

LEGAL SOURCES OF THE UKRAINIAN GENOCIDE OF 1932-1933

As it is clear from article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), the crucial element to establish genocide under the Genocide Convention is evidence that such acts were committed with the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. Though legal documents which testify to the Holodomor in Ukraine as genocide against Ukrainians were revealed in archives, some argue that not a single decree of the Soviet government and the Central Committee of the Communist Party in which there was an order to kill with famine a certain number of Ukrainian or other peasants was found by researchers [1]. Victor Kondrashyn and Diana Penner state in their book «Famine: 1932– 1933 in Soviet village (on materials of Volga region, Don and Kuban)» that evidence that the famine of 1932 – 1933 was thoroughly planned has not yet been established. Evidently, it would be naive to think that such a criminal power as the Soviet Union would explicitly issue decrees to kill millions of Ukrainian peasants. However, the intent to do so is implicitly expressed in many legal acts of Soviet authorities. In addition, numerous legal documents of international and foreign bodies recognize that the case of the Holodomor of 1932 – 1933 in Ukraine was an act of genocide against Ukrainians. Famous scholars further bring the case forward in a wide array of historical documents, memoirs and writings.

Legal documents of Ukrainian SSR and USSR

Among the legal sources, there are, first and foremost, laws and by-laws adopted by the Central Executive Committee (CVK) and the Council of People Commissars (RNK). On November 18 1932,

the Politburo of Central Committee (CC) of the Communist Party of Bolsheviks of Ukraine (CP(b)U) ordered Redens, Head of GPU of Ukr.SSR and Kosior, Secretary of CC of CP(b)U, to elaborate, by 23 November, a plan for the liquidation of kulak and petliura counter-revolutionary seats (nests). Four days later, Redens reported to Kosior that there will be a mass operation of attack against a class enemy. As an example, he reported that in the Kharkiv region alone, 303 people were arrested, among which there were 38 kulaks, 34 former whites and Petliura officers and 23 with an anti-Soviet past. [2] The intent was absolutely clear — to destroy peasants owners who were mostly Ukrainians.

Another decree, issued on December 14 1932 [3], of the CC of Ail-Union Communist Party of Bolsheviks (VCP(b)) and RNK of USSR entitled «On grain-collection in Ukraine, Southern Caucasus and in Western region» demonstrates that the government was scared of the results of Ukrainization. It is believed that this policy was implemented beyond the «allowed margins» and that there was a direct connection between the policy of grain storage and the results of Ukrainization. Grain storage was to become a method of suppressing social and national resistance.

In order to eliminate resistance to grain storage by kulaks elements and their party and non-party menials (prysluzhnykiv), CC and RNK of the Soviet Union approved *inter aliato* propose CC of CP(b)U and RNKU to pay serious attention to a correct carrying out of Ukrainization, to eliminate its mechanical realization, to turn out Petliura and other bouirgeois and nationalistic elements from party and soviet bodies, to thoroughly choose and bring up Ukrainian Bolshevik cadres, to guarantee systematic party leadership and control over the implementation of Ukrainization.

Kosior and Chubar obtained a right to suspend supply of goods to Ukrainian villages until they fulfilled their grain storage plan. Yet as those plans of grain storage were absolutely exaggerated, suspending of goods supply to Ukrainian villages consequently meant famine in those villages. Such a decree concerned only Ukrainian villages.

The system of «black boards» was also established in the Ukrainian regions of Kuban (by Decree of 4 November 1932) and in the rest of Ukraine by Decree of 18 November 1932. Villages that were placed on «black boards» were surrounded by military troops, all their goods and seeds stores were seized, and trade and procurement of any goods was forbidden. Therefore, in practice, a village placed on a «black board» saw its peasants starve to death.

As early as December 6 1932, a joint Decree of CC CP(b)U and R N K U announced that 6 Ukrainian villages were placed on «Black boards». Subsequently, new collective farms were added to the list of «Black boards». For example, by the decision of Dnipropetrovsk regional committee of CP(b)U on December 23 1932, 22 farms were placed on the list. In total, collective farms in 82 regions of Ukraine, amounting to a quarter of administrative districts, with a population of 5 million people were placed on the «boards» [4].

In addition to an unrealistic plan for state grain collection and punishment for failure to fulfill the quotas established by the Soviet Union, peasants were deprived of the right to leave Ukraine. A decision of the Politburo on 15 November 1932 excluded issuing passports to peasants. Moreover, in January 1933, Stalin's order banned peasants to leave the territory of Ukr.SSR and Kuban for getting bread in other territories of the Soviet Union [5].

There are other legal documents that testify to genocide in Ukraine. For example, the German Government Report on Vinnytsia 1944 [6] «contained illegal acts of the government of the USSR, most notably at Vinnytsia and during the engineered terror-famine of 1932- 1933» [7].

