.

⁹¹ Covenant of the League of Nations 1919 art 10.

⁹² Brunk and Hakimi (n 61) 429.

⁹³ Leo Gross, ‘Was the Soviet Union Expelled from the League of Nations’ (American Journal of International Law) 39 American Journal of International Law 35, 42, 43.

All four states had ratified the 1928 Pact of Paris, also known as the Kellogg-Briand Pact, when it came into force on July 24, 1929.⁹⁴ The states renounced war as an instrument of national policy and agreed to resolve disputes peacefully.^{95, 96} Academics have even written that the Pact put an end to the doctrine of conquest for good.⁹⁷ The treaty text is extremely short and does not define either national policy or the nature of pacific dispute resolution, nor the legality of coercive measures.

The Treaty of Paris was accompanied by the so-called Litvinov Protocol, which immediately implemented the Treaty of Paris and reconfirmed the state parties' renunciation of war as a national policy.⁹⁸ The Protocol was signed by the Soviet Union, which initiated it, and by all three Baltic states.⁹⁹ Estonia, Latvia, and the Soviet Union were also parties to the 1933 Convention for the Definition of Aggression, which expressly stated in its Preamble that the Briand-Kellogg Pact prohibited all aggression.¹⁰⁰ The Convention's state parties also agreed that political, military, economic, or other considerations cannot be used as justifications for aggression.¹⁰¹ Its annex also clarified that this prohibition includes its political, economic, or social structure as well as alleged defects in its administration.¹⁰²

2.5. Red Army's military operations towards the Baltic states starting in 1939

Starting in early September 1939, the USSR began concentrating military divisions along its borders with Estonia, Latvia, and Lithuania while also imposing a sea and air blockade.¹⁰³ The Soviet Baltic fleet was being prepared for full combat readiness to block potential Estonian vessels from reaching Finland and Sweden, while also carrying land troops for a possible invasion.¹⁰⁴ A full land war never broke out because Estonia, Latvia, and Lithuania capitulated and signed mutual assistance treaties that allowed the Soviet troops and military installations on their respective territories. The only state to refuse such a treaty, Finland, was invaded,

⁹⁴ General Treaty for Renunciation of War as an Instrument of National Policy (Kellogg-Briand Pact or Pact of Paris).

⁹⁵ *ibid* 1.

⁹⁶ *ibid* 2.

⁹⁷ Brunk and Hakimi (n 61) 430.

⁹⁸ Protocol for the Immediate Entry into Force of the Treaty of Paris of August 27, 1928, Regarding Renunciation of War as an Instrument of National Policy 89 LNTS 369.

⁹⁹ *ibid*.

¹⁰⁰ Convention For the Definition of Aggression (adopted 3 July 1933) Preamble

¹⁰¹ Convention For the Definition of Aggression (adopted 3 July 1933) art 3

¹⁰² Convention For the Definition of Aggression (adopted 3 July 1933) Annex

¹⁰³ Tõnu Tannberg and Enn Tarvel, 'Documents on the Soviet Military Occupation of Estonia in 1940' (2006) 10 81, 83 <<https://doi.org/10.3176/tr.2006.1.06>>.

¹⁰⁴ *ibid* 84.

which became known as the Winter War. British ambassadors Charles Orde, ambassador to all three Baltic states, and William Seeds, ambassador to the Soviet Union, at the time both noted (separately) that these moves were preceding the upcoming annexation.¹⁰⁵

In the summer of 1940, the USSR once again began to put the troops stationed in the Baltic states into full combat readiness.¹⁰⁶ It also gradually moved its troops near the USSR-Baltic borders ever closer under the pretext of military exercises. Prisoner-of-war camps were readied for officers, policemen, and other agents of the Baltic states. Hospitals and military institutions were also being prepared for military action. The Baltic Fleet continued its air and sea blockade of Estonia and Latvia. On June 14, the Lithuanian Ambassador was confronted with the claim that his state had violated the mutual assistance pact and thus Lithuania had to accept more Soviet troops in its territory. The same ultimatums were made to his Estonian and Latvian counterparts on June 16. A combat order for the 8th Army to attack Estonia and Latvia had been prepared on June 13, days before any of these ultimatums were presented to the Baltic states' representatives.

During the following days, protests held by the local Communists supporting the Red Army were supported by said Army against counter-protesters. In both Riga and Tallinn, local law enforcement at first dispersed the protests, and they were only able to continue on the following days because the supposed protesters were accompanied by the Red Army.¹⁰⁷ The Soviet Army even began to make defense plans for towns such as Tartu due to the “increasing activity of all hostile forces” to the “local revolutionary movement” that had supposedly sprang up within the past few days among the working class.¹⁰⁸ In reality, many of the protesters in favor of joining the Soviet Union were Russian and had been brought into the Baltic states for this purpose.¹⁰⁹ Per Henry Kissinger, the participation rate was around 20% of the local population, while Russia reported a 95% participation rate.¹¹⁰ In July 1940, elections were held by the new puppet governments that ignored existing election laws and did not allow for non-Communist-approved candidates to run. For example, the Estonian President Konstantin Päts, under the direction of the Soviet military, justified the ignoring of mandatory deadlines and legislative requirements with the claim that the deadlines had been set for “normal times” and therefore

¹⁰⁵ Evgeny Tikhonravov, ‘British Policy towards the Incorporation of the Baltic States into the USSR: A Dilemma of de Facto and de Jure Recognition’ (2022) 62 *American Journal of Legal History* 133, 134.

¹⁰⁶ Tannberg and Tarvel (n 103) 89.

¹⁰⁷ *ibid* 87,88.

¹⁰⁸ *ibid* 88.

¹⁰⁹ Mälksoo (n 16) 75.

¹¹⁰ *ibid*.

simply could not be applied in the current “extraordinary times”, with no legal basis provided.

¹¹¹ Previous authors have found that election laws were violated in all three countries. ^{112, 113}

The Baltic states’ diplomats stationed abroad immediately rejected the election results for these reasons. ¹¹⁴

Naturally, all three Baltic states’ elections were won by local Communists who immediately proceeded to formally request accession to the Soviet Union on July 21st, 1940. These applications were quickly accepted. Lithuania was accepted on August 3rd; Latvia on August 5th, and Estonia on August 6th. ^{115, 116, 117} On the 7th of August, all three states’ citizens were made citizens of the Union, starting on the date their respective states had joined the Union. ¹¹⁸ Citizens who were abroad could report themselves to their local USSR embassies to receive citizenship or be granted citizenship regardless. ¹¹⁹

For the purpose of determining whether an occupation was taking place, the key detail is the necessity of the Red Army in organizing these elections. Not only was the Soviet Army present in the Baltic states, but it was the key factor in holding up the narrative of public support for Soviet presence and eventual incorporation into the Union. Soviet troops were used to

¹¹¹ Vabariigi presidendi otsus ja üleskutse (Decision and Call to Action by the President of the Republic) 1940. <https://dea.digar.ee/?a=d&d=paevalehtew19400706-178.2.3&e=-----et-25--1--txt-txIN%7ctxTI%7ctxAU%7ctxTA-----> accessed on 08 March 2026

¹¹² Mälksoo (n 16) 76.

¹¹³ Magnus Ilmjärv, ‘International Reverberation to Incorporation of Baltic States by Soviet Union in Summer 1940 and Later’ (2005) 9 *Acta Historica Tallinnensia* 29, 33.

¹¹⁴ Mälksoo (n 16) 75.

¹¹⁵ ‘Leedu Nõukogude Sotsialistliku Vabariigi Vastuvõtmise Kohta Nõukogude Sotsialistliku Vabariikide Liitu (Seadus 3.Augustist 1940) (On the Acceptance of the Lithuanian Soviet Socialist Republic into the Unions of Soviet Socialist Republics (Law of 3rd August 1940)’, *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a. (Collection of the laws of the USSR and USSR Supreme Council’s Presidium: 1938-june 1944)* <<http://www.digar.ee/id/et/nlib-digar:440311>> accessed 4 April 2026.

¹¹⁶ ‘Läti Nõukogude Sotsialistliku Vabariigi Vastuvõtmise Kohta Nõukogude Sotsialistliku Vabariikide Liitu (Seadus 5.Augustist 1940) (On the Acceptance of the Latvian Soviet Socialist Republic into the Unions of Soviet Socialist Republics (Law of 5th August 1940)’, *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a. (Collection of the laws of the USSR and USSR Supreme Council’s Presidium: 1938-june 1944)* <<http://www.digar.ee/id/et/nlib-digar:440311>> accessed 4 April 2026.

¹¹⁷ ‘Eesti Nõukogude Sotsialistliku Vabariigi Vastuvõtmise Kohta Nõukogude Sotsialistliku Vabariikide Liitu (Seadus 6.Augustist 1940) (On the Acceptance of the Estonian Soviet Socialist Republic into the Unions of Soviet Socialist Republics (Law of 6th August 1940)’, *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a. (Collection of the laws of the USSR and USSR Supreme Council’s Presidium: 1938-june 1944)* <<http://www.digar.ee/id/et/nlib-digar:440311>> accessed 4 April 2026.

¹¹⁸ ‘NSVL Kodakondsuse Omandamise Korra Kohta Leedu, Läti Ja Eesti Nõukogude Sotsialistlike Vabariikide Kodanike Poolt: Seadlus 7 Septembrist 1940 (Regarding the Acquisition of Citizenship by the Citizens of the Lithuanian, Latvian and Estonian Soviet Socialist Republics: Law of 7th September 1940)’ para 2, *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a. (Collection of the laws of the USSR and USSR Supreme Council’s Presidium: 1938-june 1944)* (NSVL Ülemnõukogu Teataja 1940 nr 31 (USSR Supreme Soviet Gazette 1940 nr 31) 1940) <<http://www.digar.ee/id/et/nlib-digar:440311>> accessed 30 March 2026.

¹¹⁹ *ibid* para 3

intimidate and sometimes even assault locals who showed any resistance to the narrative the Soviets wanted to tell.¹²⁰ Furthermore, without the Soviet Army's presence and actions, the elections factually could not have taken place. It is thus evident that the Baltic states were under the factual control of the Soviet Army by June 1940 at the latest.

This control continued throughout until 1994. The exact number of troops stationed in the Baltic states during these decades is still not publicly available. The implicit threat was ever-present. Before partisan activity was mostly ended in the 1950s, the Red Army had multiple divisions devoted to "fighting counter-revolutionary elements". Many of these partisans had fled into the woods and became "counterrevolutionaries" specifically to avoid the German and/or Soviet military draft during World War II.¹²¹ Those military units were notoriously violent and, when unable to reach partisans, instead used violence against their family and associates. The Soviet Army burned homesteads, killed civilians, looted homes and destroyed public buildings on a massive scale.¹²² For example, in a 1945 letter, the People's Commissar of the Estonian SSR alerted his superiors in Russia that 25% of the crimes reported in the third quarter of the year had been committed by the Red Army.¹²³ The underlying threat to civilians and society at large presented by the Army and other repressive organs was necessary to establish control over the Baltic states and to then gradually move towards a more (seemingly) civilian form of governance.

Locally stationed Soviet troops were also used to crush popular unrest against Soviet alignment in Hungary in 1956 and then stationed in Czechoslovakia after the Prague Spring in 1968 to ensure the local politics stayed on the course approved by the Kremlin.^{124, 125} Even through the layers of propaganda used to justify these military interventions, the implicit threat to any society in the Soviet sphere of influence was evident. Even once the USSR became the Russian Federation, it continued its military presence in the Baltic states without their consent, as was recognized by the UN and the CSCE at the time.¹²⁶ It continually used various excuses, which

¹²⁰ Tannberg and Tarvel (n 103) 87–88.

¹²¹ Meit Grossmann, 'Rahvusvahelise Õiguse Probleeme Seoses Metsavendlusega Nõukogude Liidu Poolt Okupeeritud Ja Annketeeritud Eestis Ning Teistes Balti Riikides (On the Issues of International Law Regarding Forest Brothers in Estonia and the Baltic States While Annexed and Occupied by the Soviet Union)' (University of Tartu 2022) 11.

¹²² Vytautas Zabiela and Vytautas Raudeliunas, *Judgment of Vilnius Tribunal* (2000) 150–154.

¹²³ Grossmann (n 121) 17 fn 66.

¹²⁴ 'Report of the Special Committee on the Problem of Hungary' (United Nations General Assembly 1957) A/3592 para 406,407 <<https://digitallibrary.un.org/record/712474?v=pdf#files>> accessed 4 April 2026.

¹²⁵ Otakar Odložilík, 'Stalinism in Czechoslovakia' *Britannica* <<https://www.britannica.com/topic/Czechoslovak-history/Stalinism-in-Czechoslovakia>> accessed 4 April 2026.

¹²⁶ Ineta Ziemele, 'State Continuity, Succession and Responsibility: Reparations to the Baltic States and Their Peoples?' *International Law from a Baltic Perspective* (BRILL 2020) 67.

did not conform to international law, to attempt to force the Baltic states into making concessions.¹²⁷

The Russian state, despite its overall opposing position, has in fact expressed some differing opinions. Russian diplomat A.Uldatov even admitted in 1996 that the agreements were coerced and could be called a “violent incorporation”, although he denied that this met the definition of occupation in the meaning of international law.¹²⁸ Russian history textbooks in the 2000s and 2010s acknowledged the role of military pressure in the incorporation of the Baltic states and Moldova into the USSR, particularly for the elections that supposedly legalized it. Still, the textbooks do not use words such as “occupation” or “annexation,” supposedly because of their emotional undertones.¹²⁹ Earlier textbooks had actually acknowledged annexation explicitly, but were gradually removed from circulation for political reasons.¹³⁰ Still, these events are framed as necessary actions for state security, and the viewpoints of the Baltics or other states are not given. This shows, yet again, how much refusal to acknowledge the Baltic states’ theses is about politics, not international law. The Russian state, on both the national and international levels, has thus acknowledged that military power was the crucial element to securing its hold over the Baltic states during the Soviet era.

2.6. Baltic legations and representatives abroad in 1940-1991

Soviet authorities were unable to completely prevent representatives of the original governments from at least attempting to continue their work. Jüri Uluots, who had been the prime minister of Estonia on June 16, 1940, when Estonia received the ultimatum regarding additional Soviet troops on Estonian soil.¹³¹ He had been replaced by a new Prime Minister, Johannes Vares, at the Soviets' orders. Nevertheless, as that appointment was not in conformity with the 1938 Constitution, Uluots continued to be the legitimate and highest-ranking Estonian representative, as President Päts was deported to Siberia in 1940.

