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The Holodomor-Genocide and the Ongoing
Russian Genocide in Ukraine: Intent,
Victims and Perpetrators



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Preface

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In my short article I will briefly compare two genocides committed against the Ukrainians within the period of one hundred years: the Holodomor in the first half of 20th century and the ongoing Russian genocide against the Ukrainian nation. These two genocides were committed by the same perpetrator – the Russian empire, which was called the USSR in the previous century and is called Russian Federation now. Whatever the name might be, it remains the same perpetrator – the Russian empire.

Under art. III of the UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)¹ the following acts shall be punishable as crimes under international law: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide. Article IV of the Genocide Convention foresees that “Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals”.

During the Holodomor which was organized by Soviet regime against Ukrainians in the first half of the 20th century millions of farmers were starved to death as a result of grain procurement policy planned by the leaders of the Communist Party of the USSR, and thousands of the Ukrainian intelligentsia, religious leaders and clergy were liquidated. Of great importance for the qualification of the Holodomor as genocide was Rafael Lemkin’s paper “Soviet Genocide in Ukraine” where he characterized the Kremlin policy in Ukraine in the first half of the 20th century as “the classic example of the Soviet genocide, its longest and broadest experiment in Russification – the destruction of the Ukrainian nation.”² As stated by Samuel Totten and Paul Bartrop, “under the strictest definition of genocide the Holodomor of the Ukrainians may be placed among the three most significant such acts in the first half of the 20th century – together with the Ottoman Turk genocide of the Armenians and the Holocaust.”³

Though the crime of genocide was first formulated in 1948 in the Genocide Convention, it was a crime under international customary law long before it, as was the case with the Armenian genocide in the beginning of the 20th century. This becomes

* The author is thankful to Prof. Dr. Thomas Giegerich for valuable comments to the draft of the article.

¹ Convention on the Prevention and Punishment of the Crime of Genocide, <https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf>.

² Rafael Lemkin, “Soviet Genocide in Ukraine”, in *Soviet Genocide in Ukraine. (Article in 28 Languages)*, ed Roman Serbyn (Kyiv: Maisternia Knyhy, 2009), 31.

³ Paul R. Bartrop and Samuel Totten, “The History of Genocide: An Overview,” in *The Genocide Studies Reader*, ed. Samuel Totten and Paul R. Bartrop (New York and London: Routledge, 2009), 138.

clear from the formulation of article I of the Convention where “[t]he Contracting Parties *confirm* that genocide ... is a crime under international law ...” (emphasis added).

The key issue for the qualification of a crime as genocide, and for determining if a state has violated its obligations under the Genocide Convention – is the special intent, *dolus specialis*, to destroy, in whole or in part, any national, ethnic, racial or religious group, as such, which should be proved for a crime to be qualified as genocide, and not “only” a crime against humanity, a war crime or other crimes. That special intent was present in the Holodomor and is present in the ongoing Russian genocide. It was implicit in the Holodomor and has been explicitly articulated nowadays. Accordingly, with regard to the Holodomor, the German Parliament (Deutscher Bundestag) on 30 November 2022 determined that “from today’s perspective, this suggests a historical-political classification as genocide. The German Bundestag shares such a classification.”⁴

It is worth mentioning that the International Court of Justice (ICJ) is very strict with the *dolus specialis* requirement in its case law. Thus, in its judgment of 26 February 2007 in the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), the ICJ found genocide only with regard to the mass murder of Muslim males at Srebrenica, and not with regard to any of the other atrocities committed against Bosnians. As stated by the ICJ, “... save in the case of Srebrenica – the Applicant has not established that any of the widespread and serious atrocities, complained of as constituting violations of Article II, paragraphs (a) to (e), of the Genocide Convention, were accompanied by the necessary specific intent (*dolus specialis*) on the part of the perpetrators.”⁵ The ICJ found that “[t]he *dolus specialis*, the specific intent to destroy the group in whole or in part, has to be convincingly shown by reference to particular circumstances, unless a general plan to that end can be convincingly demonstrated to exist; and for a pattern of conduct to be accepted as evidence of its existence, it would have to be such that it could only point to the existence of such intent.”⁶