Far from being complete, this list of legal acts of Ukrainian SSR and USSR testifies to the well-planned act of genocide perpetrated against the Ukrainian people.

Legal Documents of Ukrainian People's Republic in exile

In response to the man-made famine of 1932 – 33 in Ukraine, Ukrainians in Halychyna and neighbouring territories held widespread acts of protest, which found expression in letters from the Government of the Ukrainian People's Republic (UPR) in exile and various organizations and parties. There were letters of the Government of the Ukrainian People's Republic (UPR) in exile to foreign trade agencies of European states requesting to halt the bread trade with the USSR. There were also letters to the League of Nations, namely, the letter by a representative of the Government Oleksandr Shulhyn on September 25 1933 to the Head of the Council of the League of Nations, Mr. Mowinkel, in which he asked to raise the painful question of the famine in Ukraine as «the very existence of a great nation was being threatened») [8]. Another letter was addressed to the head of the 14th Assembly of the League of Nations, Mr. Voter, in which the League was asked to take all necessary measures to prevent exportation of bread from the USSR,

actually from Ukraine, to organize a commission for determining the real extent of the tragedy and to organize international aid for the starving people [9].

In 1983, the Government-in-exile of the Sovereign Ukraine (1917 – 20) presented an Accusation Act against the Government of the USSR, regarding the Great Famine of 1932/33 to the International Court of Justice in The Hague. The Court did not accept the petition, on the grounds that Ukraine did not exist then as an independent state. Now that Ukraine has achieved independence, the case of the Great Famine is waiting to be pleaded.

Legal sources of independent Ukraine

The Ukrainian genocide was recognized by the Ukrainian Law «On the Holodomor in Ukraine of 1932– 1933» on November 28 2006. Article 1 of this law states that «The Holodomor of 1932-1933 in Ukraine was genocide against the Ukrainian people». Under article 2 of this legislation, public denial of the Holodomor is illegal.

Following a request from the World Congress of Ukrainians, the National Commission for Strengthening Democracy and the Rule of Law approved a Conclusion, on May 16 2008, regarding the juridical characterization of the Holodomor of 1932–1933 in Ukraine as an act of genocide against the Ukrainian people, with regards to the definition formulated in the UN Convention on the Prevention and Punishment of the Crime of Genocide adopted in 1948. Point 6 of the aforementioned Conclusion states that the recognition of the Holodomor of 1932–1933 in Ukraine as a genocide against the Ukrainian people corresponds to the purpose of the UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the principal aim of which lies not in the juridical definition of the concept of genocide, but in assuring the irrevocability of punishment for its commission.

Legal documents of other states

Among legal documents of foreign states, one of the first to be adopted was Resolution 39a, submitted to the United States Congress by Congressman Hamilton Fish Jr. on May 28 1934. This resolution enumerated the facts of the famine, recalled the American tradition of «taking cognizance» of such violations of human rights, expressed sympathy with the victims and signalled

hope that the USSR would change its policies and allow for immediate American relief. It was referred to the Committee on Foreign Affairs and ordered to be printed (House Resolution 39a, 73rd Congress, 2nd Session).

In addition, foreign diplomats in the USSR sent letters and notes to their home governments expressing their views on the situation to their respective governments. The British Embassy, for example, reported to London that conditions in the Kuban and in Ukraine were «appalling» (British Embassy dispatch, March 5, 1933). German consulars in Kharkiv, Kyiv and Odesa, as well as the Italian consular in Kharkiv, Sergio Gradenigo, and others appropriately informed their governments about events in Ukraine [10].

It was not until 1984 that the ninety-ninth Congress of the USA created the Commission on the Ukraine Famine to conduct a study of the 1932 – 33 famine in order to: (1) expand the world's knowledge of the famine and (2) provide the American public with a better understanding of the Soviet system by revealing the Soviet role in Ukraine's famine [11]. The Report of the Commission was adopted on April 19 1988 and submitted to the Congress on April 22 1988. It was also preceded by two interim reports on meetings and hearings of the Commission of 1986 and 1987 [12]. In its executive summary, the Commission formulated nineteen findings, one of which was: «Joseph Stalin and those around him committed genocide against Ukrainians in 1932 – 33» [13].

From the 1990's to the beginning of the 21st century, when Ukraine started to research and to actively discuss issues of the Holodomor, the Australian, Argentinean, Georgian, Estonian, Italian, Canadian, Lithuanian, Polish, American, and Hungarian parliaments (as well as those of other countries) adopted resolutions or legislation condemning the Holodomor. Thus the Australian Senate adopted a Resolution on October 30 2002 which stated that the Holodomor was one of the genocides in the history of mankind [14]. Seim of Lithuania adopted a Resolution on November 24 2005 which states that «Stalin's totalitarian regime committed a conscious and thoroughly planned genocide against the Ukrainian people» [15]. Furthermore, the Georgian parliament recognized the Holodomor as a genocide against the Ukrainian people committed by the totalitarian Bolshevik regime in 1932 – 1933 [16].