¹²⁷ John Woodliffe, ‘The Stationing of Foreign Armed Forces Abroad in Peacetime’ (1994) 43 *International & Comparative Law Quarterly* 443, 446–448.

¹²⁸ Toomas Sildam, ‘Eesti-Vene Suhted Muutuvad Külmaks (Estonian-Russian Relations Are Turning Cold)’ *Eesti Päevaleht* (Moscow-Tallinn, 01 February 1996) 5
<[https://dea.digar.ee/?a=is&oid=eestipaevaleht19960201&type=staticpdf&e=-----et-25--1--txt-txIN%7ctxTI%7ctxAU%7ctxTA-----](https://dea.digar.ee/?a=is&oid=eestipaevaleht19960201&type=staticpdf&e=-----et-25--1--txt-txIN%7ctxTI%7ctxAU%7ctxTA----->)> accessed 30 March 2026.

¹²⁹ Mariya M Yarlykova and Xunda Yu, ‘Before and After the Fall of Communism: The Molotov–Ribbentrop Pact and Soviet Foreign Policy in 1939–1940 in Soviet and Post-Soviet Russian Textbooks’ (439 AD) 70 *Problems of Post-Communism* 439, 448.

¹³⁰ *ibid.*

¹³¹ Lauri Mälksoo, ‘Professor Uluots, the Estonian Government in Exile and the Continuity of the Republic of Estonia in International Law’ (2000) 69 *Nordic Journal of International Law* 289, 290–291.

As such, he attempted to negotiate with the Germans in 1941 and convened Estonian political and legal leadership when he could to preserve Estonian statehood as much as possible. The day before his death, he transferred his tasks to the last legitimate Minister of Foreign Affairs, August Rei. Rei convened a government-in-exile in 1953 in Sweden, which continued its work until 1992. Admittedly, this government-in-exile was not recognized by foreign governments. Nevertheless, it illustrates the continued refusal of Estonians to accept Soviet rule. Neither the pre-ultimatum Government officials nor local inhabitants, as described in the previous section, would have accepted Soviet authority in any sense were it not for the Soviet Army's continued factual control over Estonian territory.

Neither Latvia nor Lithuania was able to form governments-in-exile, although Lithuanian President Antanas Smetona attempted to, and the Latvian Council of Ministers also tried to take action to organize.¹³² Latvian diplomats and consular services continued to work officially in the United States of America, the United Kingdom, Argentina, and Switzerland.¹³³ Three legations of Lithuania continuously functioned until the dissolution of the USSR itself in Washington, London, and the Vatican.¹³⁴ One legation of Estonia and one of Latvia also functioned for as long.¹³⁵ Their main function was symbolic. In some cases, states that recognized the Baltic states' incorporation into the USSR as illegal refused to extend the legations' accreditation when the original holder died, even when a successor was available. Mostly, it was justified by arguments of political and economic reality – there was no effective and legal government for these states. Thus, it was hardly a rejection of the illegality of incorporation, but rather a simple political and economic calculation.

In all three states, organized resistance emerged as “Forest Brothers”, men and women who at various times fled into the woods to avoid both Nazi and Soviet authorities. Many of the men fled specifically to avoid mobilization for either occupier. At peak size, the Forest Brothers comprised of 0,5-1% of the entire population.¹³⁶ Organized armed resistance in the Baltic states was active until the 1950s. In all three states, the aim was to restore the original Baltic

¹³² Anika Binnendijk and Marta Kepe, *Civilian-Based Resistance in the Baltic States: Historical Precedents and Current Capabilities* (RAND Corporation 2021) 33 <https://www.rand.org/pubs/research_reports/RRA198-3.html> accessed 4 April 2026.

¹³³ ‘International Recognition of the Republic of Latvia (de iure)’ (1 February 2022) <<https://www.mfa.gov.lv/en/article/international-recognition-republic-latvia-de-iure>> accessed 30 March 2026.

¹³⁴ Mälksoo (n 16) 123.

¹³⁵ *ibid.*

¹³⁶ Ronald J Misiunas and Rein Taagepera, *The Baltic States: Years of Dependence 1940-1980* (University of California Press 1983) 81.

Republics.¹³⁷ Finally, amnesty was offered in 1955 and again in 1956, suggesting some groups remained after numerous operations and battles, which killed the majority of the partisans.¹³⁸ Many of the documents of the authorities from that time remain unavailable. However, the released files paint a distinct picture of ongoing resistance even under extremely repressive conditions. In the late 1950s, the Lithuanian KGB had significant trouble rooting out underground groups, noting that new youth groups were consistently cropping up.¹³⁹ The same issue was noted in Latvia and Estonia.¹⁴⁰ In 1972, thousands of Lithuanians rioted for several days, and one person even self-immolated in protest of the Soviet occupation. It was the largest protest held in the Soviet Union at the time and was followed by thirteen more people attempting the same act in 1972 alone.¹⁴¹ These groups engaged in different activities and held different ideologies, but a pattern of independence-era songs, flags, and other symbols remained a constant concern for the Soviet state until its dissolution. In the repressive conditions of the USSR rule, the citizens of the Baltic states continuously found new ways to express their lack of loyalty to the Soviet Union both within the framework of allowed activities and groups, as well as in underground organizations.¹⁴²

2.7. Russian views on occupation and the Baltic states

The Soviet theory, at least in the abstract, was that annexation violated the right to self-determination.¹⁴³ In the 1917 Decree on Peace the Soviet state declared that annexation meant “every incorporation of a small or weak nation into a large or powerful state without the precisely, clearly and voluntarily expressed consent and wish of that nation, irrespective of the time when such forcible incorporation took place, irrespective also of the degree of development or backwardness of the nation forcibly annexed to the given state, or forcibly retained within its borders, and irrespective, finally, of whether this nation is in Europe or in distant, overseas countries.”¹⁴⁴ The Decree explicitly states that annexation, equated with seizure and violence, encompasses situations in which referendums are held while the troops

¹³⁷ Grossmann (n 121) 11.

¹³⁸ Misiunas and Taagepera (n 136) 90–91.

¹³⁹ Robert Hornsby, ‘Past, Present and Future: Youth Protest in the Soviet Union’s Baltic Republics after Stalin’ (2025) 34 *Contemporary European History* 1, 3 <<https://doi.org/10.1017/S0960777324000535>>.

¹⁴⁰ *ibid* 5,8

¹⁴¹ ‘Romas Kalanta, Ambassador of Freedom, and the Spring of 1972 in Kaunas’ *Office of the Seimas of the Republic of Lithuania* <https://www.lrs.lt/pls/inter/w5_show?p_r=8524&p_k=2> accessed 25 April 2026.

¹⁴² Binnendijk and Kepe (n 132) 55.

¹⁴³ Mälksoo (n 16) 91.

¹⁴⁴ Decree on Peace 1917.

of the stronger, or annexing, state are present in the territory. The Soviet Union also accepted the idea that illegally annexed states could continue to exist de jure.¹⁴⁵

The Soviet Union's position was that, as all populations were primarily made up of working classes, it could be presumed they would always use the principle of self-determination for alignment with the Soviet Union based on their class interests, at least eventually.¹⁴⁶ That position supports its thesis today on the situation of the Baltic states. Russia continues to maintain that the Baltic states' 1940 elections were legitimate and peaceful. The Red Army played no role, and the local working classes had genuinely expressed their free will. Therefore, the incorporation into the USSR was perfectly legal.¹⁴⁷ The original Republics ceased to exist, and in 1991, the Baltic states formed new states with no ties to the pre-WW2 statehood.¹⁴⁸

Interestingly, Russia recognized the annexation of Lithuania and violation of its sovereignty in 1940 by the treaty establishing relations between the states.¹⁴⁹ Lithuania has consistently relied on this admission to promote its thesis that Lithuania was, in fact, under occupation, although Russia continues to reject this claim.¹⁵⁰ R. Satkauskas also notes that the treaty accepts Lithuanian legal acts, such as the Act on the Re-establishment of the State of Lithuania and the Law on the Re-establishment of the Application of the Constitution of 12 May 1938, both of which recognized the USSR as an occupying power and the continued legal statehood of Lithuania.¹⁵¹

Latvia and the Russian Federal Socialist Republic recognized each other's irrevocable independence in the Treaty on Fundamental Relations between the two countries, but no further references are made to Latvian statehood prior to the treaty.¹⁵² The Fundamental Relations Treaty between Estonia and the Russian FSR references "shared historical experiences," but it, too, similarly to the treaty by Lithuania, references prior legal acts which directly state that

¹⁴⁵ Mälksoo (n 16) 41.

¹⁴⁶ *ibid* 91.

¹⁴⁷ 'Comments by the Russian Foreign Ministry Information and Press Department in Connection with Remarks by Some European Politicians Regarding the "Occupation" of the Baltic Countries by the Soviet Union and the Need for Russia to Condemn This' (*The Ministry of Foreign Affairs of the Russian Federation*, 4 May 2005) <https://mid.ru/en/foreign_policy/rso/1729697/> accessed 19 April 2026.

¹⁴⁸ Mälksoo (n 16) 61.

¹⁴⁹ 'Treaty on the Basis for Relations between States (Lithuania and Russian Federation) (Signed 29 July 1991) UNTS 1787'.

¹⁵⁰ Rytis Satkauskas, 'Expired Friendship? Some Aspects Of Treaty Validity' 28/2012 Lithuanian Foreign Policy Review 105, 110.

¹⁵¹ *ibid* 109–110.

¹⁵² 'Treaty on the Fundamentals of Interstate Relations between the Republic of Latvia and the Russian Soviet Federative Socialist Republic (Signed 13 January 1991)' <<https://likumi.lv/ta/en/lv/starptautiskie-ligumi/id/525>> accessed 19 April 2026.

Estonia considers Soviet rule as occupation.¹⁵³ To conclude, Russia, in fact, has made implicit references that it accepts and recognizes the Baltic states' claim of occupation in the case of 2 out of the 3 countries. As all were annexed under the exact same circumstances and as part of a single military operation, this consideration would extend to Latvia as well.

2.8. Principle of effectiveness vs principle of legality

One of the most common arguments made against the law of occupation applying to the Baltic states is based on the principle of effectiveness or *ex facto ius oritur* (the law arises from the facts). Its oppositional principle *ex injuria ius non oritur* instead proposes that legal consequences cannot arise from an illegal act. The principle of effectiveness is moreso applied to the argument of the Baltic states that they remain the same legal persons as were established in 1918. Most states, particularly Western states and the European Community, accepted the Baltic states' position and recognized the re-establishment of these states.¹⁵⁴ Of course, these were also the states the Baltic states had had diplomatic relations with prior to the Second World War.

Nevertheless, the main argument against applying the law of occupation was the duration of the alleged occupation. It is said that the law of occupation was meant to cover temporary periods, and a time period of around 50 years is simply too long. The argument goes that applying the law of occupation is illogical and ineffective. As previous authors have demonstrated, by the start of the Second World War and during it, the concept of belligerent occupation was already being interpreted more widely than was necessarily envisioned at the time of adoption of the HCs.^{155, 156} The law of occupation applying to the Baltic states has also been repeatedly recognized by the European Court of Human Rights and the Human Rights Committee, suggesting actual judicial bodies dealing with the applicable law do not struggle with such a notion.^{157, 158, 159} Additionally, this argument would paradoxically make international law ineffective in practice. There is simply no point to a prohibition if it becomes legal within an indeterminate time period. International law's often lauded problem is its lack

¹⁵³ 'Treaty on the Fundamentals of Inter-State Relations between the Russian Soviet Federative Socialist Republic and the Republic of Estonia (Signed 12 January 1991)' <<https://www.riigiteataja.ee/akt/13068080>> accessed 19 April 2026.

¹⁵⁴ Mälksoo (n 16) 50.

¹⁵⁵ *ibid* 174–176.

¹⁵⁶ Gerviene (n 84) 48.

¹⁵⁷ *Sõro v Estonia* [2015] European Court of Human Rights 22588/08 [6,8].

¹⁵⁸ *Kolk and Kislyiy* European Court of Human Rights 23052/04, 24018/04.

¹⁵⁹ *Sipin v Estonia* (Human Rights Committee).

of an enforcer. As such, there is no way to determine what this time period could be. If states were to conclude a treaty that legalizes occupation within, say, a year, then a state intending to occupy and annex a country would simply plan military operations for a year and one day. It would clearly turn an absolute prohibition into, at best, a strong suggestion.

Furthermore, to suggest that the annexation or incorporation into the Soviet Union legalized Soviet control over the Baltic states is to argue that a combination of the broader threat to use force, the use of Red Army troops in elections that were not legal under domestic law, the occupation of Naissaar, the arrests of Estonian crew in Estonian territorial waters by the Red Army, the home arrests of Baltic state officials, the shooting down of a civilian aircraft carrying foreign diplomats and other more or less illegal measures by themselves combined somehow make an act legal. Dozens of wrongs, when combined, effectively make a right. It must also be kept in mind that all of this also took place in the context of a wider war, with the Baltic states being situated between two major powers. The Baltics were well aware that states that might otherwise engage were themselves under occupation, already involved with the war in other capacities, or fending off adversaries themselves.

International law is a highly flexible system with no single decision-maker. Others have struggled with determining whether the law of occupation can apply precisely for this reason. In the author's eyes, it is only logical to continue with the view that the law of occupation was applicable. Firstly, to suggest otherwise is to undermine 30 years of state practice by the relevant states, decisions by multiple treaty bodies, and international organizations. The Russian Federation, as the state that assumed the Soviet Union's obligations and considers itself the same state, certainly has strong political incentives to deny the illegality of its actions.

The view also ignores the legal principle of non-recognition. As explained at the start of the Chapter, the idea of not recognizing illegally annexed territory as belonging to the Occupying/Annexing Power was already initiated in the 19th century. When it became US doctrine, as stated by US Secretary of State Henry L. Stimson in 1932, it immediately received wide support from European and other American states alike.¹⁶⁰ The doctrine made its way into various binding and non-binding instruments, such as the 11th March 1932 League of Nations Resolution, the Chaco Declaration of August 3, 1932, the Montevideo Convention, and the Saavedra Lamas Anti-War Treaty.¹⁶¹ Some have even argued that the combination of the aforementioned Resolution and the League of Nations Covenant Article 10 turned the non-

¹⁶⁰ Mälksoo (n 16) 99.