In *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Croatia v. Serbia), judgment of 3 February 2015, the ICJ denied the *dolus specialis*.⁷ As stated by the Court, “Croatia has not established that the only reasonable inference that can be drawn from the pattern of conduct it relied upon was the intent to

⁴ In the German original: „Damit liegt aus heutiger Perspektive eine historisch-politische Einordnung als Völkermord nahe. Der Deutsche Bundestag teilt eine solche Einordnung.“ (Deutscher Bundestag, Drucksache 20/4681 of 29 November 2022, p. 2). The resolution was adopted by a large majority of the Bundestag (Deutscher Bundestag, Plenarprotokoll 20/72, p. 8427).

⁵ <<https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>>, para. 376.

⁶ *Id.*, para. 373.

⁷ <https://www.icj-cij.org/public/files/case-related/118/118-20150203-JUD-01-00-EN.pdf>.

destroy, in whole or in part, the Croat group. The acts constituting the *actus reus* of genocide within the meaning of Article II (a) and (b) of the Convention were not committed with the specific intent required for them to be characterized as acts of genocide.” [para 440] This demonstrates that one needs to be very strict in affirming the requirement of *dolus specialis* for the crime of genocide.

In general, circumstances which may evidence the intent to commit genocide are different, and according to the International Criminal Tribunal for Rwanda (ICTR) judgement in the *Acyesu* case, intent may be inferred from the following factors: “the scale of atrocities committed”; the “general nature” of the atrocities committed; “the fact of deliberately or systematically targeting victims on account of their membership of a particular group”, “the general political doctrine which gave rise to the acts”; “the repetition of destructive and discriminatory acts” and others.⁸ In the *Kayishema and Ruzindana* case, the ICTR Trial Chamber stated that as intent might be difficult to determine “the perpetrator’s actions, including circumstantial evidence, however may provide sufficient evidence of intent”, and that “intent can be inferred either from words or deeds and may be demonstrated by a pattern of purposeful action.”⁹

As it was explained in the “Elements of Crimes” formulated by the Conference of States Parties to the Rome Statute “[e]xistence of intent and knowledge can be inferred from relevant facts and circumstances.”¹⁰

What concerns the Holodomor-genocide, there is plenty of evidence of intent to destroy Ukrainians in part, as they were too numerous to be eliminated all at once. There was a pattern of conduct that pointed to the existence of genocidal intent.¹¹ What is going on in Ukraine nowadays proves that Russia has the intent to destroy Ukrainians in whole.

Public speeches of president Putin and his henchmen in which they deny that Ukrainians constitute a nation are well known. Thus, in his televised address to the nation on 22 February 2022, Putin explicitly stated that Ukraine was an integral part of Russia’s “own history, culture, spiritual space.”¹² The intent to destroy the Ukrainian nation could be also inferred from numerous other speeches of Putin,

⁸ *Acyesu case* (Trial Chamber), 1998, para. 523-524.

<<https://unictr.irmct.org/sites/unictr.org/files/case-documents/ict-96-4/trial-judgements/en/980902.pdf>>.

⁹ *Kayishema and Ruzindana case* (Trial Chamber), 1999, para. 93, 527 <<https://unictr.irmct.org/en/cases/ict-95-1>>.

¹⁰ Elements of Crimes, The Official Journal of the ICC, para. 3 of the General Introduction <<https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>>.

¹¹ Myroslava Antonovych, “Individual and Collective Intent in the Crime of Genocide (on the example of the Holodomor-Genocide against the Ukrainian Nation)” <<http://apir.iir.edu.ua/index.php/apmv/article/view/3764/3438>>.

¹² Billi Perrigo, “How Putin’s Denial of Ukraine’s Statehood Rewrites History” <<https://time.com/6150046/ukraine-statehood-russia-history-putin/>>.

Medvediev, Duma deputies¹³ and other politicians, religious leaders and journalists that constitute “the general political doctrine which gave rise to the acts that might be qualified as genocide”. On the other hand, those statements might themselves be qualified as incitement to commit genocide by Russian militaries under art. III of the Genocide Convention, as mentioned above.

