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## **Legal Aspects of the 1932-1933 *Holodomor*: Ukrainian and Russian Approaches<sup>1</sup>**

### **Introduction**

While the 1932-1933 Great Famine in the U.S.S.R. occurred in both Ukraine and some regions of Russia, the approaches to investigating this crime and to its qualification are absolutely different in modern Ukraine and the Russian Federation. The aim of this paper is to analyze the views of Ukrainian and Russian scholars on the legal aspects of the 1932-1933 *Holodomor* in Ukraine and the official positions of both states concerning the *Holodomor*.

### **Ukrainian Scholars' Position**

Ukrainian scholars started to actively research the documents and evidences on the *Holodomor* since Ukraine's independence in 1991, and even prior to it during Gorbachev's *perestroika*. Since the beginning of this research, and especially at the end of 1990s, a majority of Ukrainian scholars who investigated the *Holodomor* characterized it as a crime of genocide against the Ukrainian people.

Unfortunately, not many lawyers research the crime of the *Holodomor* in Ukraine. Among those who are actively writing on the legal issues of the *Holodomor* is Professor Volodymyr Vasylenko who formulates arguments on the *Holodomor* as genocide directed against Ukrainian national group thusly: "наявність наміру сталінського тоталітарного режиму організувати Голодомор в Україні, замаскований під надмірні плани хлібозаготівель, і спрямованість проти української нації як такої, зокрема проти її вагової частини — селян. Між українським Голодомором і голодом, який у той період охопив інші регіони СРСР, існувала якісна різниця: селян поза межами України та Кубані

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<sup>1</sup> Presented at the 26<sup>th</sup> Conference on Ukrainian Subjects at the University of Illinois at Urbana-Champaign on June 24-27, 2009.

виморювали голодом як соціальний клас, а українські селяни стали жертвами злочину насамперед через свою приналежність до української нації. [the reality of the intent of the *Holodomor* organized by Stalin's totalitarian regime was camouflaged by the immoderate plans for grain collection and targeted against the Ukrainian nation as such, especially against its most populous sector — the peasants. There was a significant difference between the Ukrainian *Holodomor* and the famine that, during that same period, had spread through other regions of the USSR: the peasants beyond the boundaries of Ukraine and Kuban were starved to death as a social class, while the Ukrainian peasants became victims of starvation primarily because they were Ukrainian.]”<sup>2</sup>

Specialists in criminal law in Ukraine are still tracing the ways in which the crime of the *Holodomor* can be prosecuted and punished in Ukraine, stressing that it was not a crime under Ukrainian law at the time when it was committed. However, the *Holodomor* was a crime under international customary law and constitutes a crime of genocide under the “Genocide Convention,” which has no statutory limitations. Both the International Covenant on Civil and Political Rights (article 15) and the European Convention on the Protection of Human Rights and Fundamental Freedoms (article 7) stress that the norm of “no offence without law” in this case is superseded by the norm “nothing shall 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 the community of nations.”

### Official Recognition of the *Holodomor* in Ukraine

The Verkhovna Rada of Ukraine adopted in 2002 the Decree on the 70<sup>th</sup> Anniversary of the *Holodomor* in Ukraine, recognizing the *Holodomor* as genocide. The Ukrainian genocide was then recognized by the Ukrainian Law “On the *Holodomor* of 1932-1933 in Ukraine” on November 28, 2006. 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.

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<sup>2</sup> Володимир А. Василенко, “Голодомор 1932-1933 років в Україні: правова оцінка,” *Дзеркало тижня* (October 4-10, 2008).