¹⁶¹ *ibid.*

recognition principle into a legally binding obligation.¹⁶² All of these existed before the occupation of the Baltic states began.

The law of occupation does not actually contain any provisions that limit its duration. It is a legal term that, unlike most other international law terms, is determined solely on the basis of pure facts. The preconditions and limitations are minimal. The applicability of an occupation is determined based on (military) control over territory. The Soviet takeover could not have happened without the military's presence, which was achieved by coercive means. One can argue if and to what extent coercion in and of itself as such was legal at the time, but regardless, the staged elections through which the Baltic states were turned into Socialist Republics and later applied to the USSR would not have taken place and would not have been able to show the desired results without the presence of the Soviet military. The actual representatives of the Baltic states, entitled to act and speak on behalf of these states by their function, immediately invoked the law of occupation, as well. The reason they were able to do this was precisely that the Soviet Army was unable to reach them.

Additionally, an often-forgotten fact for non-Baltic authors is that the Soviet Union recognized the Baltic states' right to self-determination by treaties. Even under the incredibly repressive conditions of Soviet rule, various movements sprang up to protest the Soviet presence and proclaim that they identified far more with the pre-World War II republics. The Soviet Union was well aware since the beginning that it had no true popular support. Otherwise, the military actions and the charade of elections would have been unnecessary. Despite its legal obligations and political commitments to uphold national self-determination and state sovereignty, it conducted military operations for close to a year in order to annex the Baltic states before it was able to start the process of incorporating the Baltics into the Union. The military's presence also continued until after the dissolution of the USSR. To uphold the position that annexing made the occupation legal is to render the Soviet Union's treaty obligations entirely meaningless.

This chapter has shown that the law of occupation can be applied to the Baltic states for the duration of Soviet rule. The requirements of the state of occupation under the HCs and the GC, which actually has a lower threshold, precisely because states systematically attempted to use technicalities to avoid the obligations they had accepted by ratifying the HCs, are met. Previous authors have already demonstrated why applying the law of occupation is the most appropriate

¹⁶² *ibid.*

legal solution to the issue of the Baltic states under Soviet rule from varying angles. Not all of them could be covered in this analysis, nor is there much point to simple repetition. The prohibition of aggression between the Baltic states and the USSR was in place, regardless of its role in general international law. The law of occupation was being interpreted more widely than the original intent had been by the start of, and especially following, the Second World War.

The end of the application of the law of occupation is either cessation, which legally took place in 1991 and practically in 1994 when Soviet/Russian troops actually left the Baltic states, or annexation, as recognized by the international community, which did not happen. If anything, recognition of the fact of occupation has gained more ground since the Baltic states re-established their independence, as case law has made its way through national and regional courts and other international bodies. Even the Soviet Union's allies did not accept its arguments when it would have been politically convenient and possibly outright beneficial for them to do so. The general issue has been analyzed and reanalyzed from every possible angle, from the legality of coercion at the time to the nature of legal continuity. Those considerations have their relevance, certainly, and are interesting for lawyers, but they also can remove attention from the primary notion of occupation: the simple fact of military control over territory by a state that does not hold the legal title to it. Subsequent attempts to legalize it, or at least make it seem significantly more complicated through various claims, most likely have motivations beyond a simple interest in the intricacies of international law.

3. Enlistment in the military

Military service was a compulsory duty of all (male) Soviet citizens.¹⁶³ The 1940 Union Constitution, which amended the previous 1936 Constitution, and all subsequent Union and individual states' Constitutions describe it as an “honorary duty”, along with the wider “sacred” duty to defend the homeland that is applicable to all citizens.¹⁶⁴ These rather expressive terms were not simply written down; refusal to serve in the military or desertion was a serious abdication of a citizen's responsibility toward the state.^{165, 166} Rather tellingly, general military service is described as defending the Soviet state's interests and assisting in the strengthening of its might and authority.¹⁶⁷ In short, the USSR was a highly militarized state, and all citizens were expected to participate.

3.1. Prohibition under International Law

The 1899 Hague Convention prohibits the compulsion of inhabitants of occupied territory to take part in military operations against their own country.¹⁶⁸ The prohibition is thus rather limited. The 1907 Hague Convention does not have a separate article on enlistment. Instead, article 55 of the 1907 Convention mirrors article 52 of the 1899 Convention and prohibits enlistment in any services that can be considered part of a military operation.¹⁶⁹ This significantly widens the scope of the prohibition and includes “hidden” or more indirect ways of securing local inhabitants' work for military operations.

Per Article 51 of the Geneva Convention “The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.”¹⁷⁰ The Geneva Convention closes the gap of

¹⁶³ Nõukogude Sotsialistlike Vabariikide Liidu Konstitutsioon (Põhiseadus) (Constitution of the Soviet Union of Socialist Republics 1940 para 132.

¹⁶⁴ *ibid* para 133

¹⁶⁵ *ibid*

¹⁶⁶ Nõukogude Sotsialistlike Vabariikide Liidu seadus üldisest sõjaväekohustusest: vastu võetud NSV Liidu Ülemnõukogu 7. koosseisu 3. istungjärgul 12. oktoober 1967. a.: muudatuste ja täiendustega mis on tehtud NSV Liidu Ülemkogu Presiidiumi 1980. a.... (Law on General Military Service of the Union of Soviet Socialist Republics: adopted at the 3rd Session of the 7th Meeting on 12 October 1967; amendments made by the Presidium of the Supreme Soviet of the USSR 1980) paras 2,3.

¹⁶⁷ *ibid* para 2

¹⁶⁸ Hague Convention II art 44.

¹⁶⁹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. art 55.

¹⁷⁰ Geneva Convention IV art 51.

indirect means to secure the labor, military, or otherwise, that can be secured through means that fall just short of coercion.

The 1958 Commentary describes the widespread practice of enlistment of civilians in both military and civilian capacity in both world wars to provide for the war economy, often carried out abroad as “resurrected slavery”, as these civilians were systemically and on a truly massive scale deprived of the international humanitarian law protections they were supposed to have.

¹⁷¹ The Commentary describes the prohibition as absolute and states that no derogation is allowed. ¹⁷² The Diplomatic Conference, when drafting the Convention, considered it important that the prohibition apply regardless of the opposing side, whether it be unrelated third states, resistance movements in the occupied territory, or the armed forces of their native state. ¹⁷³

3.2. Defense/military as the Union’s responsibility

The Soviet Union was, in its own words, a federal republic composed of individual Soviet Socialist Republics, which were equal to one another. ¹⁷⁴ Nominally, the Union’s organs had limited control over the Republics. For the purposes of this thesis, however, it is sufficient to note that the military, including national military troops, was explicitly in the legal purview of the Union as a whole¹⁷⁵, as were national defense and matters of war and peace.^{176, 177} National constitutions were based on the Union’s Constitution, although some room was left for local features and peculiarities. ¹⁷⁸ That is to say, national authorities played no substantial role in

¹⁷¹ ‘Article 51’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 1958) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-51/commentary/1958?activeTab=1949GCs-APs-and-commentaries>>.

¹⁷² ‘Article 51’ (n 47).

¹²⁶ *ibid.*

¹⁷⁴ Nõukogude Sotsialistlike Vabariikide Liidu Konstitutsioon (Põhiseadus) (Constitution of the Soviet Union of Socialist Republics) para 13.

¹⁷⁵ Nõukogude Sotsialistlike Vabariikide Liidu seadus üldisest sõjaväekohustusest: vastu võetud NSV Liidu Ülemnõukogu 7. koosseisu 3. istungjärgul 12. oktoober 1967. a.: muudatuste ja täiendustega mis on tehtud NSV Liidu Ülemkogu Presiidiumi 1980. a.... (Law on General Military Service of the Union of Soviet Socialist Republics: adopted at the 3rd Session of the 7th Meeting on 12 October 1967; amendments made by the Presidium of the Supreme Soviet of the USSR 1980) para 14g.

¹⁷⁶ Nõukogude Sotsialistlike Vabariikide Liidu Konstitutsioon (Põhiseadus) (Constitution of the Soviet Union of Socialist Republics) para 14i.

¹⁷⁷ Nõukogude Sotsialistlike Vabariikide Liidu seadus üldisest sõjaväekohustusest: vastu võetud NSV Liidu Ülemnõukogu 7. koosseisu 3. istungjärgul 12. oktoober 1967. a.: muudatuste ja täiendustega mis on tehtud NSV Liidu Ülemkogu Presiidiumi 1980. a.... (Law on General Military Service of the Union of Soviet Socialist Republics: adopted at the 3rd Session of the 7th Meeting on 12 October 1967; amendments made by the Presidium of the Supreme Soviet of the USSR 1980) para 14a.

¹⁷⁸ Nõukogude Sotsialistlike Vabariikide Liidu Konstitutsioon (Põhiseadus) (Constitution of the Soviet Union of Socialist Republics) para 16.

the enactment of national military service. Neither the legal commitment to send citizens to military service nor its actual application were up to individual states or their organs.

3.3. Legislation pre-WW2

As stated, military service was in the Union's purview and a constitutional duty. Conscription was imposed in Russia since the founding of the Red Army in 1918.¹⁷⁹ In 1930, the Union-wide law 'On the obligatory military service' was passed. Obligatory military service and the duty of all citizens to assist in national defense were included in the 1939 Constitution and other legislative acts.¹⁸⁰ The same underlying logic would carry through to later legislation.

3.4. Criminal penalties applied during World War 2

Desertion and simply not showing up for military service were criminal offenses under Soviet law. When the Baltic states were first incorporated into the Soviet Union, the Criminal Code of the Russian SSR was used, at least theoretically requested by the local authorities until local equivalents could be written.¹⁸¹ In fact, the Russian Criminal Code remained in effect until the late 1950s.¹⁸² The Criminal Code was applied retroactively to actions that had taken place in the Baltic Republics before the states were incorporated into the Union.¹⁸³

Treason, which included defection once drafted into the Red Army, was punished with the death penalty, along with confiscation of all property.¹⁸⁴ Adult family members who had assisted in escape, or defection, or had failed to notify the authorities could be punished with prison time of 5-10 years, along with confiscation of all property.¹⁸⁵ Refusing to serve in the Red Army was punishable by remedial work for up to a year.¹⁸⁶ Under aggravating circumstances, such

¹⁷⁹ 'The Law "On the Universal Military Duty" Adopted' <<https://www.prilib.ru/en/history/619624>> accessed 3 April 2026.

¹⁸⁰ *ibid.*

¹⁸¹ VNFSV kriminaalkodeks: ametlik tekst muudatustega kuni 1. aug. 1944. a. ühes paragrahvide järgi süstematiseeritud materjale sisaldava lisaga : ametlik tõlge

¹⁸² Ilmar Rebane, *Eesti NSV Kriminaalkodeks : Kommenteeritud Väljaanne (Estonian SSR Criminal Code: Commentary)* (Eesti Raamat 1965) 4 <<http://www.digar.ee/id/et/nlib-digar:412268>> accessed 4 April 2026.

¹⁸³ Jaan Soontak, *Nõukogude Kriminaalõigus Eestis: 50 Aastat Eesti Karistusõiguse Lähijalugu (Soviet Criminal Law in Estonia: The Short History of the Past 50 Years of Penal Law in Estonia)* (Juura 2025) 46.

¹⁸⁴ VNFSV Kriminaalkodeks : Ametlik Tekst Muudatustega Kuni 1. Aug. 1944. a. Ühes Paragrahvide Järgi Süstematiseeritud Materjale Sisaldava Lisaga : Ametlik Tõlge (*Criminal Code of the Russian Soviet Federal Socialist Republic: Until 1 August 1944 and Annexed Materials: Official Translation*), para 581 a <<http://www.digar.ee/id/et/nlib-digar:949610>> accessed 4 April 2026.

¹⁸⁵ *ibid* 581v.

¹⁸⁶ IT Goljakov, *Kriminaalõigus: Õpik Juriidilistele Koolidele* (Pedagoogiline Kirjandus (Pedagogical Publishing) 1946) 200.

as by forging documents or simulating illnesses or bodily injuries, it could be punished by up to 5 years of imprisonment.¹⁸⁷ Religious objections were also not permitted under the General Military Service Law.^{188, 189}

Counter-revolutionary sabotage, meaning failure to fulfill duties for negligent fulfillment with the goal of undermining the Soviet government, could be punished with anything from at least a year-long imprisonment, partial or full confiscation of property, or being shot to death.¹⁹⁰ Military service and participation in national defense were, of course, a constitutional duty and thus fall under this criminal act. Persistent avoidance of military service was punished with “remedial work” up to a year, or in cases of self-inflicted damage to health, falsely claiming an illness, falsifying documents, bribery, or due to religious conviction, up to five years.¹⁹¹ During wartime, failure to appear for labor service or rear guard duty could result in imprisonment for at least a year.¹⁹² These provisions were further applied until 1951.¹⁹³

3.5. Mobilization during World War II

The Soviet Union was invaded by Nazi Germany on June 22, 1941. On the same day, the Union announced a general mobilization in several military districts that included Estonia, Latvia, and Lithuania, starting the next day.¹⁹⁴ Several mobilization operations were conducted in the summer of 1941, involving men born at different times, those already conscripted previously, as well as those who had earlier been listed in the reserves.¹⁹⁵ Historian Peeter Kaasik has hypothesized that because many of those who were mobilized in 1941 were not used in military aspects, they were mobilized as part of the scorched-earth policy against the Germans, to ensure Estonian men would not be mobilized against the Soviet Union, as opposed to actually wanting Estonian (or Latvian or Lithuanian) conscripts in the Red Army.¹⁹⁶ This would make sense, as

¹⁸⁷ *ibid.*

¹⁸⁸ *VNFSV Kriminaalkodeks : Ametlik Tekst Muudatustega Kuni 1. Aug. 1944. a. Ühes Paragrahvide Järgi Süstematiseeritud Materjale Sisaldava Lisaga : Ametlik Tõlge (Criminal Code of the Russian Soviet Federal Socialist Republic: Until 1 August 1944 and Annexed Materials: Official Translation)* (n 184) para 594.

¹⁸⁹ Goljakov (n 186) 199.

