**Academic Workshop**

**Legal Governance of Historical Memory in Europe and Asia**

Venue: **Osaka University Faculty of Law**

Date: 26 April

14:00 – 14:15 Opening remarks by Japanese organizers in Osaka

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| 14:15-15:45  **Panel I *Law and Historical Memory in Europe***  Chair: Dr. Kazuhiro Matsumoto (affiliation)  1. Dr. Ulad Belavusau (T.M.C. Asser Institute, the Hague – University of Amsterdam)  *“Dilemmas in Legal Governance of Memory in Europe”*  2. Dr. León Castellanos-Jankiewicz (T.M.C. Asser Institute, the Hague – University of Amsterdam)  *“The Soviet Contribution to the Prohibition of Genocide: Harmony or Contestation?”*  *Followed by a Q&A* |

15:45-16:15 Tea / Coffee Break

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| 16:15-17:15  **Comments and Discussion**  1.Comments for each presentation on Panel from chairman and organizer  *Dr. Kazuhiro Matsumoto*(chairman)/ *Dr. Tomoyoshi Hayashi* (expected, Professor of faculty of Law in Osaka University)  2. *Discussion with audiences (Including a Q&A)* |

17:15-17:30 Closing Remarks by the organizers

**Abstracts**

**Uladzislau Belavusau,**

***Dilemmas in Legal Governance of Memory in Europe***

This presentation will examine the legal governance of history in European law and the ongoing conflicts this causes with freedom of speech. It will begin with exploring the genesis and mechanics of the legal prescription of certain historical memories in Western law, starting from the duty of oblivion imposed by the Westphalia Treaty (1648), and the duty to remember, which emerged in French post-revolutionary law (after 1789). This account will unpack the major stages in the deployment of the so-called memory laws (lois mémorielles in French, Erinnerungsgesetze in German, etc.), including their typology and classification. Such laws enshrine state-approved interpretations of crucial historical events. The paper will subsequently focus on memory politics embedded in the legal systems of two major European organisations, the European Union and the Council of Europe, unfolding the conflicts with freedom of expression. As regards the Council of Europe framework, the dynamics of memory-related judgements at the ECtHR will be analysed. The reconstruction of EU law and politics of memory will focus on EU citizenship and the prohibition of genocide denials. Both systems signal the emergence of a specific type of legal governance, which I call ‘mnemonic constitutionalism’. Regarding European law, this mnemonic constitutionalism can be based on two distinctive and sometimes overlapping paradigms. The first one embodies soft law that invites EU citizens to remember historical events and certifies a ‘European’ viewpoint on those events. Such events (e.g. commemoration of Holocaust, acknowledgement of communist atrocities, etc.) are often projected as a common European memory via various resolutions of the EU Parliament, as well as in the Europe for Citizens Program launched by Decision 1904/2006/EC, which centres on ‘European Remembrance’. The second paradigm of memory-building outright bans the denial, trivialisation and minimisation of certain atrocities. Since the adoption of Framework Decision 2008/913/JHA, this second paradigm has become ever more visible in EU law and politics of memory.​

**León Castellanos-Jankiewicz,**

***The Soviet Contribution to the Prohibition of Genocide: Harmony or Contestation?***

On 20 May 2015, the Meshanksy District Court of Moscow added a pamphlet penned by Raphael Lemkin to the Russian government’s List of Extremist Materials. Russian legislation sets forth liability for the mass dissemination, production or storage of the items contained on this list, which is maintained by the Russian Ministry of Justice. Lemkin’s text, entitled *Soviet Genocide in the Ukraine*, was originally published in 1953 and addressed the 1932-33 famine in Holomodor. Today, the tract is largely unknown despite its author’s famous role in bringing the Genocide Convention into existence in 1949.

Also forgotten is the Soviet Union’s role in the articulation of the crime of genocide. Official narratives, for their part, exalt Russia’s long-time commitment to the eradication of the so-called “crime of crimes”. In an article published in the *Fordham International Law Journal* when he was Permanent Representative of the Russian Federation to the United Nations, Sergey Lavrov highlighted Russia’s “decisive contribution” to the affirmation of “a legal basis to fight genocide”. He also reaffirmed Russia’s adherence to “traditions of humanism and mercy” and highlighted its efforts to defend victims of genocide, war crimes and crimes against humanity (Lavrov, 1999).

Recent revisionist work, however, suggests that the Genocide Convention was purposefully weakened by the Soviets in the midst of Cold War tensions and inner struggles (Weiss-Wendt, 2017). The *nomenklatura* would have understood the stakes, not least because the Great Purge of 1936-38 had targeted specific nationalities and groups. The Soviets nevertheless ratified the Genocide Convention in 1954 during the period known as the Thaw, which was characterized by a relaxing of censorship and repression during the Khrushchev era.

In light of these seemingly contradictory attitudes, this paper seeks to understand how the Soviets justified the prohibition and repression of genocide internationally. Its working hypothesis is that Soviets adopted a selective approach to the law and politics of remembrance in Russia in respect to genocide early on: developing a narrative of victory over Germany that condemned Nazi atrocities became an essential ingredient of national identity that outweighed the risk of international accountability for outrages committed against national minorities and dissenters. This would also explain the current move to censor Lemkin’s pamphlet, considering the resurgence of Russian nationalism today.

The paper thus seeks to understand the dynamics between national censorship and international support of the concept of genocide in Russia. In doing so, it analyzes the Soviet contributions in the Ad Hoc Committee on Genocide that was charged with drafting the Convention at the United Nations Economic and Social Council, and its role in formulating the Nuremberg Principles (1950), the Draft Code of Offences against the Peace and Security of Mankind (1954) and the Charter of the International Military Tribunal (1945).

**Biographical Information about Speakers from Europe**

**Dr. Uladzislau Belavusau**is Senior Researcher at the T.M.C. Asser Institute – University of Amsterdam (the Netherlands). Previously he was Assistant Professor of EU law at the University of Amsterdam and Vrije Universiteit Amsterdam. He holds a Ph.D. from the European University Institute (Florence) and an LL.M. from the Collège d’Europe (Bruges). He is a principal investigator of the MELA ("Memory Laws in European and Comparative Perspectives") consortium for the Netherlands, author of *Freedom of Speech: Importing European and US Constitutional Models in Transitional Democracies*(Routledge, 2013), as well as co-editor of *Law and Memory: Towards Legal Governance of History*(Cambridge University Press, 2017) and *EU Anti-Discrimination Law Beyond Gender*(Hart: Oxford, 2018).

**Dr. León Castellanos-Jankiewicz** is Researcher in International Human Rights Law at the T.M.C. Asser Institute and member of the [MELA consortium](http://melaproject.org/) (‘Memory Laws in European and Comparative Perspectives’). His current book project focuses on human rights during the interwar period. Previously, León was Max Weber Postdoctoral Fellow at the European University Institute, Florence, and Lecturer in the Law of International Organizations at Bocconi University, Milan. He holds a PhD in International Law from the Graduate Institute of International and Development Studies, Geneva (2017).