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THE LEGAL DEFINITION OF THE HOLODOMOR AS GENOCIDE UNDER THE GENOCIDE CONVENTION

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Abstract

The article addresses the applicability of the definition of genocide in the UN Genocide Convention to the Holodomor of 1932–33 and analyzes the Holodomor under that definition. It takes a four-step approach to prove the elements of the crime of genocide, with a focus on specific genocidal intent. The author identifies the group targeted by the genocide as the ethnically based Ukrainian civic and political nation, arguing that only this specific group could fight for independence and realize its right to self-determination. The author contends that the Holodomor was aimed at the physical destruction of a sufficiently large portion of the Ukrainian national group, undermining its potential, eliminating its aspirations for independence, and achieving a final resolution of the Ukrainian national question.

Keywords*: Holodomor, Genocide Convention, genocidal intent, Ukrainian nation.*

ЮРИДИЧНЕ ВИЗНАЧЕННЯ ГОЛОДОМОРУ ЯК ГЕНОЦИДУ ВІДПОВІДНО ДО КОНВЕНЦІЇ ПРО ГЕНОЦИД

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Анотація

У статті розглядається застосовність визначення геноциду в Конвенції ООН про Геноцид до Голодомору 1932–33 років і Голодомор аналізується за цим визначенням. Стаття використовує 4-етапний підхід для доведення ознак злочину геноциду з акцентом на спеціальний геноцидний намір. Цільовою групою українського геноциду автор визначає етнічну українську громадянську та політичну націю, бо тільки ця особлива група могла боротися за незалежність і реалізувати своє право на самовизначення. Автор стверджує, що Голодомор був спрямований на фізичне знищення достатньо великої частини української національної групи, підрив її потенціалу, ліквідацію її прагнення до незалежності та остаточне розв'язання українського національного питання.

Ключові слова*: Голодомор, Конвенція про геноцид, геноцидний намір, українська нація.*

An objective assessment of the Holodomor of 1932–33 and what led to it, as well as an analysis of the similarities between the then Soviet and the current Russian atrocities in Ukraine, is an obligation that needs to be fulfilled in order to honor the memory of the millions of victims of the famine and the ongoing Russian aggression against Ukraine. The purpose of this article is to show that the Holodomor had a national dimension and can be classified as genocide, not only under broader definitions of genocide, but also under the narrow definition of genocide found in the 1948 UN Genocide Convention.

Why should the definition of genocide in the Genocide Convention be used to qualify the Holodomor as an act of genocide? First of all, because the term "genocide," legally defined for the first time in article II of the 1948 Genocide Convention, is an internationally recognized term for many years. Secondly, because the definition of genocide, as it stands in the Genocide Convention, is applicable to the Holodomor of 1932–33. Genocide is a crime prohibited under customary international law and a *jus cogens* norm, to which the general rule of non-retroactivity does not apply.[1] It is a crime with no statute of limitation and can be prosecuted irrespective of the date of its commission. Under the 1968 United Nations Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, no statutory limitations shall apply to the crime of genocide as defined in the Genocide Convention, irrespective of the date of its commission. Furthermore, Article 7(2) of the European Convention on Human Rights (1950) provides that the principle of non-retroactivity of criminal law "shall not prejudice the trial and punishment of any person for any act or omission, which at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations." The International Commission of Inquiry into the 1932–33 famine in Ukraine, created in 1988 with a membership that included international lawyers, delivered its final report in 1990. Although this commission did not state that genocide was committed — due partly to a lack of evidence, it did state that if genocide was committed in Ukraine, it was contrary to the provisions of the international law then in force. Thirdly, the term genocide has been widely used with respect to the Holocaust and the Armenian genocide, both of which took place prior to the entry into force of the Genocide Convention. Clearly, genocide as defined in the Genocide Convention can be used to make an assessment of historical events.

The Holodomor of 1932–33 can be viewed in a narrow perspective as a famine organized by the Soviet regime and aimed at subordinating Ukrainian peasants, or else in a broader perspective as an integral part of a planned genocide against the

[1] Bohdan A. Futey, *International Legal Responsibility for Genocide: Justice in the Courts* (Sept. 25–26, 2008) (paper presented at a Conference on Famine-Holodomor, May 2, 2011, http://www.holodomoreducation.org/index.php/id/178/lang/en).