The Ministry for Foreign Affairs of Ukraine worked actively on the international arena while trying to persuade the UNO and the Council of Europe, as well as other states, to adopt resolutions recognizing the *Holodomor* as genocide against Ukrainians. Though it was definitely premature — the world in its majority is not yet ready to recognize it — the effort attracted the world community's attention to the Ukrainian *Holodomor* and clearly identified who strong-headedly opposed and will oppose this recognition. In its 58<sup>th</sup> session, the UN General Assembly adopted a declaration signed by 64 states on the 70<sup>th</sup> anniversary of the *Holodomor* — “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 November 1, 2007, the 34<sup>th</sup> Session of the UNESCO General Conference, with 193 countries, unanimously passed a Resolution “On Remembrance of victims of *Holodomor* in Ukraine” on the 75<sup>th</sup> anniversary of the *Holodomor*. The Resolution expressed the conviction that the tragedy of *Holodomor*, which was caused by the harsh actions and politically totalitarian régime under Stalin, should be a warning to present and future generations to adhere to democratic values, human rights and legality. A similar proposal was put forward by Ukraine at the 9<sup>th</sup> 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 September 22, in a spirit of compromise, decided not to insist on a vote for the draft resolution by the Council.”<sup>3</sup>

In January 2006, the Parliamentary Assembly of the Council of Europe condemned the *Holodomor* as a crime of the communist régime and, in October 2008, the Parliament of the European Union adopted the Resolution recognizing the *Holodomor* in Ukraine as a crime against humanity.

Ukrainian President Victor Yushchenko said at a November 2008 ceremony marking the 75<sup>th</sup> anniversary of the onset of the 1932-1933 famine that “hunger was selected as a tool to subdue the Ukrainian people.” In January 2009, President Yushchenko ordered state archives to declassify, publish and study all documents relating to the *Holodomor*, the Ukrainian independence movement, and political repressions during the Soviet period from 1917 to 1991. On May 25, 2009, the Security Service of Ukraine launched criminal proceedings on charges of arranging the *Holodomor* in

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<sup>3</sup> From a statement issued September 26, 2008 by the Press Service of Ukraine's Ministry of Foreign Affairs regarding the 75<sup>th</sup> anniversary of the *Holodomor*; see [khpg.org.ua/en/index.php?id=1222377444](http://khpg.org.ua/en/index.php?id=1222377444).

1932-1933 and asked the Federal Security Service of Russia to provide documents kept at the archives of Russian special services and help Ukraine investigate these criminal proceedings.<sup>4</sup>

From the 1990s to the beginning of the 21<sup>st</sup> 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.<sup>5</sup> The Seim of Lithuania adopted a resolution on November 24, 2005 which states that "Stalin's totalitarian régime committed a conscious and thoroughly planned genocide against the Ukrainian people."<sup>6</sup> Furthermore, the Georgian parliament recognized the *Holodomor* as genocide against the Ukrainian people committed by the totalitarian Bolshevik regime in 1932-1933.<sup>7</sup>

### Russia's Approaches to the Great Famine

Russia, under the presidency of Boris Yeltsin, also started to actively research the problems of the 1932-1933 famine and other crimes of the Soviet totalitarian system in Russia. One such example was the Katyn case opened by the Procurator General Office of the Russian Federation. However, after democracy was curtailed in Russia, the trends in investigating and especially in assessing the famine in Russia, and in the former Soviet Union in general, changed to absolute non-acceptance of recognition of Ukraine's *Holodomor* as genocide. It naturally led to a decrease in research on the famine. Ukraine's genocide claim is hotly contested by Russia, which insists that the famine indiscriminately affected many ethnic groups across the Soviet Union. While this is so to an extent, it was only in Ukraine and in the Northern Caucasus (Kuban), predominantly inhabited by ethnic Ukrainians (and to some extent in Kazakhstan<sup>8</sup>) that it was organized with the intent to eliminate peasants on the national ground: the

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<sup>4</sup> "Ukraine asks Russia for Holodomor archives," *Kyiv Post*, vol. 11, issue 33 (June 4, 2009).

<sup>5</sup> "Австрія визнала Голодомор геноцидом," *За нашу Україну*, no. 45 (July 7, 2003).

<sup>6</sup> "Литва визнала Голодомор в Україні геноцидом," *Голос України*, no. 225 (November 26, 2005), p. 6.

<sup>7</sup> "Це був геноцид," *Голос України*, no. 2 (January 5, 2006), p. 1.

