



Vasylenko, Volodymyr, and Myroslava Antonovych, eds.

*The Holodomor of 1932–1933
in Ukraine as a Crime of Genocide
under International Law*

[*Holodomor 1932–1933 rokiv v Ukraini iak zlochyn henotsydu zhidno z mizhnarodnym pravom*].

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Reviewed by Yulia Anosova

The collective monograph *The Holodomor of 1932–1933 in Ukraine as a Crime of Genocide under International Law* is a result of annual workshops held by the Department of International Law of the National University of Kyiv-Mohyla Academy in 2008–2012. It consists of a series of papers in Ukrainian and in English written by Ukrainian and American researchers of the Holodomor. Unlike historical works on the subject, which focus primarily on the most controversial elements of the Holodomor as a crime of genocide, this study provides a comprehensive survey of all legal aspects of the Great Famine of 1932–1933 in Ukraine, including its qualification as a crime of genocide under international customary and treaty law, the methodology of its legal assessment and the issues of responsibility. The purpose of the book is to contribute to a wider recognition of the Holodomor as a crime of genocide by the world community, through an analysis of the Famine in Ukraine and the Kuban from the perspective of international law.

At the beginning of the monograph, Volodymyr Vasylenko, former judge at the International Criminal Tribunal for the Former Yugoslavia, using methods of legal scholarship, proves that the Holodomor has all elements of the crime of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter — the Genocide Convention). The author emphasizes that every instance of genocide is unique. That is why in examining the Holodomor in the light of the Genocide Convention from a legal perspective, we should take the document as it is without trying to adjust its interpretation to our own purposes of qualification. Although the author relies heavily on legal methods in the analysis of the Holodomor, he does not discuss in great detail the legal methodology he employs, as well as its difference from historical methodology.

Further, Myroslava Antonovych, following Raphael Lemkin proposes to regard the 1932–1933 Holodomor in a broader context of the Soviet genocide of the Ukrainian nation, which took place in 1920–1949 and which, apart from the extermination of peasants, also included the extermination of the intelligentsia and the national Church. Professor Antonovych also

provides qualification of the Holodomor according to the genocide provisions of the Rome Statute, and more specifically as this crime is defined in the “Elements of Crimes,” a subsidiary source to the Rome Statute. Although the analysis of the 1932–1933 Holodomor is presented only in the light of Article 6(c) of the Rome Statute, that is as an act of deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part, which is the most commonly agreed version of interpretation of the Holodomor. The author contends that all five acts envisioned in Article 6(a-e) might be identified in it. However, the latter statement is not supported by substantial evidence.

The authors of the monograph argue that the Holodomor can be officially qualified as genocide under the Genocide Convention and not only in the context of a historical assessment of events, which would open opportunities for bringing to responsibility those involved in its commission. For this purpose, Kateryna Bondar shows that the Genocide Convention can be applied retroactively, that is to the acts committed before its adoption, which is possible due to the principle of the non-applicability of statutory limitations to the crime of genocide. Refuting the argument that there was no national legislation prohibiting genocide at the time of the commission of the Holodomor, Professor Futey points out that the 1968 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity “expands the scope of prosecutions for genocide under the Genocide Convention by eliminating any domestic barriers to such prosecutions” (p. 177). Further, Victoria Mykuliak, analyzing customary norms and principles of the law of war of the end of the 19th and the beginning of the 20th centuries, proves that at the time of their commission the acts constituting the Holodomor were prohibited by international customary law as well.

Finally, issues of legal responsibility for the Holodomor are raised in the monograph. Volodymyr Vasylenko considers the USSR as a state, and individuals, whether masterminds or executors, responsible for the Holodomor. Despite Russia constituting the continuation of the USSR, Ukraine has proclaimed that it will not put forward any claims against the Russian Federation for this crime. This fact does not prevent descendants of victims to file complaints against the Russian Federation as the continuation of the Soviet Union to get compensation, though in practice this right is hard to realize. As for the individual perpetrators, today their persecution and punishment is impossible due to their death. In addition to state and individual responsibility, Kateryna Krakhmalova examines the previously unexplored issue of the responsibility of foreign companies who bought wheat from the Soviet government. The author concludes that although Western corporations knew or at least should have known about the Holodomor, so far there is no international instrument, which would permit holding them responsible for this crime. Thus, the prosecution of foreign companies under the domestic law of the state of their nationality might be much more promising. Overall, outlining the current state of affairs and existing obstacles, the authors suggest a range of quite feasible mechanisms which can still be used to bring the perpetrators of the Holodomor to justice.

To conclude, the monograph provides a unique view on the Holodomor from a legal perspective, and more specifically, from the perspective of international law. Although the authors aim to provide only a juridical assessment of the Great Famine, they also refer to historical and political issues to support some legal points. This enriches the book by creating a more comprehensive picture of this crime. The arguments presented in the monograph are

supported by plenty of evidence and examples. The authors use a wide range of sources including legal acts, decisions of the courts, reports of investigation commissions, works of legal scholars and historians, statistical data, and archival material. Since different authors contributed to the book, there is sometimes a divergence of views, but not on key points. Overall, the monograph, by relying on strict legal criteria and not mere political speculation, should undoubtedly help to convince as many states as possible that the 1932–1933 Holodomor was indeed a genocide of the Ukrainian nation, and can catalyze the process of the recognition of this fact by the whole international community.