Ukrainian nation. The position of Raphael Lemkin, the author of the term "genocide," is highly relevant in this regard. According to him, genocide can be committed through a coordinated plan of different actions aimed at destroying the essential foundations needed for the very existence of a national group. Lemkin defined Stalin's attempt to destroy the Ukrainian nation, the pattern of atrocities committed against this nation, as a classic example of Soviet genocide. Hence, we can view the Holodomor as a complex phenomenon that included not only the destruction of an independent Ukrainian peasantry, but also of intelligentsia, artists, and political and religious figures.

The legal requirements for constituting a crime of genocide stipulate that the elements of the crime have to clearly correspond to the Convention. Under article 2 of the Convention, genocide is "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group." A literal reading of the Genocide Convention's definition of genocide consists of four constituent parts: (1) a criminal act / actions, (2) intent to destroy, (3) an identifiable target group, that is national, ethnic, racial or religious group, (4) and specific genocidal intent—targeting the group as such.

The two last elements are critical to proving a crime of genocide. While extermination (as provided, for example, in Article 7(2)(b) of the Rome Statute of the International Criminal Court) and genocide are the most serious crimes under international law, the mass extermination of people is not enough to constitute a genocide. It requires special intent to destroy a specific group enumerated in the Genocide Convention and directing that intent against this specific group. Genocide is not directed against people in general or private members of the group targeted. The members of the group are destroyed in whole or in part because of belonging to the group.[2]

The objective element of a crime of genocide is the first element in a 4-step approach to the Ukrainian famine. The Genocide Convention provides five kinds of acts or five ways to commit genocide that form *actus reus* ("killing members of the group," "causing serious bodily or mental harm to members of the group," "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part," "imposing measures intended to prevent births within the group" and "forcibly transferring children of the group to another group").

[2] Prosecutor v. Rutaganda, Case No. ICTR-96-3-T, Judgment and Sentence, Dec. 6, 1999, para. 60.

The Holodomor was not solely the outcome of a failure to provide help. In the case of the Holodomor, the objective element of the crime consisted of a set of deliberate **actions**, such as excessive and unrealistic grain procurements quotas, repressive requisitioning of grain, confiscation of all the foodstuffs, export of grain rather than use within the country, all actions that made conditions of life impossible and either resulted in or directly caused large-scale and catastrophic famine. These acts were all committed by means of special legislation, decrees and orders, and through their actual implementation. Special acts included the Resolution of 9 August 1932 "On measures for fighting grain speculation" and directives of 23 October 1932 and 1 December 1932 on confiscation of grain from peasants and repressions, the Resolutions "On measures to intensify grain procurement" of 30 October 1932 and 18 November 1932 that prevented the sale of grain or industrial goods in Ukraine, strengthened the repressions and imposed fines in kind, which allowed confiscation of meat and potatoes. The blacklisting of villages that was implemented under the Resolution of 6 December 1932, included total suspension of cooperative and state trade in the villages and the removal of all available goods village stores. The introduction of a passport system and the sealing of borders prevented peasants from leaving the starving villages and freely travelling in search for food.

All these decisions and actions of Stalin's totalitarian regime led to deprivation of grain and foodstuffs necessary for the survival, thus creating living conditions incompatible with life. The actions causing the famine most closely qualify under "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part," but as the Holodomor was a complex phenomenon and included other actions such as executions, repressions, transfers of population, it can be argued that actions of the Soviet regime fall under different kinds of acts set out in the Genocide Convention. For instance, Zakharov argues that, in the case of ethnic Ukrainians residing in Kuban, children of victims of the famine were forcibly transferred to another group, due to cessation of the policy of Ukrainization and the fear that they would preserve their own ethnical identity.[3]

Second element (**intent to destroy** or general intent to commit crime of genocide) can be inferred from actions on the ground, the sheer number of victims, as well as from testimonies of Holodomor survivors, who generally sensed that the acts — simultaneous export of grain, denial of famine and failure to provide help — were purposeful and deliberate.

The existence of a plan or policy is an important factor in proving intent.[4] The Soviet government created famine *sui generis*.[5] The mechanism of organizing the

[3] Ievhen Zakharov, *Can the Holodomor 1932–1933 in Ukraine and Kuban be classified as Genocide?*, 2008, at 14.

[4] Prosecutor v. Jelisic, Case No. IT-95-10-A, Judgment, July 5, 2001, para. 48.

[5] David Marcus, *Famine Crimes in International Law*, 97 Am. J. Int'l L. 245, 2003, p. 255.