<sup>8</sup> The issue of the Kazakhstan famine is not dealt with in this article.

harvest in Ukraine, though less than in previous years, was enough to feed the people. Stanislaw Kosior, the head of the Communist Party in Soviet Ukraine, stated in a summer 1930 memo “*саме щодо українських селян*” [pertaining to Ukrainian peasants]: “The farmers have adopted a new tactic. They want the grain to rot, in order to strangle Soviet rule with the bony hand of starvation. But the enemy has miscalculated. We will show them what a famine really is. You are ordered to collect everything, to the last grain, and immediately deliver it to the procurement stations.”<sup>9</sup>

Recently Russia issued a DVD and a thick book of historical documents to dispute claims that the Ukrainian famine of the 1930s amounted to genocide.<sup>10</sup> They include letters portraying the dire situation at that time in what is now Russia and in other ex-Soviet republics and orders — some with Stalin’s stamped signature in red ink — denying pleas for relief in grain procurement quotas. Other documents suggest officials in Ukraine misled Moscow about the extent of hunger there.<sup>11</sup>

Russian archivists and historians pressed the Kremlin’s case that the Stalin-era famine — which killed millions of people — was a common tragedy across Soviet farmlands, countering efforts by Ukraine’s pro-Western president (former President Yushchenko) to convince the world that Ukrainians were targeted for starvation.<sup>12</sup>

Much as in the 1930s, when the word “famine” was treated as anti-soviet agitation,<sup>13</sup> the Russian government still treats the word *Holodomor* as anti-Russian propaganda. The Russian Duma in 2008 passed a resolution that firmly rejected recognizing the famine in Ukraine as genocide. When President Yushchenko organized a 75<sup>th</sup>-anniversary commemoration in November 2008, Russian President Dmitry Medvedev refused to attend it, accusing his Ukrainian counterpart in an open letter of “[using] the so-called ‘*Holodomor*’ ... to achieve short-term political goals.”

There exist different explanations of Russia’s behavior concerning the Great Famine in general and the Ukrainian *Holodomor* in particular. As Peter Borisow writes: “Russia has changed only its tactics, not its ultimate goal of solving its ‘Ukrainian problem.’ Russia continues its work to

<sup>9</sup> From the exhibit “*Holodomor: Genocide by Famine*” (June 2009, University of Illinois Library).

<sup>10</sup> O. A. Antipova (ed.), *Golod v SSSR: 1930-1934 gg* (Moscow: Federalnoe arkhivnoe agentstvo, 2009).

<sup>11</sup> *The Ukraine List*, no. 432 (June 17, 2009), item 11.

<sup>12</sup> “Russia: Deadly 1930s famine not genocide. Denies that Ukrainians were targeted for starvation during Stalin era,” at [msnbc.msn.com/id/29391949](http://msnbc.msn.com/id/29391949).

<sup>13</sup> P. О Медведев, *Сталине и сталинизме* (Moscow, 1990), p. 212.

eliminate all that defines Ukrainians as a people and as a nation in order to return Ukraine once and for all to regional status within Russia. ... Nothing stands in Russia's way more than the *Holodomor*. How can Russia pretend to be a respected world leader, a caring and responsible steward of its people with all that blood on its hands? This is a case of Lady Macbeth in reverse — the world sees the blood, while Russia actually believes that after seventy-five years of denial, rewriting history, repression and destruction of evidence, it has washed away the blood and is now magically pure as a newborn baby's soul. ... while the *Holodomor* marked the height of Russian genocide against Ukrainians, it was by no means an isolated event. Under Russian rule, Ukrainians were subjected to tyranny that went beyond traditional interpretations of genocide, to what this author terms 'metagenocide' — 'long term ongoing genocide systematically targeting for destruction not just a group of people but also all that defines them as that group. The goal is not just to deny the group's right to exist, but to deny that it ever existed as a nation in the first place, to wipe it from humanity's collective memory'.<sup>14</sup>