¹⁹⁰ *VNFSV Kriminaalkodeks : Ametlik Tekst Muudatustega Kuni 1. Aug. 1944. a. Ühes Paragrahvide Järgi Süstematiseeritud Materjale Sisaldava Lisaga : Ametlik Tõlge (Criminal Code of the Russian Soviet Federal Socialist Republic: Until 1 August 1944 and Annexed Materials: Official Translation)* (n 184) para 581.

¹⁹¹ *ibid* 594.

¹⁹² Goljakov (n 186) para 595.

¹⁹³ *Eesti NSV Territooriumil Kehtiv Kriminaalkodeks : Ametlik Tekst Muudatustega Kuni 1. Juulini 1951. a. Ühes Paragrahvide Järgi Süstematiseeritud Materjale Sisaldava Lisaga* (1952).

¹⁹⁴ Tiit Noormets, ‘Mobilisation into the Red Army in Estonia in 1941’ *Estonians in Russian Armed Forces in 1940-1945 (M-Sel)*, vol 10 (Tallinn Print House 2011) 6.

¹⁹⁵ Kaasik (n 42) 116.

¹⁹⁶ *ibid* 118.

the political leadership was well aware of the widely differing opinions among Baltic peoples towards the Soviet Union.

Many of the Baltic conscripts, as well as those enlisted from other “untrustworthy” peoples, such as Finns, Hungarians, Tartars, and western Ukrainians, were used in “labor units” both close to the front and in the rear.¹⁹⁷ Even devoted communist soldiers from the Baltic states were met with mistrust and only earned the respect of the political decision-makers after the 201st Latvian Rifle Division fought alongside the 33rd Army or “the great Russian people”, as the newspaper Pravda put it, in the battle for Moscow in December 1941.¹⁹⁸ That particular division had been purged of politically unreliable higher officers, educated in Soviet political and military training, and had faced the Germans in battle before. Nevertheless, the political department of the 33rd Army had been instructed to be prepared to “eliminate possible undesirable incidents” before the battle.¹⁹⁹ Their bravery in battle was later mythologized and used for propaganda purposes. This instance is yet another demonstration that the Baltic states and their citizens were not considered true Soviets, and even after propaganda trainings and battle experience, they were, as Baltic nationals expected to be untrustworthy until proven otherwise.

National units were composed in 1941-192 not only in the Baltic states but also among Central Asian, Caucasian, and Russia’s Volga Urals’ populations, although half of them would be disbanded before even making it to the front.²⁰⁰ The same practice was followed by Nazi Germany starting in 1941.²⁰¹ At least some of the motivation for this move was the simple reality that many men in these units simply did not speak Russian, which remained the *lingua franca* of the Red Army until the dissolution of the USSR. National units were also necessary for propaganda. As Western states refused to recognize the Baltic states’ incorporation into the USSR, it was necessary to show Baltic men “liberating” their homelands and even leading the Red Army. For example, Soviet propaganda claimed that Lieutenant Lumiste (a clearly Estonian name) of the Red Army had raised the Soviet flag at Pikk Hermann tower, whereas earlier photographs and articles show it was two entirely different men with Slavic surnames.

202

¹⁹⁷ *ibid* 117.

¹⁹⁸ Konstantin Fuks, ‘The Struggle for Recognition and Belonging: Military Mobilization and Integration of Latvians into the Red Army during the Second World War’ (2025) 38 *The Journal of Slavic Military Studies* 101, 116 <<https://doi.org/10.1080/13518046.2025.2463174>>.

¹⁹⁹ *ibid* 113–116.

²⁰⁰ *ibid* 102.

²⁰¹ Kaasik (n 42) 130.

²⁰² *ibid* 132.

The previously described legal obligations and penalties did not simply remain on paper. One of the men mobilized in such a manner later described that they were warned that if they attempted to escape or aided in someone else escaping, they would be subjected to a military tribunal.²⁰³ Mobilized soldiers described being required to pledge allegiance to the Soviet state.²⁰⁴ There is even testimony that soldiers who were mobilized were later invoiced for coats issued by the Army.²⁰⁵

3.6. Enlistment post WW2

The practice of national units was ended in 1956 after Georgian military members refused to use forcible measures as commanded against their fellow nationals following public protests.²⁰⁶ The avoidance of national units dates back to the Tsarist Russian Empire, which also used military units and personnel to quell public uprisings. The authorities were similarly concerned that conscripts would be less likely to use force against people they knew or who spoke their native language.²⁰⁷ After this move, conscripts began serving their military service mostly in other states of the Union or in countries that belonged to the Warsaw Pact.²⁰⁸ Additionally, the Army was considered a useful vehicle for strengthening relations among the peoples of the USSR. It also increased the importance of knowing the Russian language, which was not only the language of the Army but was now needed to converse with fellow service members, as the other languages of the Union were not spoken by all of them.

This research paper regards the legality of mandatory general military service and not the actual experiences of the men and women enlisted. Many documents pertaining to the Red Army were removed and remain unavailable to the general public or even researchers. It is worth noting that Baltic conscripts were used in active conflicts and other dangerous situations after the Second World War as well. 36 Estonians, 51-63 Latvians (sources differ), and around 90 Lithuanians died in the Soviet invasion and subsequent decade-long war in Afghanistan.

²⁰³ Noormets (n 194) 34.

²⁰⁴ August Pusta and Pjotr Izmetjev, *Lahingutes Nõukogude Kodumaa Eest: Mälestusi Eesti Laskurkorpuse Lahingupäevilt Suures Isamaasõjas (In Battles for the Soviet Homeland: Memories from the Battle Days of the Rifle Corps in the Great Patriotic War)* (Eesti Riiklik Kirjastus (Estonian National Publishing) 1964) 36.

²⁰⁵ Noormets (n 194) 31.

²⁰⁶ Kristjan Luts, 'Eestlastest Ajateenijad Nõukogude Liidu Relvajõududes Külma Sõja Perioodil (Estonian-Born Conscripts in the Armed Forces of the Soviet Union during the Cold War Period)' (2012) 2 *Estonian Yearbook of Military History* 145, 150.

²⁰⁷ *ibid* 156.

²⁰⁸ *ibid* 150.

^{209,210,211} 17,000 men from the Baltic states were sent to the cleanup efforts in Ukraine after the Chernobyl disaster. ²¹² in 1968. was able to find Experiences in the Soviet Army differed widely, but experiences ranging from mistreatment to outright abuse were common, including those based on nationality. ²¹³

Local authorities and directors of schools, companies, and any other organizations were legally obliged to assist enlistment efforts. ²¹⁴ The aforementioned directors and organizations could also be held legally liable when they stopped an individual from turning up before the relevant authorities at the correct time. ^{215,216} In effect, society and civil organizations were all directed to enforce universal military service. Avoidance was made impossible by having multiple layers of society, from residential building managers to headmasters of schools, be involved in reporting to national authorities and ensuring their compliance.

The criminal penalties for desertion or ignoring military summons continued and applied until the dissolution of the USSR. The Criminal Code of the Russian SSR applied in Estonia, Latvia, and Lithuania until individual Criminal Codes were drafted. Criminal law was added to the individual Republics' competencies in 1957. ²¹⁷ The first Estonian Criminal Code was not drafted until 1961. Nonetheless, certain categories of crimes, such as military-related crimes, remained in the Union's competence. Criminal penalties for these violations were the same

²⁰⁹ Toomas Sildam, "How Do You Shoot People?": Remembering Afghanistan, 40 Years On' *ERR* (27 December 2019) <<https://news.err.ee/1018208/how-do-you-shoot-people-remembering-afghanistan-40-years-on>> accessed 20 April 2026.

²¹⁰ Ina Strazdiņa, 'Not Their Battle to Fight. Latvian Veterans Remember Trials of Soviet-Afghan War' *LSM.lv* (18 February 2019) <<https://eng.lsm.lv/article/society/society/not-their-battle-to-fight-latvian-veterans-remember-trials-of-soviet-afghan-war.a309933/>> accessed 20 April 2026.

²¹¹ Rokas M Tracevskis, 'Afghan Veterans View War with Mixed Feelings' *The Baltic Times* <<https://www.baltictimes.com/news/articles/5674/>> accessed 20 April 2026.

²¹² Kaja Rahu and others, 'Site-Specific Cancer Risk in the Baltic Cohort of Chernobyl Cleanup Workers, 1986-2007' <<https://pubmed.ncbi.nlm.nih.gov/23683549/>> accessed 19 April 2026.

²¹³ Andrew L Spivak and William Alex Pridemore, 'Conscription and Reform in the Russian Army' (2004) 51 *Problems of Post-Communism* 33, 35–36.

²¹⁴ Üldisest sõjaväekohustusest: Nõukogude Sotsialistlike Vabariikide Liidu seadus (Law on General Military Service of the Union of Soviet Socialist Republics) 1967 para 90,95,97.

²¹⁵ *ibid* 91.

²¹⁶ Nõukogude Sotsialistlike Vabariikide Liidu seadus üldisest sõjaväekohustusest: vastu võetud NSV Liidu Ülemnõukogu 7. koosseisu 3. istungjärgul 12. oktoober 1967. a.: muudatuste ja täiendustega mis on tehtud NSV Liidu Ülemnõukogu Presiidiumi 1980. a.... (Law on General Military Service of the Union of Soviet Socialist Republics: adopted at the 3rd Session of the 7th Meeting on 12 October 1967; amendments made by the Presidium of the Supreme Soviet of the USSR 1980) para 96.

²¹⁷ G Martin, I Rebane and H Randalu, *ENSV Kriminaalkoodeksi Põhimõtetest (On the Principles of the Criminal Code of the ESSR)* (Eesti Riiklik Kirjastus (Estonian National Publishing) 1961) p 6.

across all states.^{218 219} This thesis uses Estonian Criminal Codes, but the laws across all SSRs were the same in this area. Crimes related to the military were classified as crimes against the Union's interests as a whole.²²⁰

As of 1961, repeated ignoring of military summons was punishable with 1-3 years of imprisonment but could be extended to 5 years.^{221, 222} The same acts, when committed during times of emergency, could be punished by imprisonment of 5-10 years or the death penalty.²²³ These punishments were re-established in 1965 and 1972, 1979, until eventually being abolished in 1990.^{224, 225 226} This section could be used for both those already conscripted and those who had not been called for service before. The Commentary lists women who were called to act as medical personnel in the armed forces as an example.

A person could be called into service from the age of 18 to 27.^{227 228} The duration of service depended on the military unit one served in. It could also be affected by the level of education of the conscript. Most conscripts, meaning those in regular land forces, the Border Guard, Air Force, Naval shore units, and internal armed forces, would serve for 2 years.²²⁹ Service could take anywhere from a single year to four years.²³⁰ The Soviet Army was a reserve army. Men remained in the Army reserves until age 50, while women remained until the age of 40.²³¹ Military service was thus not even limited to the actual time spent in service, but the possibility

²¹⁸ Nõukogude Sotsialistlike Vabariikide Liidu seadus üldisest sõjaväekohustusest: vastu võetud NSV Liidu Ülemnõukogu 7. koosseisu 3. istungjärgul 12. oktoober 1967. a.: muudatuste ja täiendustega mis on tehtud NSV Liidu Ülemnõukogu Presiidiumi 1980. a.... (Law on General Military Service of the Union of Soviet Socialist Republics: adopted at the 3rd Session of the 7th Meeting on 12 October 1967; amendments made by the Presidium of the Supreme Soviet of the USSR 1980) para 2(2).

²¹⁹ Martin, Rebane and Randalu (n 217) 16.

²²⁰ Rebane, *Eesti NSV Kriminaalkodeks: Kommenteeritud Väljaanne (Estonian SSR Criminal Code: Commentary)* (n 182).para 2 comment b

²²¹ Martin, Rebane and Randalu (n 217) para 78(1).

²²² *ibid* 78(2).

²²³ *ibid* 79.

²²⁴ Rebane, *Eesti NSV Kriminaalkodeks: Kommenteeritud Väljaanne (Estonian SSR Criminal Code: Commentary)* (n 182) para 79.

²²⁵ Ilmar Rebane, *Eesti NSV Kriminaalkodeks: Kommenteeritud Väljaanne (Estonian SSR Criminal Code: Commentary)* (Eesti Raamat 1972) para 79.

²²⁶ Ilmar Rebane, *Eesti NSV Kriminaalkodeks: Kommenteeritud Väljaanne* (Eesti Raamat) para 79.

²²⁷ Üldisest sõjaväekohustusest: Nõukogude Sotsialistlike Vabariikide Liidu seadus (Law on General Military Service of the Union of Soviet Socialist Republics) para 10.

²²⁸ *ibid* 37.

²²⁹ *ibid* 13(a).

²³⁰ Kristjan Luts, 'Eestlased Nõukogude Armees 1968-1991 (Estonians in the Soviet Army 1968-1991)' *Ajalooline Ajakiri* (The Estonian Historical Journal) 253, 260-261.

²³¹ Nõukogude Sotsialistlike Vabariikide Liidu seadus üldisest sõjaväekohustusest: vastu võetud NSV Liidu Ülemnõukogu 7. koosseisu 3. istungjärgul 12. oktoober 1967. a.: muudatuste ja täiendustega mis on tehtud NSV Liidu Ülemnõukogu Presiidiumi 1980. a.... (Law on General Military Service of the Union of Soviet Socialist Republics: adopted at the 3rd Session of the 7th Meeting on 12 October 1967; amendments made by the Presidium of the Supreme Soviet of the USSR 1980) para 46.

of being summoned remained a possibility for long after. Additional training sessions after the completion of the original service could take 60 or 90 days.²³²

3.7. Requirement to swear allegiance

Both HCs prohibit compelling inhabitants of occupied areas to swear allegiance to the occupying power.^{233, 234} The Soviet Union required a military pledge from all members of the armed forces prior to the occupation of the Baltic states and then applied this mandate in the occupied areas.²³⁵ The text of the pledge is exactly what one would expect, reminding the pledging soldiers of the duty they now have to protect their homeland and follow superiors' orders. It also finishes with the rather dramatic sentence "Should I criminally violate this sacred pledge, let the loud might of Soviet law, the laboring people's general hatred and contempt hit me".²³⁶ One can assume the goal was to remind pledges of the criminal, administrative, and societal sanctions that could be used against them, thus ensuring compliance. The Soviet Union's propaganda described the swearing of allegiance as a sacred vow with political, military, and educational purposes.²³⁷ The mandatory pledge was carried through to the 1967 Law on General Military Service, and to its later amendments.^{238, 239}

²³² Luts (n 230) 261.

²³³ Hague Convention II art 45.