Holodomor consisted of adopting unrealizable plans for grain requisition, special punitive actions that included confiscation of all food supplies, travel bans, information blockades and other repressive measures. The cruelty of these measures, aimed specifically at extermination, is reinforced by the fact that not only grain was confiscated, but all edibles, clothes, and tools as well. Implementing an internal passport system and sealing borders was meant to restrict the movements of Ukrainian peasants, ensure that they could not travel in search of food.

There were enough possibilities to prevent, control or stop the famine. In 1933, the Soviet Union held 1.5 million tons of grain in state reserves that could have been used to feed more than 5 million people.[6] Large amounts of grain were not exported but stored in grain elevators or churches and guarded by Soviet military units and secret police until these reserves decayed. The resolutions and secret directives passed in May 1933 and afterwards show that the famine was planned for a specific period of time.

Stalin and other Communist party leaders knew or should have known about the massive deaths in Ukraine and the actions that were undertaken to execute the orders that were issued from above. This is sufficient to establish the necessary element of knowledge. As the International Criminal Tribunal for Rwanda emphasized, "the offender is considered guilty since he knew or should have known that the acts he committed would destroy the group partly or totally."[7] The Soviet government received numerous inquiries from abroad concerning the famine, as well as offers of help, but it denied the famine and rejected help from various international NGOs and relief organizations. There were 33 publications in the foreign press in 1932 and 180 in 1933[8] regarding the famine. The policy of denying the famine and rejecting foreign aid further proves intent to starve the population. Thus, the attack against the Ukrainian peasants was systematic, planned, specifically programmed and organized in detail.

The third element, an object of the crime of genocide, is **an identifiable targeted group** that is protected by the Genocide Convention. Although the ethnic and civic character of the Ukrainian peasantry overlapped, the famine targeted Ukrainians primarily as a national group, which should be understood as an ethnically based socio-economic, civic and political nation[9], a nation that could potentially fight

[6] Roman Serbyn, "Holodomor — The Ukrainian Genocide," in *Holodomor Studies*, No. 2, Summer-Autumn 2009, p. 4, 6.

[7] William A. Schabas, *Genocide in International Law: The Crime of Crimes,* 2nd ed., 2009, p. 243–255.

[8] "Holodomor v Ukraini 1932–1933," rr: *Bibliohraphichnyi Pokazhchyk*, L. M. Burian & I. E. Rikun eds., 2008.

[9] Roman Serbyn, "The Ukrainian Famine of 1932–1933 as Genocide in the Light of the UN Convention of 1948," LXII *The Ukrainian Quaterly*, No.2, Summer 2006, p. 187; Myroslava Antonovych, "Holodomor 1932–1933 rokiv v Ukraini yak Zlochyn Henotsydu, *in Identychnist i Pamiat u Postradyanskiy* Ukraini 41, 2009, p. 47–48.

for independence and realize its right to self-determination. The peasants were targeted as part of the Ukrainian nation. According to the 1926 census, peasants of Ukrainian ethnicity constituted the overwhelming portion of the Ukraine's population. They made up 88.5 percent of Ukraine's peasant population; 89 percent of Ukraine's ethnically Ukrainian population and 71.8 percent of Ukraine's overall population. As stated in the Kyiv Court of Appeal decision, the Holodomor was directed specifically against part of the Ukrainian nation and not against members of other ethnic or national groups, who had also fallen victim to the Holodomor of 1932–33, but arguably to a much lesser degree than ethnic Ukrainians. For instance, professor Volodymyr Vasylenko defined the targeted group as the Ukrainian nation, but did not look at it as encompassing all citizens of Ukraine.[10] With respect to the predominantly Ukrainian Kuban region of the Northern Caucasus, it can be argued that there the regime primarily targeted Ukrainians as an ethnic group.[11]

The specific genocidal intent against a particular group (*dolus specialis*), in the absence of a confession, can be inferred from a number of facts and circumstances in which the acts took place. They include the general political doctrine, facts of deliberate and systematic targeting of victims because of their membership in a specific group, the general context of the perpetration of other culpable acts systemically directed against the same group, the scale and nature of atrocities, repetition of destructive or discriminatory acts, and the combine effect of speeches and projects justifying the acts.[12] A specific genocidal intent to destroy the Ukrainian nation can be inferred from legal documents, decisions and acts of different Soviet organs and authorities, correspondence and speeches, including public and confidential statements, and actions on the ground, including scale and nature of atrocities.