It combined the worst aspects of classic genocide with long term intentional ethnocide. Russia's metagenocide in Ukraine targeted not only Ukrainian persons, but also the Ukrainian language, culture, history, churches, traditions and all else that contributes to defining Ukrainians as Ukrainians and not as just another subset of Russians.<sup>15</sup>

As was mentioned above, the topic of the famine is not widely analyzed by Russian scholars. Still, among those scholars who do write about the Famine, one can identify three different approaches, and consequently Russian sources on the Famine-*Holodomor* may be divided into three categories:

1. Denial of the *Holodomor* within the political context of a new Ukrainian nationalist policy.
2. Denial that its consequences were so crucial, stressing the exaggerated conclusions of Ukrainian scholars on the *Holodomor* and denying the genocidal character of the *Holodomor*.
3. Objective research of crimes of the totalitarian Communist régime in the Soviet Union, including the Great Famine (by a very small group of Russian scholars).

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<sup>14</sup> Peter Borisow, "Holodomor: Metagenocide in Ukraine — Its Origins and Why It's Not Over," *Canadian American Slavic Studies*, vol. 42, no. 3 (Fall 2008), pp. 251-265.

<sup>15</sup> Ibid.

### Ideology and politicking

Under this first approach, a majority of new sources either deny the *Holodomor* at all or bring it into the political context of a new Ukrainian nationalist policy. Among these latest books is Yurii Shevtsov's *Новая идеология: Голодомор* (*New Ideology: Holodomor*) which constitutes an extreme Ukrainophobia by the former Director of the Center on Problems of European Integration in Minsk. The main idea of this book is that the "myth" of the Ukrainian *Holodomor* is directed against Russia and was turned by nationalists into a universal anti-communist ideology for all post-communist countries and represents a "re-natzification" of Eastern Europe. However, according to reliable sources, the author openly admits to having written the book upon official instructions from Moscow.<sup>16</sup>

In the introduction to *Новая идеология*, Gleb Pavlovsky writes about a new Kyiv ideology which "aims at creating a nation — a victim of the *Holodomor*, whose only goal and the content of whose life will be retaliation (*призвана воспитать нацию – жертву Голодомора, целью и единственным содержанием жизни которой станет месть*)."<sup>17</sup> The Council of Europe resolution "On International Condemnation of the Crimes of Totalitarian Communist Régime,"<sup>18</sup> as well as the obligation to punish for grave human rights violations under international law, so that they do not occur in the future, must be definitely unknown to Pavlovsky.

Shevtsov considers defining the *Holodomor* as genocide to be a myth directed against Russia,<sup>19</sup> just a viewpoint of "Orange" revolutionists which they "imposed upon Ukrainian society" ("*навязали украинскому обществу*"),<sup>20</sup> an "inevitable concept of Ukrainian nationalists."<sup>21</sup> The *Holodomor* is not treated like a crime that resulted in the death of millions of people but is very cynically called a "totalitarian ideological construction."<sup>22</sup> Shevtsov's "hypothesis" for the reasons of the famine — such as

<sup>16</sup> Email from M. T. Znayenko to [aaus-list@ukrainianstudies.org](mailto:aaus-list@ukrainianstudies.org) on the subject of Russian Ukrainophobia on *Holodomor*: New book (May 14, 2009).

<sup>17</sup> Юрий Шевцов, *Новая идеология: Голодомор* (Moscow: Европа, 2009).

<sup>18</sup> The text of Resolution 1481, "Need for international condemnation of crimes of totalitarian communist regimes," was adopted by the Parliamentary Assembly of the Council of Europe on January 25, 2006 (5th Sitting), [www.assembly.coe.int](http://www.assembly.coe.int).

<sup>19</sup> Шевцов, pp. 8-9.

<sup>20</sup> Ibid., p. 7.

<sup>21</sup> Ibid., p. 13.

<sup>22</sup> Ibid., p. 11.

the so-called suicidal behavior of villages themselves and the crisis of village culture — against the background of the International Inquiry Commission Report on the causes of Great Famine<sup>23</sup> are, to put it mildly, absolutely absurd and strange.