²³⁴ 'Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.' (27 November 1909) art 45 <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907/state-parties/ru?activeTab=default>>.

²³⁵ 'Töölis-Talurahva Punaarmee Sõjaväelise Vandetöotuse Teksti Kohta (Seadus 3.Jaanuaris 1939) (Law on the Text of the Working People's and Peasants' Red Army Military Pledge) (Law of 3rd January 1939', *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a. (Collection of the laws of the USSR and USSR Supreme Council's Presidium: 1938-june 1944)* (NSVL Ülemnõukogu Teataja (USSR Supreme Soviet Gazette)).

²³⁶ *ibid.*

²³⁷ NSV Liidu kodanike austav kohustus : [Suure Oktoobri saavutuste kaitsmise vajadusest] <http://www.digar.ee/id/et/nlib-digar:650269> p 19

²³⁸ Üldisest sõjaväekohustusest: Nõukogude Sotsialistlike Vabariikide Liidu seadus (Law on General Military Service of the Union of Soviet Socialist Republics) para 7.

²³⁹ Nõukogude Sotsialistlike Vabariikide Liidu seadus üldisest sõjaväekohustusest: vastu võetud NSV Liidu Ülemnõukogu 7. koosseisu 3. istungjärgul 12. oktoober 1967. a.: muudatuste ja täiendustega mis on tehtud NSV Liidu Ülemkogu Presiidiumi 1980. a.... (Law on General Military Service of the Union of Soviet Socialist Republics: adopted at the 3rd Session of the 7th Meeting on 12 October 1967; amendments made by the Presidium of the Supreme Soviet of the USSR 1980) para 7.

Propaganda

The Geneva Convention expressly forbids propaganda that encourages people from occupied areas to join the army of the Occupying Power.²⁴⁰ Per the 1958 Commentary, propaganda and coercion are often so tightly interlinked that it is difficult to differentiate between the two.²⁴¹ Pressure can be covert and subtle, which is why the Diplomatic Conference decided to prohibit both.²⁴²

Soviet propaganda emphasized Soviet soldiers from an early age, glorifying them in children's books and in youth organizations, starting from the age of 7.²⁴³ Soviet law mandated a military basic course in the 8th-10th grades as well as in universities from 1939 onwards.²⁴⁴ The bodies responsible for the program were the military commissariats, not teachers.²⁴⁵ The 1967 Law on General Military Service mandated basic courses starting from the 9th grade in all educational establishments.²⁴⁶ For young men who were not studying, any company, collective farm, or any other establishment they belonged to was mandated to ensure they received such education. It was mandatory for both boys and girls. The prohibition on propaganda is, like the prohibition on enlistment, an absolute prohibition.²⁴⁷

3.8. Protest movement against enlistment

The Geneva-49 movement sprang up in the late 1980s, when the political atmosphere was significantly more relaxed. A combination of social movements increased dislike for the Soviet Army. Environmentalists were concerned about environmental damage caused by military bases, for example, in April 1988, at the Raadi Airfield, jet fuel was noticed to be freely flowing into ditches and made its way into water reserves. Multiple organizations, both affiliated with the local Communists and not, raised concerns about the cleanup of Chornobyl had left on the men who had been sent there. Additional movements to protect dissidents, and as more stories

²⁴⁰ Geneva Convention IV art 51.

²⁴¹ 'Article 51' (n 171) 51.

²⁴² 'Article 51' (n 47).

²⁴³ Luts (n 230) 256.

²⁴⁴ Kristjan Luts, 'Eestlastest Ajateenijad Ja Ohvitserid Nõukogude Liidu Relvajõududes 1956–1991 (Estonian Co

²⁴⁵ *ibid.*

²⁴⁶ Üldisest sõjaväekohustusest : Nõukogude Sotsialistlike Vabariikide Liidu seadus (Law on General Military Service of the Union of Soviet Socialist Republics) para 55.

²⁴⁷ 'Article 51', *Commentary to the Geneva Convention* (International Committee of the Red Cross 1958) p 291 <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-51/commentary/1958?activeTab=1949GCs-APs-and-commentaries>>.

came out about the abuses of power in the military.²⁴⁸ As a result, a political movement sprang up in all three Baltic states, whereby men refused to serve in the Red Army, specifically citing the prohibition of military service under the Geneva Convention.²⁴⁹ Perhaps this event is the most consequential of this thesis, showcasing the continued belief that even in 49 years after the original annexation, Soviet rule continued to be seen as a foreign military occupation and that enlisted individuals were willing to risk administrative and criminal penalties in order to assert the rights international law of occupation affords those who live in these conditions.

²⁴⁸ Heiki Suurkask, 'Nõukogude Armee Vastane Protestilaine Eestis 1989. Aastal (Protest Wave against the Soviet Army in Estonia in 1989)' *ERR* (1 May 2025) <<https://www.err.ee/1609329615/noukogude-armee-vastane-protestilaine-eestis-1989-aastal>>.

²⁴⁹ Mälksoo (n 16) 159.

4. Law of State Responsibility

4.1. Law of State Responsibility on Aggression

The law on state responsibility, though codified only by the International Law Commission in 2001, has a long history. Codification efforts began in the 1930s, though the first Special Rapporteur on the subject did not begin his work until 1956.²⁵⁰ The principle of accruing responsibility for violations of contractual obligations was recognized by the Permanent Court of Justice²⁵¹ and various arbitral tribunals in the first half of the 20th century.²⁵² It is also a simple matter of basic logic: there is no rule if violating the rule has no consequences.

There is little doubt that aggression and continued violations resulting from said aggression would trigger the law of state responsibility. Aggression against another state(s) triggering state responsibility in particular is a violation of the foundations of international law. Sovereign equality can hardly exist when aggression is tolerated. While the legal system of the early 20th century ultimately failed to prevent war or guarantee equality among nations, as described in Chapter II, aggression was limited, if not outright prohibited, by several legal instruments at the start of the Second World War.

Soviet scholars, too, recognized that by the time of the Second World War, aggression constituted an internationally wrongful act that could trigger state responsibility.²⁵³ In fact, the Soviet Union supported the position that aggression and other methods of violating the maintenance of peace and security should be considered distinct, more serious violations of state responsibility that would be labeled as a crime.²⁵⁴ The prohibition on the use of force as introduced by the UN Charter likely had a role in this stance, but it must be reiterated that the ban on aggression was in force for the Soviet Union, both generally and vis-à-vis the Baltic states, by 1939. It should also be kept in mind that the Commission's work in the 1950s focused

²⁵⁰ James Crawford, 'Articles On Responsibility Of States For Internationally Wrongful Acts' (United Nations 2012) <https://legal.un.org/avl/pdf/ha/rsiwa/rsiwa_e.pdf> accessed 4 April 2026.

²⁵¹ *Phosphates in Morocco*, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 10, at p. 28. See also S.S. "Wimbledon", 1923, P.C.I.J., Series A, No. 1, p. 15, at p. 30; *Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; and *ibid.*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29.

²⁵² 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (United Nations 2001) 32 fn 41 <https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf>.

²⁵³ Mälksoo (n 16) 207.

²⁵⁴ Marina Spinedi, 'The Legislative History' *International Crimes of State: A Critical Analysis of the ILC's Draft Article 19 on State Responsibility* (Walter de Gruyter & Co 1988) 14.

on state responsibility for actions towards non-citizens and would later be largely discarded. As soon as the shift towards broader state responsibility began, the USSR consistently argued that acts of aggression should be treated more seriously and assigned a separate category of responsibility.²⁵⁵ Starting in 1976 it supported a provision known as draft Article 19 which would not make it into the final articles but stated that a serious breach of an international obligation for the maintenance of peace and security, violating a people's right to self-determination (including but not necessarily limited to by force), a serious breach of respect for the importance of safeguarding and preservation of a human being (prohibition on slavery, genocide) or by violations of the human environment would constitute an international crime against the international community as a whole.²⁵⁶ The USSR even agreed that certain internationally wrongful acts could entail new legal relationships with states other than the directly injured states.²⁵⁷

The categories listed were not a complete list of what could be an international crime, but it is noteworthy that, of the topic this thesis covers, almost all conditions for state responsibility are met. The Soviet Union undoubtedly committed aggression when it occupied the Baltic states; there is little argument about that. Again, most commentators who disagree on the applicability of the law of occupation to the Baltic states argue that the annexation of the Baltic states legalized the situation of occupation, not the aggressive acts in and of themselves.

This thesis has briefly covered the self-determination angle, and it has been invoked continuously by the Baltic states during and after the end of Soviet rule. As for the importance of safeguarding a human being, as discussed in the previous chapter, the enlistment orders by the Soviet authorities resulted in numerous deaths and injuries. Moreover, even those who did not suffer physical long-lasting harm, the nature of the prohibition on enlistment explicitly refers to its demeaning nature. The ICRC compared (wartime) enlistment, including in labor battalions, to slavery, and the prohibition is listed as a grave violation under Article 147 of the GC for good reason.

Furthermore, while the damage to the environment in the Baltic states, including because of Soviet military bases, did not reach the level where it would concern other states, it was precisely the Soviet Union's (lack of) environmental protections that resulted in protests against

²⁵⁵ *ibid* 14,19,47.

²⁵⁶ *ibid* 47.

²⁵⁷ *ibid* 72.

industry that risked 40% of Estonia's water supply.²⁵⁸ That would certainly count as damage to the human environment. Those protests, along with protests such as the Geneva 49 movement, also partially inspired by environmental concerns, and others, ultimately led to the Baltic states' secession from the Union itself. State behavior not completely lining up with its statements on international law is hardly a surprising discovery, but it is certainly noteworthy that the Soviet Union for decades advocated for significant state responsibility for violations of international law that it was itself violating at the time.

4.2. Legal nature of the Russian Federation vis-à-vis the Soviet Union

The Russian Federation has considered itself the continuator state of the USSR since 1991. It was able to assume the USSR's international role, most notably its permanent seat on the Security Council, after the former USSR's Heads of State (excluding the Baltic states and Georgia) agreed to this.²⁵⁹ The Russian Federation took over the Soviet Union's legal personality as smoothly as it had taken over from Tsarist Russia.²⁶⁰ Silvija Gerviene also pointed out that the Russian Federation adopted its 1993 Constitution based on the 1977 USSR Constitution and even adopted its anthem, only with some changes to the lyrics.²⁶¹ It has also explicitly confirmed its status as a continuator state, rather than a successor state. Therefore, there is little doubt that the Russian Federation is the same legal person as the USSR for the purposes of the law of state responsibility.

4.3. Similarities with Russian military operations in Ukraine

On February 20th, 2014, Russian Special Forces members, who were only identified at a later date, entered Ukraine. On the 23rd, pro-Russian demonstrations were staged, and the first public appeals were made to separate from Ukraine and join the Russian Federation. Throughout the following days, the Russian military, disguised at the time, seized vital objects of infrastructure and appointed a pro-Russian representative as the Head of Government of the Verkhovna Rada of the Autonomous Republic of Crimea, who later, along with other collaborators, would legalize the joining of Crimea to Russia. On March 1st, Russian President Putin and the Federal

²⁵⁸ Heiki Suurkask, 'Nõukogude Armeed Vastane Protestilaine Eestis 1989. Aastal (Protest Wave against the Soviet Army in Estonia in 1989)' ERR (1 May 2025) <<https://www.err.ee/1609329615/noukogude-armee-vastane-protestilaine-eestis-1989-aastal>

²⁵⁹ Mälksoo (n 16) 210.

²⁶⁰ *ibid.*

²⁶¹ Gerviene (n 84) 170–171.

Council authorized the Russian military operations in Ukraine, which were impressively be able to be deployed on the same day. By May 2014, the occupation was complete.²⁶²

Once Crimea was annexed to the Russian Federation, the Russian Armed Forces moved onto Luhansk and Donetsk, where the conflict continued until Russia launched the full-scale invasion against Ukraine in 2022. Local collaborators declared the Luhansk and Donetsk People's Republics in 2014, which were fully recognized as independent states by the Russian Federation just days before its full-scale invasion was launched. Despite not controlling these territories fully, Russia staged referendums in Donetsk, Luhansk, Kherson, and Zaporizhzhia. According to Russia, 99% of the inhabitants had voted to join Russia, which was then graciously granted. These annexations are roundly rejected internationally.²⁶³ If the use of Russian military personnel in supposedly democratic movements aimed at joining Russia regardless of its legality, the referendums held at literal gunpoint, implausible voting records, and continued insistence on legal annexation despite widespread condemnation by other states does not give the feeling of déjà vu after Chapter II, that Chapter should be read again.

Since Spring 2015, Crimean inhabitants have been required to serve in the Russian Armed Forces. Evasion is criminally penalized. Per the Crimea Platform, an international consultation and coordination format initiated by Ukraine and supported by 73 states and international organizations, as of October 2025, at least 53 000 individuals have been conscripted. In 2026, Russia switched to a year-long conscription drive, which suggests even more people will be drafted in the coming months.²⁶⁴ The current number of conscripts is unknown. According to Ukraine's Human Rights Commissioner, about 25% of the captured prisoners-of-war are from Ukraine's occupied areas.²⁶⁵ Ukraine has explicitly referred to this action as a war crime under Article 51 of the Geneva Convention.²⁶⁶

²⁶² 'Temporary Occupation of Crimea and City of Sevastopol' (*Ministry of Foreign Affairs of Ukraine*, 22 July 2022) <<https://mfa.gov.ua/en/temporary-occupation-autonomous-republic-crimea-and-city-sevastopol>> accessed 11 April 2026.

²⁶³ 'UNGA Res A/RES/ES-11/4' <<https://docs.un.org/en/A/RES/ES-11/4>> accessed 28 April 2026.

²⁶⁴ 'The 22nd Illegal Conscription Campaign into the Russian Armed Forces Has Begun in Temporarily Occupied Crimea' (*Crimea Platform*, 14 October 2025) <<https://crimea-platform.org/en/news/u-tymchasovo-okupovanomu-krymu-rozpochato-22-hu-nezakonnu-kampaniiu-pryzovu-do-armii-rosii/>> accessed 11 April 2026.

²⁶⁵ Faustine Vincent, 'Fighting Their Own Country: Hundreds of Thousands of Ukrainians Have Been Forcibly Conscripted by Russia' *Le Monde* (22 October 2025) <https://www.lemonde.fr/en/international/article/2025/10/22/hundreds-of-thousands-of-ukrainians-are-forcibly-conscripted-by-russia-s-army_6746688_4.html> accessed 11 April 2026.