That genocidal intent was directed primarily against the Ukrainian nation is evidenced by several distinctive characteristics of the Ukrainian famine of 1932–33. As Stanislav Kulchytsky pointed out, "Why did Stalin opt for the most horrible form of repressions, terror by famine, and what territory was affected and when?"[13] In the words of James Mace, the genocidal nature of the famine can be inferred from the "clarity with which it was geographically focused against areas containing target populations" and the combination of particularly harsh nationality policies

[10] Volodymyr Vasylenko, *Holodomor 1932–1933 yak Zlochyn Henotsydu*, 2009, p. 24.

[11] Ievhen Zakharov, *Can Holodomor 1932–1933 in Ukraine and Kuban be classified as Genocide?,* 2008, p. 9–10.

[12] Prosekutor v. Akayesu, Case No. ICTR-94-4-T, Judgment, Sept. 2, 1998, paras. 523–524.

[13] Stanislav V. Kulchytsky, *Holod 1932–1933 rr. v Ukrayini yak Henotsyd: Movou Dokumentiv, Ochyma Svidkiv,* 2008, p. 129.

against the Ukrainian target group."[14] The specific factors indicating the intent to destroy the Ukrainian national group as such include the **period** during which the Holodomor took place, the **territory** it covered, the **nature and types of measures,** plus the **scale** of the tragedy.

One has to distinguish the famine that affected different regions of the Soviet Union up to the autumn of 1932 and the catastrophic famine that affected Ukraine and the North Caucasus at the end of 1932, particularly in 1933.[15] In the first three quarters of 1932, the famine occurred as a result of non-fulfillment of grain requisition quotas from the 1931 and 1932 harvests respectively. During that period, the famine in Ukraine had similar causes and characteristics to that of other big agricultural regions in the Soviet Union. From November 1932 to the summer of 1933, the regions experiencing famine were mainly Ukraine and Kuban, regions of the Soviet Union inhabited by Ukrainians. Deaths due to the famine began in late autumn 1932 and grew to large scales from February to August 1933, with the largest number of deaths occurring in June 1933.[16]

The national character of the famine is further proved by particularly cruel measures (confiscation of all foodstuffs, isolation of villages, closure of borders, and rejection of foreign relief). They were very different from measures taken on a pan-Soviet scale.[17] The total confiscation of foodstuffs applied only to Ukraine and Kuban. The regime of black boards, ban on trade, and isolating villages solely targeted Ukraine. Only in Ukraine and Kuban were the borders sealed and travel banned. As a result of Stalin's border directive (Directive of the CC AUCP(b) and CPC USSR of 22 January 1933), peasants could not leave Ukraine in search of food. The directive ordered the arrest of all peasants trying to cross the border, and their return to territories where the famine raged. In one six-week span of time, the OGPU arrested 220,000 people and returned about 190,000 to their starving villages; the remainder was shot.[18] The directive is crucial evidence of genocide, because it concerns only Ukraine and Kuban, and it clearly notes that peasants leaving Ukraine and Kuban were organized by enemies of the Soviet regime, Social

[14] J. E. Mace, "Genocide in the U.S.S.R,"*, in Genocide: A Critical Bibliographic Review* 117, I. W. Charny ed., 1988.

[15] David Marples, "The Holodomor in Contemporary Ukraine," 2, Feb. 23, 2011 (unpublished paper, presented at Post-Soviet Press Group meeting of UCL SSEES), p. 2; "The Soviet Countryside: A Tour of Inquiry," in *Manchester Guardian*, Oct. 21, 1933, p. 14 ("No provinces within a radius of several hundred miles of Moscow experienced the Ukrainian and North Caucasian extremities.").

[16] Stanislav V. Kulchytsky, *Holod 1932–1933 rr. v Ukrayini yak Henotsyd*, 2005; Zakharov, p. 5.

[17] Andrea Graziosi, "The Soviet 1931–1933 Famines and the Ukrainian Holodomor: Is a New Interpretation possible, and What Would its Consequences Be?" *in Hunger by Design. The Great Famine and Its Soviet Context*, 1, 2008, p. 8.

[18] Andriy J. Semotiuk," The Ukrainian Holodomor — Was It a Genocide?" May 4, 2011.

Revolutionaries and Polish agents, whose aim was to agitate against collective farms in particular, and Soviet authority in general.

By the summer of 1932, 70 percent of all Ukrainian peasants and 80 percent of all farm land had been collectivized, while in Russia and throughout the Soviet Union, only 59 percent.[19] The repressions used to force Ukrainian peasants into collective farms had already achieved their goal. Why then did the famine in Ukraine happen and during this short and specific period? The answer lies in the **historical context.** What distinguishes the Ukrainian famine from other famines and proves genocidal intent against Ukrainians is precisely the historical context, that is, the cessation of the policy of Ukrainization and the attack on Ukrainian political, cultural and religious elites. While peasants were starving, thousands of Ukrainian intelligentsia, party cadres, teachers, artists, and other intellectuals were being persecuted.