However the main reason for Shevtsov's (i.e., Russia's) fear of the "cult of Holodomor" lies in its assisting "Ukraine's integration into Europe — EU and NATO"<sup>24</sup> — and this is what scares Russia most of all. It would mean losing Ukraine, like Russia has lost the Baltic States and is now losing Georgia. The most cynical statement of the book is the last: that the resistance to the cult of the *Holodomor* is indeed the protection of European values and European civilization. One cannot even criticize such a statement — its lack of common sense places it beyond criticism.

Another Russian historian, R. Medvedev, while not denying that Soviet Ukraine has passed through a lot of difficulties, one of which was Famine of 1933,<sup>25</sup> stresses that in the winter and spring of 1933 the famine was wide-spread in all the southern regions of the U.S.S.R., including Kazakhstan, the Volga region and Don, and thus was a tragedy in all the grain regions and a crime of the government against the peasants of the whole Union. He considers it dishonest to treat the famine as genocide against only the Ukrainian people, since the bread, which was collected by the powers of Ukraine from towns and villages, went either to cities of Ukraine itself or was exported through Odesa to western states.

Medvedev stresses that Ukraine was headed at that time by Vlas Chubar, a Ukrainian, and Stanislav Kosior, a Pole, who fulfilled Stalin's orders. Medvedev disagrees that it is Russia which is accused in 1933 Famine. He notes that already in 1983 there was a monument erected in Los Angeles with the inscription "To Ukrainians — victims of Russian communism, victims of the *Holodomor*." In refuting such "nationalistic interpretations and demands to the Russian Federation to pay compensation," Medvedev cites the weekly "2000," published in Kyiv, which calls the "campaign organized by Victor Yushchenko" to be "dances on the bones (*плясками на костях*)."<sup>26</sup>

However, President Yushchenko never accused Russia of the *Holodomor*-Genocide against Ukrainians — but instead cited the Soviet

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<sup>23</sup> International Commission of Inquiry into the 1932-33 Famine in Ukraine, *Final Report* (1990).

<sup>24</sup> Шевцов, p. 170.

<sup>25</sup> Р. А. Медведев, "Из истории Содружества Независимых Государств," *Новая и новейшая история*, no. 5 (2006), p. 178.

<sup>26</sup> "2000" (December 23, 2005); as cited by Medvedev.



Communist totalitarian régime — nor demanded compensation. One could suggest, though, that Russia, as the successor of the Soviet Union, should take responsibility for the crimes of its government.

A view similar to Medvedev's is expressed by Boris Piadyshev, who notes in his article "*Holodomor* Politicking" that Yushchenko's assertion that Moscow created the famine is a desperate move to hide his own responsibility for the problems in the country. He contends that evoking the issue of the famine cannot help the situation in any way, and that Yushchenko is only politicking.<sup>27</sup>

### **Over-exaggerated and not planned**

The second category of scholars who investigate the Famine deny that its consequences were so crucial, stress the idea of exaggerated conclusions of Ukrainian scholars on the *Holodomor* and deny the genocidal character of the *Holodomor*. They include as arguments a lack of sources proving the intent of the government to exterminate the Ukrainian nation. "Not a single document exists that even indirectly shows that the strategy and tactics chosen for Ukraine differed from those applied to other regions, not to mention tactics or strategy with the aim of genocide," said Vladimir Kozlov, head of Russia's Federal Archive Agency. He stressed that the famine was a direct result of Josef Stalin's brutal collectivization campaign and the widespread confiscation of grain that was exported to secure equipment needed for the Soviet dictator's frenetic industrialization drive. Kozlov also mentioned that the policy was class-based, targeting the kulaks — wealthy farmers perceived as enemies of Communism — and was implemented virtually identically across the Soviet Union. "There were no national or ethnic undertones," he told a news conference at the headquarters of state news agency RIA-Novosti.<sup>28</sup>

The same thought was expressed earlier by Victor Kondrashin and Diana Penner, who 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 and 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

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<sup>27</sup> Boris Piadyshev, "Holodomor Politicking," *International Affairs: A Russian Journal of World Politics, Diplomacy & International Relations*, vol. 55, issue 1 (2009), pp. 69-70.