I would remind that on 24th February 2022 there should have started the final solution of the Ukrainian question in the course of a brief up to three-day special military operation, as planned by Russia. The phrasing “final solution of the question” was used by the Nazis in the Second World War in relation to Jews which was qualified as genocide of the Jewish people – the Holocaust. This very phrasing was used in the article by Timophei Sergeitsev “What Russia should do with Ukraine?” – the manifesto, the map of Russian genocide against the Ukrainian nation, published by Russian state news agency “RIA Novosti” with clearly genocidal narrative, formulating the idea of destroying the Ukrainian nation.¹⁴ But even leaving aside this article which the Russian minister for foreign affairs Lavrov called a private view of the author (as if anything could have been published by the *state* news agency without approval by political leadership) there are numerous other proofs of the intent of the Russian political and military leadership to commit genocide against the Ukrainian nation.

As Volodymyr Shelukhin rightly states, “[t]his ideological framing does not see Ukrainians as a nation; according to this narrative, they have no right to their own language, culture, or state. It is misleading to think about this war as an armed struggle for territories like many wars of the 19th century. In reality, this war is about identity and the world order. The Russian Federation is not willing to accept the existence of Ukraine and Ukrainian identity just as much as it is not willing to accept liberal democracy, tolerance, and free speech.”¹⁵

Acts committed by Russian militaries in Ukraine since 24 February 2022 constitute the pattern of conduct evidencing the existence of genocidal intent, among which:

a) deliberate killings of civilians through systematic indiscriminate shelling, shooting civilians, missile and artillery bombing of the cities and villages all over the territory of Ukraine, killing detained military personnel because it belongs to a protected group;

b) causing physical and mental harm to citizens of Ukraine through torture and inhuman treatment, rape and other forms of sexual violence, enforced disappearances etc. The whole world was shocked by rapes in the Kyiv region and other occupied

¹³ <https://t.me/glavcomua/9479>.

¹⁴ <<https://euvsdisinfo.eu/into-the-heart-of-darkness-what-russia-wants-in-ukraine/>>.

¹⁵ Volodymyr Shelukhin, “The Putins” <<https://krytyka.com/en/articles/the-putins>>.

regions of Ukraine committed by Russian militaries. In the *Acayesu* case of the ICTR, the Trial Chamber ruled that "... rapes resulted in physical and psychological destruction of Tutsi women, their families, and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole" [para 731]. There is evidence that Russian perpetrators committed this brutality stressing that the Ukrainian women should not give birth to children. This also evidences preventing birth within the members of the group;

c) deliberate inflicting by the Armed Forces of the Russian Federation of conditions of life calculated to bring about destruction of the Ukrainian nation in whole or in part, in particular by means of besieging settlements, blocking of humanitarian aid and the evacuation of civilians; the capture and deliberate destruction of infrastructure that provides for people's basic needs;

d) forcible transfer of Ukrainian children is also part of the destruction of the Ukrainian nation. As stated by the Verkhovna Rada of Ukraine in the Declaration On the Genocide Committed by the Russian Federation in Ukraine, "the forcible transfer of Ukrainian children to the territory of the Russian Federation and their relocation to an alien environment aimed at the annihilation of their self-identification as Ukrainians, as well as the expulsion from their homes and deportation to the territory of the Russian Federation of thousands of persons belonging to the civilian population of Ukraine."

As stated by the Trial Chamber in the *Blagojević and Jokić* case of the International Criminal Tribunal for the former Yugoslavia (ICTY), "[i]n relation to forcible transfer, Judge Shahabuddeen found that 'mere displacement' does not amount to genocide. However, he further found that displacement can constitute genocide when the consequence is dissolution of the group." The Trial Chamber moreover observed in this case that the forcible transfer could be an additional means by which to ensure the physical destruction of the Bosnian Muslim community in Srebrenica. "The forcible transfer of the women, children and elderly is a manifestation of the specific intent to rid the Srebrenica enclave of its Bosnian Muslim population. The manner in which the transfer was carried out – through force and coercion, by not registering those who were transferred, by burning the houses of some of the people, sending the clear message that they had nothing to return to, and significantly, through its targeting of literally the entire Bosnian Muslim population of Srebrenica, including the elderly and children – clearly indicates that it was a means to eradicate the Bosnian Muslim population from the

territory where they had lived.”¹⁶ The parallels with Mariupol and other occupied cities and villages in Ukraine are clear.