International Legal Documents

There have been some attempts to organize «Nuremberg-style» tribunals for the crimes of the CPSU. Among the first steps in preparing for a trial of this sort was the creation of an International Commission of Inquiry into the 1932–1933 Famine in Ukraine. The establishment of this Commission was a result of an initiative of the World Congress of Free Ukrainians, the members of which approached a number of jurists and legal scholars in different nations asking them to participate in an inquiry into the famine that had taken place in Ukraine during 1932– 1933. The Commission was formed on February 14 1988 with seven commissioners: Colonel G.I.A.D. Draper, formerly a British prosecutor at the Nuremberg Trials; Prof. John P. Humphrey of Canada, formerly Director of the United Nations Division of Human Rights; Prof. G. Levasseur of France, formerly a member of the Commission for the Revision of the French Penal Code; Prof. R. Levene of Argentina, formerly president of the Court of Appeals; Prof. C.T. Oliver, USA, former Assistant Secretary of State and US Ambassador; Prof. J. Sundberg of Sweden, appointed President of the Commission of Inquiry; and Prof. J. Verhoeven of Belgium, appointed vice-president.

The Commission of Inquiry was established as an entirely independent, non-governmental body. Under the Terms of Reference, adopted on February 14 1988, the Commission was to inquire and report on:

- (1) the existence and extent of the famine,
- (2) the cause or causes of the famine,
- (3) the effect it had on Ukraine and its people, and
- (4) recommendations regarding responsibility for the famine [17].

In his opening statement, the counsel for the Petitioner (the World Congress of Free Ukrainians), Mr. John Sopinka, Q. C., submitted the contention that in 1932 – 1933, between five and ten million Ukrainians were starved to death as a result of a brutal enforcement of excessive grain-procurement quotas by the Soviet government. Mr. Sopinka asked the Commission to make the legal finding: (1) that the famine was deliberately caused as an instrument of state policy; (2) that the famine was an act of genocide; and (3) that Stalin, Molotov, Kaganovich, Postyshev and others were responsible [18].

As a result, it was established to the satisfaction of the Commission that it is beyond doubt that Ukraine was severely

affected by the famine in 1932 – 33, and that the Ukrainian and Soviet authorities were aware of the dire food shortages of the population. It was also indisputable that, although they were aware of the dramatic conditions in Ukraine, the Soviet authorities refrained from sending any relief until the summer of 1933. The Commission concluded that the Soviet authorities adopted various legal measures which amplified the disastrous effects of the famine by preventing the victims from finding any food at all or from leaving the region. It was confirmed that the Soviet authorities at the time denied the existence of any famine in Ukraine, and that, against all evidence to the contrary, they ((persisted in their denials for more than fifty years, with the exception of Khrushchev's private avowal» [19].

Although the International Commission of Inquiry into the 1932 – 33 Famine in Ukraine was not a court, even less a criminal one, it, by its Terms of Reference, formulated recommendations regarding responsibility for the famine which «almost certainly lies with the authorities of the Soviet Union... Whatever the role of local authorities in the enforcement of particular policies, to the Commission majority it appears obvious that the prime responsibility rests with the central powers» [20].

During the debates, and particularly in the closing submission by W. Liber, Esq. as counsel for the Petitioner, an accusation of genocide was made [21]. The views of the members of the Commission differed. While Professors Verkhoeven, Humphrey and Levene deemed it plausible that the constituent elements of genocide were in existence at the time of the famine, and Prof. Sundberg stated that his findings were such as to coincide with what was called genocide in the Genocide Convention, Prof. Levasseur thought that a qualification of other facts found should establish it as a crime against humanity. Prof. Oliver did not feel convinced that the Petitioner has made a technical, legal case for genocide under the facts.

With documents available at that time when Soviet archives were not disclosed the Commission majority did not believe that the 1932– 1933 famine was systematically organized to crush the Ukrainian nation once and for all [22]; nonetheless it was of the opinion that the Soviet authorities used the famine voluntarily, when it happened, to crown their new policy of denationalization [23].