<sup>28</sup> *The Ukraine List*, no. 432 (June, 17 2009), item 13.

researchers<sup>29</sup> (оценки Голода 1932-1933 годов как тщательно спланированного до этого времени не получили документального подтверждения, а исследователями не найдено ни единого постановления Советского правительства и ЦК партии, в котором был бы приказ убить с помощью голода определенное количество украинских или иных крестьян.)". Evidently, it would be naïve to think that such a criminal power as the Soviet Union would explicitly issue decrees to kill millions of Ukrainian peasants. Yet hundreds of documents have been revealed by the Security Service of Ukraine proving that the *Holodomor* was ethnically rooted.

Russian scholars also stress the "over-exaggerated" numbers of victims of the famine.<sup>30</sup> V. A. Tishkov, Director of the Institute of Ethnology and Anthropology of the Russian Academy of Sciences, in his article "Demographical 'holodomors'," assigned the cause for such "exaggerated" (from his point of view) data on victims of the famine among the Ukrainian population to changes of ethnic identity to the benefits of the other group and to external (trans-state) migrations.<sup>31</sup>

### A handful of objective researchers

There is still a very small group of Russian scholars who continues to objectively research the crimes, including the Great Famine, of the totalitarian Communist régime in the Soviet Union. A. N. Sakharov, while analyzing the general problems of historical scholarship in Russia, notes investigation of a new topic of "power and society,"<sup>32</sup> with research conducted on the basis of recently opened archive documents.<sup>33</sup>

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<sup>29</sup> В. Кондрашин і Д. Пеннер, *Голод: 1932-1933 роки в радянській деревні (на матеріалах Поволж'я, Дону і Кубані)* (Samara: Pensa, 2002), p. 23.

<sup>30</sup> В. Н. Смирнов, "Україна в світлі сучасних викликів глобалізації," *Нова і новітня історія*, no. 4 (2008), pp. 26-40.

<sup>31</sup> В. А. Тишков, "Демографічні 'голодомори,'" *Родина*, no. 7 (2007), p. 86.

<sup>32</sup> А. Н. Сахаров, "Общие проблемы исторической науки. О новых подходах в российской исторической науке. 1990-е годы," *История и историки*, no. 1 (2002), pp. 3-28.

<sup>33</sup> Голос народа. Письма и отклики рядовых советских граждан о событиях 1918-1932 гг. (Moscow, 1998); Общество и власть. 1930-е годы (Moscow, 1998); Письма во власть. 1917-1927: Заявления, жалобы, доносы, письма в государственные структуры и большевистским вождям. *Документы советской истории* (Moscow, 1998); Советская деревня глазами ВЧК - ОГПУ - НКВД. 1918-1939: *Документы и материалы*: В 4 т. (Moscow, 1998-2000); Крестьянские историки: русская деревня 20-х годов в письмах и доку-

While analyzing Walter Duranty's activity in describing the famine in the Soviet Union, Russian historian K. T. Tikhii writes that Duranty's communications to the *New York Times* impress by the "Jesuitical" nature of his statements about the absence of famine in Russia,<sup>34</sup> citing Duranty's assertion that "there is only wide spread mortality because of diseases caused by malnutrition."<sup>35</sup>

Tikhii further writes that another journalist, William Henry Chamberlin, travelled in the same places for two weeks and revealed convincing evidence of recent famine.<sup>36</sup>

M. Greenberg in his article "Strengthening of Legality and Struggling with Crime. Criminal Law as a Phenomenon Incompatible with Illegality and Tyranny" — which turned out to be the only article in the Russian *State and Law* that includes the issue of Famine — characterizes the Decrees of the Central Executive Committee and the Council of People's Deputies of the U.S.S.R. on "Guarding the Property of State Enterprises, Collective Farms and Cooperation and Strengthening of Socialist Property" of August 7, 1932<sup>37</sup> (the so-called "Law of Five Stalks") as an example of criminal law free from principles of humanity, justice, differentiation and individualization of responsibility.<sup>38</sup> This Decree foreshadowed judicial repression for the plunder of collective and cooperative properties in the form of "execution with the confiscation of all property and substitu-