²⁶⁶ 'Comment by the MFA on the So-Called "Military Conscription" of Ukrainian Citizens by the Russian Federation in the Temporarily Occupied Territories of Ukraine' (*Ministry of Foreign Affairs of Ukraine*, 1 October 2025) <<https://www.kmu.gov.ua/en/news/komentar-mzs-shchodo-tak-zvanoho-viiskovoho-pryzovu-rf-ukrainskykh-hromadian-na-tymchasovo-okupovanykh-terytoriiakh-ukrainy>> accessed 11 April 2026.

4.4. State responsibility for violations of IHL

In 1953, the UN General Assembly requested the International Law Commission ('ILC') to undertake the codification of the principles of international law governing State responsibility.

²⁶⁷ The work was overseen by four Special Rapporteurs over multiple decades and admittedly includes some progressive elements. ²⁶⁸ The ILC was clear to note that the obligations themselves are derived from binding treaty obligations, and the Articles simply deal with the consequences that come from breaches of obligations. ²⁶⁹

The obligations that the Soviet Union had towards each of the Baltic states, specifically, namely, non-aggression, including for military reasons, and respect for the right to self-determination of Estonians, Latvians, and Lithuanians, have already been extensively covered in Chapter II. The Soviet Union also had voluntarily accepted obligations not to enlist men from occupied areas, to require pledging allegiance from the inhabitants of occupied areas, and not to impose its own legislation on occupied areas by the time of the actions analyzed.

Under the general law of state responsibility, a state is responsible for actions that violate its obligations that are in force at the time of taking said action, and it must be clearly attributable to the state. ^{270, 271} The analysis has already described the actions and the Soviet Union's/Russia's international obligations. There is also no argument as to the responsible actor. Breaches of existing laws have been described by the ICJ as "incompatibility with the obligations" of a State or acts "contrary to" or "inconsistent with" a given rule. ^{272, 273} When the action is a continuous obligation, it applies as long as the action continues and is in violation of the acting state's obligations. ²⁷⁴ A state cannot exclude liability on the basis of the act being legal under domestic law. ²⁷⁵

²⁶⁷ UNGA Res 899 (VIII) 1953.

²⁶⁸ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001 31(1).

²⁶⁹ *ibid* 31 (4)(b).

²⁷⁰ *ibid* 2.

²⁷¹ *ibid* 13.

²⁷² *United States Diplomatic and Consular Staff in Tehran* (International Court of Justice) [56].

²⁷³ *Military and Paramilitary Activities in and against Nicaragua* (International Court of Justice) [115, 186,].

²⁷⁴ 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (n 252) art 14(2).

²⁷⁵ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries art 3.

The 1899 HC does not contain any provisions about responsibility, whether for states or individuals. The 1907 HC, however, obliges state parties to pay compensation when necessary.²⁷⁶ It also clarifies that the state is responsible for acts committed by persons in its Armed Forces.²⁷⁷ This might be considered an early provision on state responsibility. The Geneva Convention also expressly prohibits its High Contracting States from absolving themselves of grave breaches of the GC as listed in Article 147.²⁷⁸ Enlistment is included in the list.²⁷⁹ The 2025 Commentary notes that the Convention articles do not clarify the beneficiaries of reparations, whether states or individuals, and the same goes for the responsible parties.²⁸⁰

A similar issue arises regarding the responsible individuals. For this specific violation, it seems quite likely that no individuals can be held accountable. The planners of the 1939-1940 operation to occupy the Baltic states are, of course, dead, but even then, these are violations that were part of a massive systemic effort spanning close to five decades. The original planners of the occupation of the Baltic states went to great lengths to hide the fact of occupation by legislation and propaganda. The majority of individuals involved in the enlistment of Baltic states' citizens thus had little knowledge of the Baltic states' status under international law, and that they were, in fact, violating international law. The mental element of the war crime, as suggested by the 2025 Commentary, was therefore not present.²⁸¹ In this case, individual liability for most people involved in actually carrying out the majority of enlistment actions would be nonsensical.

Furthermore, this thesis also focuses on continuing violations, albeit in different states, carried out by the same legal person at different times. Today's decision-makers regarding the Russian invasion of Ukraine were, in many cases, part of the Soviet state apparatus, and that way of

²⁷⁶ 'Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.' (n 234) art 3.

²⁷⁷ 'Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Adopted 18 October 1907, Entered into Force 26 January 1910)' (n 4) art 3.

²⁷⁸ Geneva Convention IV art 148.

²⁷⁹ *ibid* 147.

²⁸⁰ 'Article 148', *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-148/commentary/2025?activeTab=1949GCs-APs-and-commentaries>> accessed 11 April 2026.

²⁸¹ 'Article 148', *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) s 8(b)(6761) <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-147/commentary/2025?activeTab=1949GCs-APs-and-commentaries#__Toc211412084> accessed 12 April 2026.

thinking has certainly persevered in the modern Russian state.²⁸² They have merely continued the work of their predecessors, using the same policies to pursue their current goals in Ukraine. States have an obligation to cease the illegal action and, when appropriate, to offer guarantees of non-repetition.²⁸³ The ILC has interpreted the obligation of cessation to involve cases of separate but repeated violations of the same character by the state.²⁸⁴ Admittedly, the intent of the ILC was presumably to address violations committed repeatedly by one state against another, not against different states. The question then becomes whether the newer violations create new legal relationships against the Baltic states.

The non-binding UN General Assembly Resolution “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (‘Basic Principles’) reaffirms that states, as part of the duties they undertake in humanitarian law and human rights law treaties, must also take appropriate measures to prevent further violations in addition to providing remedies for victims.²⁸⁵ States must also investigate “effectively, promptly, thoroughly and impartially.”²⁸⁶

The Russian Federation has not, at least publicly, even considered the Baltic states’ claims of occupation seriously and impartially. It certainly has not taken action to prevent further violations. Under ARSIWA, reparations are not inherently owed to a state; the individuals whose rights were violated should be the beneficiaries.²⁸⁷ However, international humanitarian law does not allow individuals to invoke responsibility against states, which means the Baltic states are potential beneficiaries.²⁸⁸

The Basic Principles and ARSIWA both promote the obligation to cease actions that violate legal obligations and to ensure that violations do not occur again. Neither, however, explains whether new obligations could arise from repeated violations against other states. This might

²⁸² Kimberly Marten, ‘The “KGB State” and Russian Political and Foreign Policy Culture’ (2017) 30 *The Journal of Slavic Military Studies* 131, 136, 138, 146, 148 <<https://doi-org.ezproxy.utlib.ut.ee/10.1080/13518046.2017.1270053>>.

²⁸³ ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries’ (n 230) art 30.

²⁸⁴ ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries’ (n 230) art 30 section 3.

²⁸⁵ ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ art 3 <<https://docs.un.org/en/A/RES/60/147>> accessed 20 April 2026.

²⁸⁶ *ibid* 3(b).

²⁸⁷ ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries’ (n 252) art 33.

²⁸⁸ Gerviene (n 84) 180.

be explained by the ICJ's ruling that good faith is presumed of a state.²⁸⁹ According to the Court, there is generally no need to assume that a state whose actions have been declared unlawful will repeat the violations, and thus the right of the victim state to seek assurances of non-repetition should be sparingly exercised.²⁹⁰ Nevertheless, a state has a duty to ensure its actions are in line with its international obligations. If cessation of an illegal action is an inherent aspect of taking on an obligation, then it would follow that repeated violations further "revive" or compound on the existing liability for previous violations.

Furthermore, the ILC specifically states that the duty to make reparations arises automatically from the violation and is not dependent on whether the injured state demands them.²⁹¹ It would be logical to use the same reasoning for repeated violations. Regardless of whether the states injured first assume responsibility, the Russian Federation has also committed a further wrong against these states by failing to ensure non-repetition. The Baltic states have invoked the law of occupation against the Soviet Union on countless occasions and compared Russian actions in Ukraine more broadly.^{292, 293, 294} Admittedly, this is more in a political context than in legal claims, but it should be noted that the Russian Federation has repeatedly rebuffed any attempts by the Baltic states to seriously discuss or negotiate over the events of 1940-1991.^{295, 296} The likelihood of any resolution, whether through negotiations, judicial or arbitral settlement, or other means provided by international law, is unfortunately extremely low.²⁹⁷ That is unlikely to change in the near future. Those changes are not legal in nature, but rather political.

²⁸⁹ Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) (International Court of Justice, 16 December 2015) para 141

²⁹⁰ *ibid.*

²⁹¹ 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (n 252) art 31 comment 4.

²⁹² 'Baltic Foreign Ministers in FT: Russia's Occupations Are Never Temporary' (14 August 2025) <<https://news.err.ee/1609770450/baltic-foreign-ministers-in-ft-russia-s-occupations-are-never-temporary>> accessed 20 April 2026.

²⁹³ 'Reinsalu Condemns Putin's Vision of Baltic Occupation' *ERR* <<https://news.err.ee/1104280/reinsalu-condemns-putin-s-vision-of-baltic-occupation>> accessed 20 April 2026.

²⁹⁴ 'Baltic States Know Russian Occupation Is Never Temporary' <<https://au.mfa.lt/en/news/42/baltic-states-know-russian-occupation-is-never-temporary:44>>.

²⁹⁵ Andis Kudors, 'The Withdrawal of the Russian Army 30 Years Ago' *LSM.lv* (31 August 2024) <<https://eng.lsm.lv/article/culture/history/31.08.2024-the-withdrawal-of-the-russian-army-30-years-ago.a567017/>> accessed 28 April 2026.

²⁹⁶ Jurga Bakaite, "'Red Army Go Home': How Lithuania Expelled Russian Troops 30 Years Ago' *LRT.lt* (31 August 2023) <<https://www.lrt.lt/en/news-in-english/19/2066608/red-army-go-home-how-lithuania-expelled-russian-troops-30-years-ago?srsId=AfmBOorp6OWUeX4pR7Y6su79EsFh4bixTD4TTVFZkR9NYUjp5erhvJml>> accessed 28 April 2026.

²⁹⁷ Gerviene (n 84) 215–219.

Conclusion

Analysis has shown that the Hague Conventions both applied to the Baltic states by 1939, largely due to the work of the International Military Tribunals of Nuremberg and Tokyo after the Second World War. The Geneva Convention's applicability is subject to far more debate. On the one hand, the USSR ratified it in 1954, meaning theoretically the Convention applied for the majority of the time the Baltic states were occupied. Textually, it applied in the territory of the Union, of which the Baltic states were a part. However, the Convention excludes citizens of states that are not members, of which the Baltic states were not. The contradiction between articles 2 and 4, when applied to the specific instance of Baltic states under Soviet occupation, leaves significant room for interpretation. The thesis concludes that the GCs can be applied as a result of the contradiction and the stated object and purpose of the Convention, as well as the ICRC's interpretation that the pros outweigh the cons, but there is room for argument for both. The annexation of Baltic states falls under the definition of occupation under the HCs and the GC. Occupation is a factual state, describing the control a foreign military has over territory without possessing the legal title to it. The lack of immediate military response does not nullify the military measures undertaken by the aggressor to achieve control over the Baltic states. Military control possibly decreased over time as the civilian apparatus took over, but did not disappear. Moreover, the role of the military in controlling civilians' political actions was repeatedly demonstrated by the Soviet Union. The Russian FSR also demonstrated it in the Baltic states during referendums for independence and after it had itself evolved into the Russian Federation and accepted the dissolution of the Soviet Union, as well as the Baltic states' independence, both factually and legally.

The arguments most commonly used in order to argue against applying the law of occupation in the Baltic states are more political than legal. Most states have at least indirectly acknowledged the Baltic states' claims, however. It has also been treated as factually correct by multiple human rights bodies. The notion that occupation is a time-sensitive state is based on the original intent of its authors, but it is not supported by the texts of any of the applicable treaties. Furthermore, while none of the three Conventions analyzed in this work explicitly refer to annexation, it is clear that, both at the time of writing and later, it is only allowed as a formal end to occupation when accepted by other states. The Baltic states' incorporation into the USSR was rejected not only by capitalist but also by socialist states alike.

The Soviet Union mandated military service for all its male citizens, and naturally, that extended to the Baltic states. After all, acknowledging the different status of the Baltic states under international law would have been unthinkable. As a result, the USSR massively and systemically violated the prohibition on enlistment from just about every angle. The Hague Conventions only prohibited military operations against one's own country, but by requiring a pledge of allegiance, the Soviet Union incurred liability under international law regardless. The criminal penalties in place at the time for avoiding service, deserting, or even neglecting duties were severe and disproportionate. Liabilities also extended to family members, leaving individuals little choice but to comply.

After the War ended, adjustments were made, but not in a way that complied with the USSR's international duties. The requirement of the pledge continued. While the applicability of the Geneva Convention is somewhat debatable, if considered applicable, the USSR also violated the prohibition on propaganda promoting enlistment, as well as the general prohibition on conscription itself. From childhood, propaganda for the Red Army was promoted and continuously enforced in schools. Any avoidance of service was also made impossible through various administrative measures, effectively forcing all levels of society to participate in the enlistment. Criminal penalties were decreased, but liability remained. Avoiding military service was made incredibly difficult.

The Baltic states have repeatedly addressed how similar today's events in the occupied areas of Ukraine are to those in the Baltic states. Most of these discussions have remained more political than legal. This thesis has investigated whether there are answers in international law. The law of state responsibility has not explicitly addressed what happens when a single state repeatedly violates the same legal norms against multiple states over decades.

Much of that may be due to the notion that a state's good faith is generally presumed. Evidently, that presumption cannot always be counted on. The obligation to cease a violation of an international norm is an inherent aspect of all international duties, as is the obligation to refrain from repeating it. Therefore, by violating the same norms repeatedly, the Russian Federation has in fact doubled down on its previous violation, only compounding its existing liabilities to Estonia, Latvia, and Lithuania while also creating new ones towards Ukraine. HC 1907 and the Geneva Convention explicitly acknowledge state responsibility. Invocations for violations of humanitarian law norms are limited to states.