In its 58th session, the UN General Assembly adopted a declaration signed by 64 states on the 70th anniversary of the Holo-

domor — «Great Famine in Ukraine in 1932 — 1933» which described the Famine as «a national tragedy for the Ukrainian people» that «took 7 to 10 millions of innocent lives». On 1 November 2007 the 34th Session of the UNESCO General Conference, with 193 countries, unanimously passed a Resolution «On Remembrance of victims of Holodomor in Ukraine» on the 75th anniversary of the Holodomor. The Resolution expressed the conviction that the tragedy of Holodomor which was caused by the harsh actions and politically totalitarian regime under Stalin should be a warning to present and future generations in order to adhere to democratic values, human rights and legality. A similar proposal was put forward by Ukraine at the 9th Session of the UN Human Rights Council. However, in view of the fact that the issue of the Holodomor was being considered at other world forums, the Ukrainian delegation on 22 September, in a spirit of compromise, decided not to insist on a vote for the draft resolution by the Council [24].

Legal Doctrine

International Law considers among its sources the teachings of the most highly qualified publicists of various nations as subsidiary means for the determination of rules of law [25]. The Holodomor of 1932 — 1933 in Ukraine was considered genocide by many famous scholars. The author of the term «genocide» Rafael Lemkin had no doubts that the Holodomor of 1932— 1933 was a crime of genocide — «not simply a case of mass murder. It is a case of genocide, of destruction, not of individuals only, but of a culture and a nation» [26]. James Mace, Alan Besanson, Roman Serbyn and many other scholars consider the Holodomor to be a crime of genocide [27].

Robert Conquest stressed that Ukrainian kulaks were not only economically suspect but also identified as nationalistic, and that Soviets used the famine to destroy Ukrainian nationalism [28].

Helen Fein wrote, «deliberate famines were imposed as a means of genocide in the Soviet Ukraine in 1932 — 33, the Warsaw Ghetto in 1941—42, and in other Jewish concentrated areas during the Holocaust») [29]. Andrea Gratsiozi noted that the answer to the question on Ukrainian genocide cannot be but affirmative, though he considers Holodomor to be a qualitatively different form of genocide in comparison to the Holocaust [30].

David J. Scheffer writes the following about famine in Ukraine in the 1930's: ((Following strong Ukrainian peasant resistance to

agricultural collectivization, Soviet authorities closed the Ukraine border and prevented Ukrainians from migrating. An estimated 4,8 to 10 million people starved to death» [31].

Rett R. Ludwиковski calls the famine in Ukraine a «forgotten holocaust» [32], as Stalin dumped millions of tons of wheat on the Western markets, while in Ukraine, men, women, and children were dying of starvation at a rate of 25,000 a day or seventeen people per minute [33].

Such a brief analyses of different legal documents on the events of the Holodomor from 1932– 1933 in Ukraine suffice to qualify this grave crime as genocide against Ukrainians under international law. For the sake of developing a solid Ukrainian nation, it is imperative to follow the affirmative international legal obligation on states to investigate and to make prior regimes accountable for their grave human rights violations. Moreover, the case of the Holodomor in Ukraine as genocide against the Ukrainian people is waiting to be pleaded in an international judicial body.

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 10. *Марочко В.* Дипломатія замовчування. — С. 147; Листи з Харкова. Голод в Україні та на Північному Кавказі в повідомленнях італійських дипломатів. 1932—1933 роки / Упоряд. Андреа Граціозі. — Харків: Фолю, 2007. - 256 с.
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 14. Австралія визнала Голодомор геноцидом // За нашу Україну. — № 45. - 2003. - 7 лип.
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 16. Це був геноцид//Голос України. — № 2. — 2006. — 5 січн. — С. 1.
 17. International Commission of Inquiry into the 1932 — 33 Famine in Ukraine: Final Report. - 1990. - P. 1.
 18. *Ibid.* - P. 2.
 19. *Ibid.* - P. 45-48.
 20. *Ibid.* - P. 5-6.
 21. *Ibid.* — P. 51. Mr. Liber became a counsel for the Petitioner after John Sopinka resigned when he was appointed to the Supreme Court of Canada.
 22. To crush a nation once and for all is not a necessary aim of the crime of genocide — the Ukrainian nation was too numerous to be crushed for all. The aim of Stalin's genocide was to destroy Ukrainian nation in part through starving to death its most numerous part — peasants.
 23. International Commission of Inquiry... — P. 5.
 24. <http://www.khpg.org.ua/en/index.php?id=1222377444>
 25. Statute of the International Court of Justice. 1945, Art. 38.
 26. *Lemkin Rafael*. Soviet Genocide in Ukraine (unpublished article) from Lemkin's archive.
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 28. *Conquest Robert*. The Harvest of Sorrow: Soviet Collectivization and the Terror-Famine. — 1986. — P. 328.

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32. *Ludwikowski Rett R*. Searching for a New Constitutional Model for East-Central Europe // *Syracuse J. Int'l L. and Commerce*. — 1991. — Vol. 17. - P. 109.
33. See: *Conquest Robert*. The Harvest of Sorrow...

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