The joint resolution of the Central Committee of All-Union Communist Party and the Council of Peoples Commissars of the USSR of 14 December 1932 "On grain procurement in Ukraine, Northern Caucasus and in Western Oblast" shows the link between the famine and interruption of Ukrainization policy. It blamed procurement difficulties in Ukraine and the North Caucasus on the Ukrainization policy and ordered that petlurites and bourgeois-nationalistic elements be removed from soviet organizations and punished, that grain quotas be enforced.

The question why Stalin wanted to exterminate Ukrainians as a nation concerns the motives that may determine the genocidal intent of the perpetrator. Ukrainians were the second most populous group in the Soviet Union but they were not a 'loyal nation.' Stalin was afraid of the results of Ukrainization, which touched upon all the key areas of social life. He was afraid of the rise of consciousness that could lead to another national resistance movement. Ukrainization was transforming the peasant population of Ukraine and Kuban into Ukrainians, conscious of their national identity. Ukrainization reached levels that led Soviet leaders to fear the loss of Ukraine. In the letter to Lazar Kaganovich of 11 August 1932 Stalin emphasized the danger of losing Ukraine: "At this point the most important thing is Ukraine. The situation in Ukraine is very bad. If we don't take steps now to improve the situation, we may lose Ukraine. The objective should be to transform Ukraine, in the shortest period of time, into a real fortress of the USSR."[20]

Ukrainian nationalism must have been seen by Stalin as a great obstacle to the stability of the entire communist regime and the Soviet system. Given Ukraine's rich cultural and historical heritage and the fact that communists had to occupy Ukraine three times over the span of 1917–20, the Soviet leadership feared a Ukrainian national movement that could eventually lead to Ukraine declaring

[19] *Holodomor 1932–1933 rr: Henotsyd Ukrayinskoho Narodu,* 29, Bohdan Lanovyk ed., 2006.

[20] Letter from Stalin to Kaganovich, 1 Holodomor Studies, Summer-Autumn 2009, p. 273–74.

independence from the Soviet Union. As the Soviet politician Kosior declared in *Izvestiia,* 2 December, 1933, "Ukrainian nationalism is our chief danger." Lemkin underlined the danger of Ukrainian nationalism: "As long as Ukraine retains its national unity, as long as its people continue to think of themselves as Ukrainians and to seek independence, so long Ukraine poses a serious threat to the very heart of Sovietism."[21] Hence Ukrainization was replaced with anti-Ukrainian terror, a campaign against Ukrainian nationalism.

Stalin must have regarded the famine as an effective preventive action to eliminate that nationalism and to destroy Ukrainian aspirations for independence. The famine was directed against part of the Ukrainian nation — the peasants, who not only were, in the words of Lemkin, "a repository of tradition, … the national language and literature, the national spirit, of Ukraine," but who also formed the "social base of Ukrainian national resistance."[22] Stalin understood that peasants formed the base of the Ukrainian national movement. In his article "Marxism and the National-Colonial Question," he wrote: "… without peasants there can be no strong national movement. This is precisely what we mean when we say that the national question is, actually, the peasants' question."[23] For Stalin, the general opposition in Ukraine to grain procurement, same as in the Northern Caucasus, was directly connected to the national question.

A 1930 report by Balitsky, head of the GPU, mentions slogans commonly used during peasant revolts such as "for independent Ukraine," "free Ukraine from Moscow rule." The GPU order of 13 February 1933 mentions that Ukrainian peasants, together with the Ukrainian intelligentsia, "were planning an armed uprising against the Soviet regime in spring of 1933 with the aim to establish a Ukrainian independent republic."[24]

As James Mace put it, the famine represented a means for Stalin to impose a "final solution on the most pressing nationality problem in the Soviet Union."[25] The diplomatic and consular dispatches of that time show that foreign delegations also saw the famine as the means for resolving the national issue in Ukraine.[26]

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[21] Rafael Lemkin*,* "Soviet Genocide in Ukraine*,*" *no.* 7 *Journal of International Criminal Justice* 125, 2009, p. 126.

[22] Lemkin, *supra*, p. 128.