Bibliography

Treaties

‘Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Adopted 29.07.1899, Entered into Force 04.09.1900) (Hague Convention 1899)’

‘Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Adopted 18 October 1907, Entered into Force 26 January 1910)’

Convention (IV) relative to the Protection of Civilian Persons in Time of War (Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950)

Covenant of the League of Nations (1919)

General Treaty for Renunciation of War as an Instrument of National Policy (Kellogg–Briand Pact or Pact of Paris)

Tartu Peace Treaty, 2 February 1920

‘Treaty on the Basis for Relations between States (Lithuania and Russian Federation) (Signed 29 July 1991) UNTS 1787’

‘Treaty on the Fundamentals of Interstate Relations between the Republic of Latvia and the Russian Soviet Federative Socialist Republic (Signed 13 January 1991)’

‘Treaty on the Fundamentals of Inter-State Relations between the Russian Soviet Federative Socialist Republic and the Republic of Estonia (Signed 12 January 1991)’

Commentaries to the Geneva Convention

‘Article 1’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 1958) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-1/commentary/1958?activeTab=1949GCs-APs-and-commentaries>> accessed 1 March 2026

‘Article 1’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-1/commentary/2025?activeTab=1949GCs-APs-and-commentaries>> accessed 1 March 2026

‘Article 2’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 1958) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-2/commentary/1958?activeTab=1949GCs-APs-and-commentaries>> accessed 28 February 2026

‘Article 2’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) <[https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-](https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-2/commentary/2025?activeTab=1949GCs-APs-and-commentaries)

2/commentary/2025?activeTab=1949GCs-APs-and-commentaries#c__Toc211431406>
accessed 12 April 2025

‘Article 4’ (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-4/commentary/1958?activeTab=1949GCs-APs-and-commentaries>>
accessed 28 February 2026

‘Article 6’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 1958) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-6/commentary/1958?activeTab=1949GCs-APs-and-commentaries>>

‘Article 47’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-47/commentary/2025?activeTab=1949GCs-APs-and-commentaries#Fn_BFC30D61_00102>
accessed 21 March 2026

‘Article 51’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 1958) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-51/commentary/1958?activeTab=1949GCs-APs-and-commentaries>>

‘Article 51’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-51/commentary/2025?activeTab=1949GCs-APs-and-commentaries#c__Toc211373962>
accessed 3 April 2026

‘Article 148’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-148/commentary/2025?activeTab=1949GCs-APs-and-commentaries>> accessed 11 April 2026

‘Article 149’, *Commentary to the Geneva Convention* (International Committee of the Red Cross 2025) <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-147/commentary/2025?activeTab=1949GCs-APs-and-commentaries#c__Toc211412084>
accessed 12 April 2026

Soviet legislation

‘Eesti Nõukogude Sotsialistliku Vabariigi Vastuvõtmise Kohta Nõukogude Sotsialistliku Vabariikide Liitu (Seadus 6.Augustist 1940) (On the Acceptance of the Estonian Soviet Socialist Republic into the Unions of Soviet Socialist Republics (Law of 6th August 1940)’, *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a. (Collection of the laws of the USSR and USSR Supreme Council's Presidium: 1938-june 1944)* <<http://www.digar.ee/id/et/nlib-digar:440311>> accessed 4 April 2026

Eesti NSV Territooriumil Kehtiv Kriminaalkoodeks : Ametlik Tekst Muudatustega Kuni 1. Juulini 1951. a. Ühes Paragrahvide Järgi Süstematiseeritud Materjale Sisaldava Lisaga (1952)

Leedu Nõukogude Sotsialistliku Vabariigi Vastuvõtmise Kohta Nõukogude Sotsialistliku Vabariikide Liitu (Seadus 3.Augustist 1940) (On the Acceptance of the Lithuanian Soviet Socialist Republic into the Unions of Soviet Socialist Republics (Law of 3rd August 1940)', *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a.* (Collection of the laws of the USSR and USSR Supreme Council's Presidium: 1938-june 1944) <<http://www.digar.ee/id/et/nlib-digar:440311>> accessed 4 April 2026

Läti Nõukogude Sotsialistliku Vabariigi Vastuvõtmise Kohta Nõukogude Sotsialistliku Vabariikide Liitu (Seadus 5.Augustist 1940) (On the Acceptance of the Latvian Soviet Socialist Republic into the Unions of Soviet Socialist Republics (Law of 5th August 1940)', *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a.* (Collection of the laws of the USSR and USSR Supreme Council's Presidium: 1938-june 1944) <<http://www.digar.ee/id/et/nlib-digar:440311>> accessed 4 April 2026

'NSVL Kodakondsuse Omandamise Korra Kohta Leedu, Läti Ja Eesti Nõukogude Sotsialistlike Vabariikide Kodanike Poolt: Seadlus 7 Septembrist 1940 (Regarding the Acquisition of Citizenship by the Citizens of the Lithuanian, Latvian and Estonian Soviet Socialist Republics: Law of 7th September 1940)', *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a.* (Collection of the laws of the USSR and USSR Supreme Council's Presidium: 1938-june 1944) (NSVL Ülemnõukogu Teataja 1940 nr 31 (USSR Supreme Soviet Gazette 1940 nr 31) 1940) <<http://www.digar.ee/id/et/nlib-digar:440311>> accessed 30 March 2026

Nõukogude Sotsialistlike Vabariikide Liidu Konstitutsioon (Põhiseadus) (Constitution of the Soviet Union of Socialist Republics) 1940

Nõukogude Sotsialistlike Vabariikide Liidu seadus üldisest sõjaväekohustusest: vastu võetud NSV Liidu Ülemnõukogu 7. koosseisu 3. istungjärgul 12. oktoober 1967. a.: muudatuste ja täiendustega mis on tehtud NSV Liidu Ülemkogu Presiidiumi 1980. a.... (Law on General Military Service of the Union of Soviet Socialist Republics: adopted at the 3rd Session of the 7th Meeting on 12 October 1967; amendments made by the Presidium of the Supreme Soviet of the USSR 1980)

'Töölis-Talurahva Punaarmee Sõjaväelise Vandetõotuse Teksti Kohta (Seadus 3.Jaanuaris 1939) (Law on the Text of the Working People's and Peasants' Red Army Military Pledge) (Law of 3rd January 1939', *NSVL seaduste ja NSVL Ülemnõukogu Presiidiumi seadluste kogu : 1938. a. - juuni 1944. a.* (Collection of the laws of the USSR and USSR Supreme Council's Presidium: 1938-june 1944) (NSVL Ülemnõukogu Teataja (USSR Supreme Soviet Gazette))

VNFSV Kriminaalkodeks : Ametlik Tekst Muudatustega Kuni 1. Aug. 1944. a. Ühes Paragrahvide Järgi Süstematiseeritud Materjale Sisaldava Lisaga : Ametlik Tõlge (Criminal Code of the Russian Soviet Federal Socialist Republic: Until 1 August 1944 and Annexed Materials: Official Translation) <<http://www.digar.ee/id/et/nlib-digar:949610>> accessed 4 April 2026

Üldisest sõjaväekohustusest : Nõukogude Sotsialistlike Vabariikide Liidu seadus (Law on General Military Service of the Union of Soviet Socialist Republics) 1967

Newspaper articles

‘Baltic Foreign Ministers in FT: Russia’s Occupations Are Never Temporary’ (14 August 2025) <<https://news.err.ee/1609770450/baltic-foreign-ministers-in-ft-russia-s-occupations-are-never-temporary>> accessed 20 April 2026

‘Baltic States Know Russian Occupation Is Never Temporary’ <https://au.mfa.lt/en/news/42/baltic-states-know-russian-occupation-is-never-temporary:44>

Bakaite J, “‘Red Army Go Home’: How Lithuania Expelled Russian Troops 30 Years Ago’ LRT.lt (31 August 2023) <<https://www.lrt.lt/en/news-in-english/19/2066608/red-army-go-home-how-lithuania-expelled-russian-troops-30-years-ago?srltid=AfmBOorp6OWUeX4pR7Y6su79EsFh4bixTD4TTVFZkR9NYUjp5erhvJml>>.

Kudors A, ‘The Withdrawal of the Russian Army 30 Years Ago’ LSM.lv (31 August 2024) <<https://eng.lsm.lv/article/culture/history/31.08.2024-the-withdrawal-of-the-russian-army-30-years-ago.a567017/>> accessed 28 April 2026.

‘Reinsalu Condemns Putin’s Vision of Baltic Occupation’ ERR <<https://news.err.ee/1104280/reinsalu-condemns-putin-s-vision-of-baltic-occupation>> accessed 20 April 2026

Press releases

‘Comment by the MFA on the So-Called “Military Conscription” of Ukrainian Citizens by the Russian Federation in the Temporarily Occupied Territories of Ukraine’ (*Ministry of Foreign Affairs of Ukraine*, 1 October 2025) <<https://www.kmu.gov.ua/en/news/komentar-mzs-shchodo-tak-zvanoho-viiskovoho-pryzovu-rf-ukrainskykh-hromadian-na-tymchasovo-okupovanykh-terytoriakh-ukrainy>> accessed 11 April 2026

‘Comments by the Russian Foreign Ministry Information and Press Department in Connection with Remarks by Some European Politicians Regarding the “Occupation” of the Baltic Countries by the Soviet Union and the Need for Russia to Condemn This’ (*The Ministry of Foreign Affairs of the Russian Federation*, 4 May 2005) <https://mid.ru/en/foreign_policy/rso/1729697/> accessed 19 April 2026

‘International Recognition of the Republic of Latvia (de Iure)’ (1 February 2022) <<https://www.mfa.gov.lv/en/article/international-recognition-republic-latvia-de-iure>> accessed 30 March 2026

‘Romas Kalanta, Ambassador of Freedom, and the Spring of 1972 in Kaunas’ *Office of the Seimas of the Republic of Lithuania* <https://www.lrs.lt/pls/inter/w5_show?p_r=8524&p_k=2> accessed 25 April 2026

On submitting a proposal to the Russian President on signing agreements between the Russian Federation and the Republic of Estonia on the Russian-Estonian state border and on delimiting

maritime space in the Narva Bay and the Gulf of Finland (2013)
<<http://government.ru/en/docs/6387/>> accessed 18 April 2026

‘Temporary Occupation of Crimea and City of Sevastopol’ (*Ministry of Foreign Affairs of Ukraine*, 22 July 2022) <<https://mfa.gov.ua/en/temporary-occupation-autonomous-republic-crimea-and-city-sevastopol>> accessed 11 April 2026

‘The 22nd Illegal Conscription Campaign into the Russian Armed Forces Has Begun in Temporarily Occupied Crimea’ (*Crimea Platform*, 14 October 2025) <<https://crimea-platform.org/en/news/u-tymchasovo-okupovanomu-krymu-rozpochato-22-hu-nezakonnu-kampaniiu-pryzovu-do-armii-rosii/>> accessed 11 April 2026

‘The Law “On the Universal Military Duty” Adopted’
<<https://www.prilib.ru/en/history/619624>> accessed 3 April 2026

Website links

Vabariigi presidendi otsus ja üleskutse (Decision and Call to Action by the President of the Republic 1940) <[62](https://dea.digar.ee/?a=d&d=paevalehtew19400706-178.2.3&e=-----et-25--1--txt-txIN%7ctxTI%7ctxAU%7ctxTA-----> accessed 26 April 2026</p></div><div data-bbox=)

Kokkuvõte

Kohustuslik sõjaväeteenistus Balti riikides Nõukogude okupatsiooni ajal: küsimused rahvusvahelise õiguse ja Venemaa riikliku vastutuse kohta

Alates Venemaa täiemahulisest sissetungist Ukrainasse on eestlased, lätlased ja leedukad korduvalt võrrelnud Ukraina okupeeritud aladel toimuvat Nõukogude Liidu okupatsiooniga Balti riikides erinevates kontekstides, kuid mitte õiguslikult. Ehkki sarnaseid kuritegusid on mitmeid, keskendub see töö ühele võimalikule rahvusvahelise õiguse rikkumisele, mis on seni saanud üsna vähe tähelepanu: okupeeritud aladel sõjaväekohustuse rakendamine. Varasemad analüüsid ei ole teinud läbi põhjaliku analüüsi asjakohaste rahvusvaheliste lepingute kohaldumise kohta.

Analüüs põhineb kolmel rahvusvahelisel lepingul: Maasõja seadusi ja tavaid käsitlev II konventsioon ning selle lisa „Maasõja seadusi ja tavaid käsitlevad eeskirjad“, millele on töös viidatud kui Haagi 1899.a Konventsioon. Haagi 1907 Konventsioon viitab Maasõja seadusi ja tavaid käsitlev IV konventsioonile ja selle lisale: „Maasõja seadusi ja tavaid käsitlevad eeskirjad.“ Haagi konventsioonidel kommenteeritud väljaandeid ei ole, mistõttu on lepingu tõlgendamisel pealmisteks allikateks kaasused rahvusvaheliste tribunalide ees ning rahvusvahelisse õiguse juristide akadeemilised tööd. Genfi konventsioon viitab Tsiviilisikute sõjaaegse kaitse 12. augusti 1949 Genfi (IV) konventsioonile. Genfi konventsioonil on seevastu kaks kommenteeritud väljannates 1958. a ning 2025.a. Analüüsis on kasutatud mõlemat väljaannet. 1958.a väljaanne peegeldab lähedasemalt lepingu valmimise ajal levinud põhimõtteid, kuid ka 2025. a väljaandes on palju kasulike viiteid lepingu valmimise ajaloole ning hilisematele kaasustele.

Töö pealmine metodoloogia on ajalooline analüüs, sest tegemist on ajalooliste sündmustega. Samas võimaldab ajavahe sündmustega hinnata, kuidas rahvusvaheline õigus on arenenud ning kas ja kuidas hilisemad arusaamad mõjutavad hinnanguid varasematele sündmustele. Kuivõrd enne 20.sajandi keskpaika ei olnud kõik rahvusvahelise õiguse põhimõtted üles täheldatud lepingutes, on analüüsis kasutatud ka akadeemilisi kirjutisi varasematest lähenemisest okupatsiooniõigusest ning riikide suveräänususest.

Kogu uurimus on üles ehitatud järgnevatele uurimisküsimustes:

1. Kas 1899. ja 1907. aasta Haagi konventsioonid ning 1949. aasta Genfi konventsioon kehtivad Nõukogude Liidu poolt aastatel 1940–1991 toimunud Balti riikide okupeerimise suhtes?
2. Eeldusel, et eespool nimetatud konventsioone saab kohaldada, kas on täidetud tingimused, mis keelavad okupeeritud alade elanike sõjaväkke võtmise?
 - a. Kas tegu oli okupatsiooniga Haagi ja Genfi konventsioonide mõistes?
 - b. Kuidas värbamine korraldati?
 - c. Milliseid teisi Haagi ja Genfi konventsioonide olulisi sätteid võidi värbamise rakendamisega rikkuda?
3. Kas riigi vastutuse õigus on rakendunud ja millised oleksid selle alusel NSV Liidu kohustused?
4. Eeldusel, et rahvusvahelise õiguse rikkumised on tõendatud, kas riigi vastutuse õigus on kohaldatav ja kas seda saab rakendada Venemaa Föderatsiooni suhtes?