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ментах (Moscow, 2001); Трагедия советской деревни. Коллективизация и раскулачивание: *Документы и материалы*: В 5 т. (Moscow, 1999-2001); "Совершенно секретно". Лубянка - Сталину: о положении в стране. 1922- 1934 гг. (Moscow, 2001); Общество и власть. Российская провинция. 1917-1980-е годы (*По материалам Нижегородских архивов*) (Moscow, Nizhniy Novgorod, Paris, 2002); Ивницкий Н. А. *Коллективизация и раскулачивание (начало 30-х годов)* (Moscow, 1996); Рязанская деревня в 1929-1930 гг. Хроника головокружения. *Документы и материалы* (Moscow, 1998; Иванова Г. М. *ГУЛАГ в системе тоталитарного государства* (Moscow, 1997); Зима В. Ф. *Голод в СССР 1946-1947 годов: происхождение и последствия* (Moscow, 1996).

<sup>34</sup> К. Т. Тихий, "Уолтер Дюранти о Советском Союзе: Мифы и реальность," *Новая и новейшая история*, no. 5 (2008), pp. 210-211.

<sup>35</sup> W. Duranty, "Russians Hungry, But Not Starving," *New York Times* (March 31, 1933).

<sup>36</sup> William H. Chamberlin, *Russia's Iron Age*, pp. 83-84.

<sup>37</sup> *Собрание законодательства СССР*, no. 62 (1932).

<sup>38</sup> М. С. Гринберг, "Укрепление законности и борьба с преступностью. Уголовное право как феномен, несовместимый с беспорядком и произволом," *Государство и право*, pp. 46-53 (available at [www.ebiblioteka.ru/sources/article.jsp?id=5428403](http://www.ebiblioteka.ru/sources/article.jsp?id=5428403)).

tion in lesser cases of the deprivation of freedom for a term of not less than 10 years with the confiscation of all property.” While it was issued and enacted at a time when many regions were suffering from famine, this Decree was psychologically and biologically damaging: “*постановление было непсихологично и, если возможен такой оборот, небιологично - не устанавливало и не закрепляло ‘перепад’ между положением законопослушного индивида и положением индивида, нарушающего закон. Нацеленный, как любое существо, на самосохранение, индивид не мог не предпочесть неизбежной гибели от голода вероятное наказание за кражу.*”<sup>39</sup>

### Summary

As long as the present régime exists in Russia, the obligation under international law to investigate the crimes of the totalitarian Soviet system, including the Great Famine of 1932-1933, and to punish those responsible is not likely to be fulfilled.

In stark contrast to Russia, former Ukrainian President Yushchenko’s efforts in commemorating the victims of the *Holodomor*, as well as the researches of Ukrainian historians, political scientists, demographers and lawyers, have gone so far that they cannot be curtailed or stopped. Ukraine persistently paves the way to ascertaining the fact of the *Holodomor* in the courts and to recognizing it as a crime of genocide on the international level. In May 2009, the Security Service of Ukraine opened criminal procedures on the fact of the 1932-1933 *Holodomor* in Ukraine. More than 130 persons are indicted in instigating and committing this crime; although none of them is alive, the very fact of the accusations is important.

In January 2010, the Appeals Court of Kyiv ascertained that the leaders of the Communist Party of the Soviet Union and of the Communist Party of Ukraine, including Stalin, Molotov, Kaganovich, Postyshev, Kosior, Chubar and Khatayevich, deliberately organized genocide on the part of the Ukrainian national group, with the purpose of suppressing the national liberation movement in Ukraine and preventing the restoration and consolidation of an independent Ukrainian State, by creating conditions of life calculated to bring about its destruction through the *Holodomor* of 1932-1933 which resulted at the destruction of three million nine hundred and forty-one thousand people.

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<sup>39</sup> Ibid., p. 51.