All in all, citing Aleksander Motyl, “[t]ens of thousands of Ukrainian civilians have been killed in Mariupol; thousands more have died in other Ukrainian villages, towns, and cities. Hundreds of thousands have been ‘ethnically cleansed’ and forcibly deported to Russia. Thousands of children have been kidnapped.”¹⁷

All the enumerated acts were committed in accordance with Russian political and military doctrine aimed at destroying the Ukrainian nation as such.

Another issue I would briefly touch is *the targeted group* which was victim of genocide in the territory of Ukraine in the first part of the 20th century and is nowadays since 24th February 2022. The Holodomor was aimed at destroying the Ukrainian *ethnic group* both in the territory of the Ukrainian SSR and Northern Caucasus and it was meant to suppress the Ukrainian national liberation movement. Ukrainians did not exist then as a separate political nation. Now we do have *a Ukrainian nation* and it is clear that the Russia’s genocidal intent is to destroy the Ukrainian nation, i.e. the national group.

My doctor who was first shot in his back in his house near Kyiv in the beginning of March 2022 and after that burnt was a Russian speaker, but he belonged to the Ukrainian nation and was killed as a representative of the Ukrainian national group. There was no other reason why he was killed. His corpse was found a month later, after Russian militaries left Kyiv region. Tens of thousands of civilians, among whom women, children, were killed, tortured, raped, disappeared because they belonged to the Ukrainian nation. Enumerated genocidal acts in the 2022 Russian genocide have changed since the Holodomor but remained as barbarous and inhuman as they used to be a century ago.

In the Raoul Wallenberg Centre for Human Rights and the New Lines Institute for Strategy and Policy Report “Independent Legal Analysis of the Russian Federation’s Breaches of the Genocide Convention in Ukraine and the Duty to Prevent” issued in May 2022 it is stated: “This report establishes reasonable grounds to conclude that Russia bears State responsibility for (a) direct and public incitement to commit genocide and (b) a pattern of atrocities from which an inference of intent to destroy the Ukrainian national

¹⁶ *Blagojevic and Jokic case* (Trial Chamber), Judgement of January 17, 2005, para. 660, 675.

¹⁷ Aleksander Motyl, “Putin’s Russia Has One Goal: To Ensure Ukraine Doesn’t Exist” https://www.19fortyfive.com/2022/05/putins-russia-has-one-goal-to-ensure-ukraine-doesnt-exist/?fbclid=IwAR0Kt84mVRfalxPudR5lZuKG0clzlw3g_Bfnok6gt4VOT61SaGWdKGtuWKQ.

group in part can be drawn, in breach of Art. III(c) and Art. II of the Genocide Convention.”¹⁸

One of the conclusions in this Report is that there exists intent to destroy the Ukrainian national group *in part*. However, the massive missile attacks of the last months on vitally important infrastructural objects all over Ukraine in all oblast (provinces) testify that there is intent to destroy the Ukrainian nation *in whole*.

Both international treaty and customary law foresees the legal obligation of the international community of States to prevent commission of genocide and to prosecute and punish perpetrators. What is more, following the GA Resolution 60 / 1 (“2005 World Summit Outcome”), “[t]he international community, through the United Nations, also has the responsibility ... to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.” This duty was not fulfilled by international community concerning the Holodomor-genocide in the first part of the 20th century. As a result, Russia is committing it again in the frame of the full-scale aggression against Ukraine since 24th February 2022. If there is no credible regime change in the Russian empire – the perpetrator of the Holodomor-genocide and of the ongoing genocide in Ukraine, then such macro-crimes will be repeated. So, if not now, then when?

¹⁸ An Independent Legal Analysis of the Russian Federation’s Breaches of the Genocide Convention in Ukraine and the Duty to Prevent: New Lines Institute for Strategy and Policy; Raoul Wallenberg Centre for Human Rights, May 2022, 1 <https://newlinesinstitute.org/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/>.