Lepingute tõlgendamisel kehtivad põhimõtteid, nagu *pacta sunt servanda* ning lepingu eesmärgi ja ajaloo arvestamine on loomulikult kasutatud ka selles analüüsis. Haagi konventsioonide preambulite kohaselt on lepingute eesmärk relvastatud konfliktide mõjude leevendamine. Preambulites on ka konkreetsetelt rõhutatud, et kõiki sõjategevuse arenguid ei ole võimalik ette näha, mistõttu tuleb alati lähtuda konventsiooni algsetest põhimõtetest ka juhtudel, kui sätted ei ole piisavalt konkreetset. Ka Genfi konventsioon rõhutab sarnast lähenemist oma esimeses artiklis, rõhutades, et lepingu ratifitseerinud riigid on kohustatud tagama lepingutest kinnipidamise igas olukorras. Kommenteeritud väljaannetes rõhutab ka Rahvusvaheline Punase Risti Komitee, et nad on seda lähenemist rõhutanud lepingu ettevalmistamisest alates, ehkki nad tunnistavad, et nendepoolne tunnustus ei tee sellest siduvat kohustust.

Nõukogude Venemaa ning Nõukogude Liit aktsepteeris rahvusvahelisi humanitaarõiguse lepinguid, mille Tsaari valitsus oli ratifitseerinud. Venemaa ratifitseeris Haagi 1899. a konventsiooni 04. septembril 1900 ning leping jõustus kohe. Haagi 1907. a konventsioon jõustus 26. jaanuaril 1910. Ehkki mõlema lepingu kohaselt pidid konflikti kõik osapooled olema lepingu ratifitseerinud, et see kehtiks, kinnitasid Nürnbergi ja Tokyo Sõjatribunalid, et lepingud olid saanud tavaõiguseks II maailmasõja alguseks ning kehtisid kõikidele tsiviliseeritud riikidele. Nõukogude Liit ratifitseeris Genfi konventsiooni 10. mail 1954. Lepingu artikli 6 kohaselt kehtib leping okupatsiooni algusest, kuid tagasiulatuvalt lepingud teadupärast ei kehti. Seega saab Genfi konventsiooni kohaldada alates 10. maist 1954. Genfi

konventsiooni ei ole artikkel 6 järgi vaja kohaldada pärast ühe aasta möödumist sõjaväeliste operatsioonide lõpetamist, kuid leping ei täpsusta sõjaväeliste operatsioonide tähendust. 1958 kommenteeritud väljaande kohaselt tuleb sätet kohaldada juhtumipõhiselt. Samuti selgitatakse väljaandes, et artikkel 6 kirjutati teadlikult ilma täiendavate tingimusteta. Eesmärgiks oli tagada, et lepinguid kohaldatakse kogu okupatsiooni lõpuni ehk antud juhul lepingu ratifitseerimisest kuni 1991.aastani. Kommenteeritud väljaandes rõhutatakse, et anneksioon lõpetab okupatsiooniõiguse kehtivuse ainult juhul, kui anneksiooni rahvusvaheliselt laialdaselt tunnustatakse. Nõukogude võimudel ei õnnestunud saada laialdast tunnustust Balti riikide okupeerimisele kogu 47 aasta jooksul. Artikli 6 kohaselt on ka sõjaväekohustuse rakendamise keeld üks lepingu sätetest, mis kehtivad kogu okupatsiooni vältel.

Haagi konventsioonid kehtisid Tokyo ja Nürnbergi tribunalide kinnitusel kõigi tsiviliseeritud riikide vahel. Genfi konventsiooni artikli 2 täpne sõnastus on järgmine: „Konventsiooni rakendatakse ka lepingupoole territooriumi osalise või täieliku okupeerimise korral, ka juhul kui okupatsioonile ei osutata relvastatud vastupanu.“ Balti riigid muudeti sunniviisiliselt Nõukogude Liidu territooriumi osaks ning neis kohaldati Nõukogude seadusandlust. Seetõttu võttis Nõukogude Liit kohustuse kohaldada Genfi konventsiooni sätteid ka Balti riikides.

Samas ei kohaldu Genfi konventsioon riikide, mis ei ole konventsiooni ratifitseerinud, kodanikele. Siin tekib selge vasturääkivus. Ühest küljest anti (meelevaldselt) eestlastele, lätlastele ja leedukatele Nõukogude Liidu kodakondsus, mis annab justkui võimaluse konventsiooni kohaldada. Teisest küljest tehti seda seadusevastaselt ning Genfi konventsiooni 2025.a kommenteeritud väljaanne spetsiaalselt selgitab, et kodakonduse andmist okupeeritud aladel ei saa kasutada konventsiooni sätete vältimiseks. Balti riigid loomulikult ei saanud lepingutega liituda enne taasiseseisvumist. Siin tekib selge vastuolu artiklite 2 ning 4 vahel. Artikli 2 kohaselt kehtib Genfi konventsioon ratifitseerinud liikmesriigi territooriumil, seega ka Balti riikides, kuid artikli 4 kohaselt mitte Balti riikide kodanikele. Olukord on ilmselgelt skisofreeniline. Arvestades ka artikli 1 nõuet lepingu kohaldamise kohta, hilisemate tribunalide selgitusi ning lepingu ajaloolist konteksti kui vastust riikide läbikukkumisi II maailmasõja ajal on Genfi konventsioonide kohaldamise pooltargumendid tugevamad kui vastuargumendid, kuigi vaielduvusi on mitmeid. Käesolevas analüüsis on kohaldatud ka Genfi konventsiooni sätteid.

Okupatsiooniõigus sai alguse rahvaste enesemääramise õigusest, mis omakorda arenes välja Prantsuse Revolutsiooni tagajärjena. Okupatsiooniõiguse levides hakkasid riigid järjest loobuma vallutusõiguse doktriinist, mille kohaselt piisas territooriumi kontrollimisest ka

juriidilise omandi saamiseks. 19.sajandil hakkasid Ladina-Ameerika riigid propageerima riikide kohustust mitte tunnustada ebaseaduslikult saadud territooriume või muid õigusi. Hiljem sai see tuntud Stimsoni doktriinina ning sellest sai kohustus mitmete rahvusvaheliste lepingute kohaselt. 19.sajandi lõpul kirjeldati mitmetes mittesiduvates dokumentides, mida Venemaa toetas, okupatsiooni mõistet kui sõjaväelist kontrolli territooriumi üle. Samuti eraldati nendes dokumentides de jure ja de facto kontroll. Esimese maailmasõja lõppedes teatas Venemaa, et loobub vallutusõiguse doktriinist.

Nõukogude Liidu ja Balti riikide vahel kehtisid mitmed lepingud, millega Nõukogude Liit tunnustas Balti riikide suveräänsust ning eestlaste, lätlaste ja leedukate enesemääramisõigust. Samuti kehtisid osapoolte vahel Pariisi Rahuleping, Rahvaste Liidu põhikiri ning erinevad lepingud erinevate riikide vahel, millega keelati sõjalised operatsioonid. Sellest hoolimata alustas 1939.a septembris Nõukogude Liit õhu ja mere blokaadi Balti riikide vastu, samal ajal survestades neid riike alla kirjutama lepingutele, millega lubati Nõukogude liidu sõdurid ja sõjaväerajatised riikide territooriumidele. 1940.a alustas Nõukogude Liit uuesti oma sõjaväe valmisolekut tõstma, samal ajal valmistudes ette relvastatud konfliktideks. Nõukogude võimud lavastasid „spontaanseid“ meeleavaldusi, mida tegelikult korraldati punaväelaste võimuga ning Venemaalt toodud meeleavaldajatega. Samaaegselt korraldati ebaseaduslikud referendumid, mille tulemused olid loomulikult kommunistide kasuks, kes koheselt vormistasid Balti riikide liitmise Nõukogude liitumisega.

Okupatsiooniõiguse kohaldamiseks on möödapääsmatu Nõukogude Liidu sõjaväe roll anneksiooni korraldamisel. Balti riikide seaduslikud esindajad, metsavennad ja teised partisanid ning kogu okupatsiooni vältel toimunud meelavaldused on kõik näited rahva ning riikide reaalsest meelsusest. Ka Venemaa diplomaadid ning Venemaa hilisemad õpikud on tegelikult tunnistanud sõjaväe rolli Balti riikide liitmisel Nõukogude Liiduga. Ehkki Venemaa esindajad ei tunnista anneksiooni või ka okupatsiooni on tegelikult nendest selgitustest näha, et sõjaväe roll on tegelikult selge.

Nõukogude Liidu Põhiseadus nõudis kõigilt (mees)kodanikelt sõjaväes osalemist. Sõjaväelised otsuseid ei teinud Liidu vabariigid, vaid Liidu organid. Sõjaväest kõrvalehoidmine oli kriminaliseeritud kogu Nõukogude Liidu okupatsiooni ajal, ehkki karistused varieerusid. Samuti kasutasid Kriminaalkodeksid mitmeid sätteid, mida oli võimalik kohandada deserteerujatele ja kõrvalehoidjatele. Võimalikud karistused hõlmasid nii aastapikkust töökohustust, vangistust kui ka vara knfiskeerumist. Sõjaajal deserteerumine võis lõppeda surmanuhtlusega mahalaskmise kaudu. Hiljem karistusi leevendati.

Sõjaväeteenistus võis kesta, sõltuvalt teenistuskohast ning-ajast 1-5 aastat. Ajateenijatelt nõuti ka sõjaväelase vannet, mis on selgelt keelatud mõlema Haagi Konventsiooni kohaselt. Teadaolevalt kasutati ajateenijaid ka relvastatud konfliktides, nagu Nõukogude Liidu ja Afganistaani sõjas ning teistes ohtlikes olukordades nagu Tšõrnobõli koristuses. Nii selle kui teiste sõjaväeteenistusega seotud probleemide tõttu tekkis Balti riikides 1980. aastate lõpus liikume Genf-49. Liikumine julgustas sõjaväealisi noormehi keelduma sõjaväes teenimisest Genfi konventsiooni alusel, täpsemalt okupeeritud aladel sõjaväekohustuse rakendamise keelu põhjal.

Riiklik vastust rahvusvahelise õiguse normide rikkumise eest on loogiline järg rahvusvaheliste kohustustele. Ilma tagajärgedeta reegli rikkumisele ei ole reeglit. Ka Nõukogude Liidu juristid tunnistasid seda loogikat, sh, et II maailmasõja alguseks kaasnes agressiooniga riiklik vastutus. Tõtt öelda nad toetasid rahvusvahelise kuritegeliku vastutuse loomist, millega sisuliselt riik kui juriidiline isik sooritab kuriteo, kui rikub rahvusvahelise rahu ja julgeoleku aluseid, rahvaste enesemääramise õigust; kui rikub tõsiselt inimese heaolu ja turvalisust (nt orjapidamine) ning tõsiste keskkonnakahjude eest. See seisukoht kujunes välja ca 15 aastat enne okupatsiooni lõppu, ehk kui rikkumised olid veel pooleli, olles ise rikkunud sisuliselt kõiki eelmainitud kohustusi.

Vene Föderatsioon on Nõukogude Liidu jätkuriik, mis tähendab, et nii siseriiklikult kui rahvusvaheliselt võeti sisuliselt üle Nõukogude Liidu õigused ja kohustused. Tegemist on sisuliselt sama juriidilise isikuga. Ka poliitilise ning sõjaväeliste otsuste kohta on näha sarnasusi, vaadates 2014. ning 2022.a Ukrainas okupatsiooni tingimusi. Sõjaväelaste kogunemine piiril, ultimaatumid valitsusele, referendumite lavastamine on hämmastavalt sarnased Balti riikides toimunuvaga.

Riiklik vastutus jätkub kogu rikkumise vältel, ka siis, kui rikkumine ise kestab aastaid ja nõuab mitmeid erinevaid tegevusi. Samuti ei ole riigil võimalik vältida vastutust väitega, et tegevus on seaduspärane riigi enda õigussüsteemis. 1907 Haagi Konventsioon kohustab riike kompenseerima rikkumiste eest. Ka Genfi Konventsioon ei luba vastutuse vältimist tõsiste rikkumiste eest, mille alla sõjaväekohustuse rakendamine okupeeritud alla kuulub. Samas täpsustab ka 2025 a kommenteeritud väljaanne, et lepingutes ei ole ette nähtud, kas reparatsioone tuleb teha riikidele või inimestele, kelle suhtes rikkumised toime pandi.

Balti riikides sõjaväekohustuse rakendamise kohta ei ole võimalik isikuid vastustusele võtta. Okupatsiooni algsed planeerijad on surnud ning hilisemad sõjaväelased, seadusandjad jne olid ilmselt teadmatutes Balti riikide õigusliku staatuse kohta. Samuti on selge, et Nõukogude Liit

ja Vene Föderatsioon rakendavad ebaseaduslike meetmeid juriidilise isikuna ning krduvalt, erinevatel aegadel.

Riikidel on kohustused lõpetada seadusvastane tegevus ja tagda, et samu rikkumisi ei korrata. Vene Föderatsioon selgelt kumbagi tingimust ei täida. Rahvusvaheline õigus eeldab riigilt heas usus käitumist. Samas on kõik Balti riigid nii koos kui eraldi teavitanud Vene Föderatsiooni, et nende hinnangul kehtis Balti riikides okupatsiooniõigus ning Nõukogude Liit/Vene Föderatsioon on seega reparatsioonide kohuslased. Samuti on Balti riigid korduvalt, avalikult ja otseselt võrrelnud Ukrainas toimuvat Balti riikides juhtunuga. Ka Ukraina on rõhutanud okupatsiooniõiguse rikkumist, sh mobilisatsioonikeelu rikkumist. Sellest hoolimata on Venemaa jätkanud seaduse rikkumist ning seeläbi rikkunud ka oma kohustusi Balti riikide ees, korrates samu illegaalseid tegevusi.