[23] J. Stalin, "Concerning the National Question in Yugoslavia: Speech Delivered in the Yugoslav Commission of the Executive Committee of the Communist International, March 30, 1925," *in* 7 J. Stalin*, Works*, 1954, p. 71–72.

[24] Roman Serbyn ", Holodomor — The Ukrainian Genocide," no. *1 Holodomor Studies*, No. 2, Summer-Autumn 2009, p. 7*; Holod-Henotsyd 1932–1933 rokiv v Ukrayini,* Y. Shapoval ed., 2005, p. 297–298.

[25] James E. Mace, *The Man-made Famine of 1933 in Soviet Ukraine*, *in* Famine in Ukraine in 1932–1933, 1986, p. 12.

[26] *Holod 1932–1933 rokiv na Ukraini: Ochyma Istorykiv, Movou Dokumentiv*, 1990, p. 109.

Indeed, in 1934, Pavel Postyshev reported: "Last year we defeated national counterrevolution."[27]

Finally, in order to establish genocidal intent, it is sufficient to show that there was intent to destroy a significant or substantial part of the group. A considerable part of the specific group can be interpreted as that part of the group that is "sufficiently large to have an impact on the group as a whole."[28] It can include a group of people, who by sheer numbers, if destroyed, endangers the group's survival, or it can target its specific or select part such as peasants, academics, artists, religious and political figures.

The huge number of victims of the famine and of political repressions of the intelligentsia and church leadership, that is, the destruction of the nation's determining parts, greatly impacted the group as a whole. Given that the peasants were a substantial component and foundation of the Ukrainian nation, a repository of national spirit and culture, Stalin, by physically destroying a sufficiently large portion of the Ukrainian national group by this particular method, could undermine the potential of the Ukrainian nation, depriving it of spiritual and national values, eliminating its aspirations for independence and thereby arrive at a final resolution of the Ukrainian national question. Famine leads to moral and psychological degradation, undermines cultural and political development. It facilitates a reeducation of people, a change in their goals and values. It breaks spirituality, mentality and national consciousness. The Holodomor left the nation so politically, socially and psychologically traumatized that national feeling was crushed and any national resistance became impossible. Children constituted a special category of Holodomor victims. Millions of children lost their lives, suffered physical and mental trauma. Others were not born, which affected future generations.

The famine was followed by Russification and various actions designed to destroy Ukrainian culture, by artificial migration and resettlement in Ukraine and Kuban (due to the Holodomor and deportations of Ukrainian settlers from the Northern Caucasus many villages became inhabited) of peoples from other areas of Soviet Union, especially Russians. All of these are indicators of genocidal intent.

In conclusion, the Ukrainian famine constitutes genocide under the Genocide Convention because it was planned and committed by the Soviet government against the Ukrainian national group as such. It targeted a national group as hostile to the Soviet regime, as a nation that, in the long run, could exercise its right of self-determination by establishing an independent state. By exterminating a significant part of the Ukrainian people, the Holodomor undermined the nation's potential to fight for independence.

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[27] Institute of National Memory, *The Holodomor: An Act of Genocide Against the Ukrainian People* 5, 2008.

[28] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Feb. 26, 2007, para. 198; Schabas, p. 281.

The current genocidal patterns and actions committed by the Russian Federation have the same aim of destroying the Ukrainian nation and include evidence of all acts prohibited by the Genocide Convention, including the forcible transfer of children (i.e. forcible deportation and abduction of thousands of Ukrainian children to Russia and actions directed to strip them of their national identity). The incitement to genocide by the Russian state has been evident and proves the Kremlin's genocidal intent; it constitutes a crime in itself. The Russian military's genocidal tactics in Ukraine have included: physical extermination; killings; serious bodily and mental harm; conflict related sexual violence; executions; enforced disappearances; the torture of activists, volunteers, community leaders, local politicians, law enforcement officers, educators and anyone else who demonstrates a Ukrainian identity, supports Ukrainian independence; destruction of cities; attacks against energy infrastructures; nuclear threats; filtration processes; and a starvation campaign. Actions directed at erasure of the Ukrainian identity and attacks against Ukrainian culture and language further prove genocidal intent. What would be the scale of Russian atrocities had not the Ukrainian military fought back, defended and liberated the Ukrainian territories? The Genocide Convention should be used to hold the Russian state responsible for genocide, as well as persons committing genocidal acts in Ukraine. It should also be used as the basis for obligating states and the international community to stop the genocide against Ukraine. Unlike 90 years ago, the perpetrators must be brought to justice.